

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. NO.1503 of 2018

This the 15th day of October, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Inspector Navin Chandra, D-1/700
PIS Sh. I.D. Kandpal
R/o Qtr. No. 4A, Type-III,
Police Colony, Laxmi Nagar,
Ramesh Park, Delhi-92.

.... Applicant

(By Advocate : Shri Sachin Chauhan)

VERSUS

- 1). Govt. of NCTD through
The Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
- 2). The Joint Commissioner of Police,
Eastern Range : Delhi through
Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.
- 3). The Addl. Dy. Commissioner of Police,
East District, Delhi
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi.

..... Respondents

(By Advocate : Ms. Harvinder Oberoi)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following
reliefs:-

- “(i). To quash and set aside the show cause notice dated 23.09.2016 at Annexure A-1, order of punishment of censure dated 02.03.2017 at annexure A-2 and order of appellant authority dated 06.12.2017 at annexure A-3 with all

consequential benefits including seniority and promotion and pay and allowances.

- (ii). Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

2. The relevant facts of the case are that applicant while working as Inspector in Delhi Police was issued a Show Cause Notice for censure dated 23.09.2016 on the following allegation :-

"A departmental enquiry initiated against Const. Vikas Kumar, No.1057/E vide order No.5285-5304/HAP (P-I)/East District dated 07.08.14 was entrusted to you Inspr. Naveen Chandra, No.D-I/700, Inspr. Inv./PS Pandav Nagar on 08.08.14 with the directions to conduct the departmental enquiry on day to day basis and submit your findings expeditiously. On perusal of the statement of Des pending with E.O. over one year, the SO to the Joint CP/Eastern Range, Delhi asked this office to send the position of Des pending over one year alongwith comments of EO. On the delay in completion of these Des, whether permission has been taken for extension of time or otherwise. You Inspr. Naveen Chandra, No.D-I/700, Inspr Inv./PS Pandav nagar was directed vide this office u.o. endorsement dated 22.07.16, 08.08.16, 09.09.16, 19.09.16 and 22.09.16 received from SO to Joint CP/Eastern Range, Delhi but you neither seek permission of the Joint CP/ER for extension of time in the DE pending with you over one year nor responded. It clearly shows your negligence and callous attitude."

3. The applicant has also submitted his reply to the said Show Cause Notice.

4. After considering the replies submitted by the applicant to the said Show Cause Notice, the disciplinary authority confirmed the penalty of 'Censure' vide order dated 2.3.2017
The contents of the said order are reproduced below:-

“A show cause notice proposing therein a punishment of Censure was issued to Inspr. Navin Chandra, No.D-I/700 (PIS No. 16920022), the then Inspr./Inv. PS Pandav Nagar vide this office No.5726-27/HAP (P-II)/East District, dated 23.09.2016, on the allegation that a departmental enquiry initiated against Const. Vikas Kumar, No. 1057/E vide order No. 5285-5304/HAP (P-I)/East District dated 07.08.14 was entrusted to Inspr. Naveen Chandra, No. D-I/700, Inspr. Inv./PS Pandav Nagar on 11.06.15 with the directions to conduct the departmental enquiry on day to day basis and submit his findings expeditiously. On perusal of the statement of Des pending with E.O. over one year, the SO to the Joint CP/Eastern Range, Delhi asked this office to send the position of DEs, whether permission was taken for extension of time or otherwise. Inspr. Naveen Chandra, No. D-I/700, Inspr. Inv./PS Pandav Nagar (now SHO/PS Pandav Nagar) was directed vide this office u.o. endorsement dated 22.07.16, 08.08.16, 09.09.16, 19.09.16 and 22.09.16 received from SO to Joint CP/Eastern Range, Delhi but he neither sought permission of the Joint CP/ER for extension of time in the DE pending with him over one year nor responded.

The subject Show Cause Notice was served upon Inspr. Naveen Chandra, No.D-I/700, SHO/PS Pandav Nagar and he submitted his written reply to the subject SCN. He was also heard in O.R. by the undersigned on 09.11.16. In his reply he pleaded that the DE against Const. Vikas Kumar, No. 1057/E was marked to him on 11.06.2015 after transfer of Inspector Dheeraj Singh, No. D/3550 (E.O.) from East District. The DE against Const. Vikas Kumar, No.1057/E was initiated due to his arrest in three criminal cases. From these cases, two cases pertained to Noida (U.P.) and one case to Crime Branch, Delhi. The I.Os and Duty Officers of the criminal cases pertaining to Noida were transferred from respective police station as the FIRs against the said Constable in these police stations were of year, 2013. These witnesses took a lot of time to attend the DE proceedings because they were not under administrative control of Delhi Police. The DE was about to complete so he did not take permission for extension of time. In the mean time, he fell sick due to which he was on Earned Leave. The Inspector further pleaded that he has already completed the DE proceedings. The undersigned has carefully gone through the written/oral submissions as well as record available on file and found the reply given by the Inspector not tenable as as

he was directed vide this office u.o. endorsement dated 22.07.16, 08.08.16, 09.09.16, 19.09.16 and 22.09.16 to seek permission of the Joint C.P./Eastern Range Delhi but he neither sought permission for extension of time in the DE pending with him over one year nor responded. Hence, the Show Cause Notice issued to Inspr. Naveen Chandra, No.D-I/700, SHO/PS Pandav Nagar is confirmed and his conduct is, hereby **censured**.

A copy of this order may be given to Inspr. Naveen Chandra, No.D-I/700, SHO/PS Pandav Nagar, Delhi free of cost. He can file an appeal against this order to the Joint C.P./Eastern Range, Delhi within 30 days from the date of its receipt on a non-judicial stamp paper valued Rs.00.75 by enclosing a copy of this order, if he so desires."

5. The Applicant preferred an appeal on 27.3.2017. The appellate authority after considering his appeal rejected the same vide order dated 06.12.2017. The relevant portion of the appellate authority is extracted below:

"Following the appeal, I have heard the appellant in O.R. During hearing in O.R. on 23.10.2017 the appellant stated that during the period the D.E. was with him he was on leave and as such he could not complete the same within the stipulated period. The D.E. was completed by him and submitted the findings and delinquent Constable has been dismissed from service vide order dated 27.12.2016. In view of above contention of the appellant, the details of leave availed by him during the period D.E. was with him, have been obtained. The above DE was pending with the appellant from 11.6.2015 to 11.11.2016. During this period, the appellant remained on EL from 6.7.2016 to 10.8.2016 besides casual leave availed on number of occasions. The scrutiny of the record has revealed that appellant neither took permission of the Competent Authority for extension of time for conducting the DE beyond the permissible period of time nor completed the same within the stipulated period. The DE was pending with him for more than one year without justified reason. The submission of the appellant is bereft of merit and has no substance.

In view of the totality of circumstances, I find no merit and reason to interfere with the order passed by

the Disciplinary Authority. The appeal preferred by the appellant against the punishment order is hereby rejected being devoid of merit.”

6. During the course of hearing, learned counsel for the applicant mainly argues that the show cause notice dated 23.9.2016, disciplinary authority's order dated 2.3.2017 and appellate authority's order dated 6.12.2017 are illegal, arbitrary, unjustified, unreasonable and are violative of principles of natural justice as the present case does not fall within the definition of police conduct because no specific guidelines or instructions which puts onus on the enquiry officer to seek permission from the Joint Commissioner in case of completion of a department enquiry is being extended beyond a period of time. In support of this contention, learned counsel placed reliance on the decision of this Tribunal in OA No.220/2006 (**G.P. Sewalia vs. UOI**) dated 27.8.2008 wherein it has been held that :

“Non-performance of duties, which may have no element of unlawful behavior, willful in character, improper or wrong behavior, misdemeanor, misdeed, impropriety or a forbidden act, may some time amount to not carrying out the duties efficiently, but the same cannot be construed to be misconduct.”

Counsel also placed reliance on the decision of the Apex Court in the case of **Union of India vs. J. Ahmed**, (1979) 2 SCC 286, wherein it has been held that :

“deficiencies in the personal character or ability of a Government servant would not by themselves

constitute misconduct for the purpose of disciplinary proceedings.

It was further held in the said case by the Apex Court that *negligence in performance of duty or inefficiency in discharge of duty are not acts of 'commission or omission' under rule 4 of the Discipline and Appeal Rules.*

6.1 Counsel for the applicant also placed reliance on the decision of the Apex Court in the case of ***The Government of Andhra Pradesh and others vs. A. Venkata Rayudu*** in Civil Appeal No.2302/2005 decided on 31.10.2006 and also of this Tribunal in OA 990/2015 (***HC (Min.) Shishu Pal vs. Govt. of NCT of Delhi and others***) decided on 14.9.2018.

6.2 Counsel further urged that the orders of the disciplinary and appellate authorities are non-speaking, mechanical and passed with a malafide attitude and thus bad in law as contentions raised by the applicant in his reply to the show cause notice have not been discussed and awarded the severe punishment of censure to the applicant. As such the said punishment is not commensurate with the gravity of misconduct alleged against the applicant.

7. On the other hand, learned counsel for the respondents at the outset argued that the judgments relied upon by the applicant in support of his claim are not at all relevant to the facts and circumstances of this case. Counsel further submitted that a departmental enquiry, which was

initiated against Const. Vikas Kumar vide order dated 7.8.2014, was entrusted to the applicant on 11.6.2015 with a specific directions to conduct the same on day to day basis and to submit his findings expeditiously but on perusal of the statement of departmental enquiries pending with the applicant over one year, the SO to the Joint CP/Eastern Range, Delhi asked him to send the position of departmental enquiries pending over one year along with comments of the applicant on the delay in completion of those departmental enquiries, whether permission was taken for extension of time or otherwise. The SO sent various UO dated 22.07.2016, 08.08.2016, 09.09.2016, 19.09.2016 and 22.09.2016 to the applicant in this regard but he neither sought permission of the Joint CP/Eastern Range, Delhi for extension of time in the DE pending with him over one year nor responded. On the above subject, show cause notice was served upon the applicant and he submitted his written reply. He was also heard in O.R. by the disciplinary proceedings on 9.11.2016 and the disciplinary authority after considering his contentions as well as record available on file found the reply given by the applicant not tenable as he was directed by the aforesaid UOs to seek permission of the competent authority but he neither sought permission for extension of time in the departmental enquiry pending with him over one year.

7.1 Counsel further emphasized that besides other DEs, the applicant was entrusted the DE initiated against Constable Vikas Kumar vide order dated 7.8.2014 on 11.6.2015 with a specific directions to conduct the same on day to day basis and to submit his findings expeditiously and when the report was not submitted by the applicant, the concerned officer sought details of pendency of DEs with him and despite the applicant was issued various UOs for seeking permission for extending the time to complete the DE proceedings but he neither sought permission for extension of time in the DE pending with him over one year nor responded.

7.2 Counsel by referring to the orders of the disciplinary and appellate authority (supra) submitted that the same cannot be said to be illegal, arbitrary, unjustified, unreasonable and violative of principles of natural justice. She further submitted that having regard to the gravity of the misconduct as aforesaid, the disciplinary authority awarded only the punishment of censure which was later on upheld by the appellate authority and that in the entire process of action taken by the respondents there is full compliance of the procedure and rules as well as principle of natural justice.

7.3 Lastly, counsel submitted that instant OA deserves to be dismissed by this Tribunal.

8. After having heard learned counsel for the parties and perused the pleadings available on record, it is observed that the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon'ble Supreme Court has laid down the law in several cases, some of which have been enumerated below:

In the case of ***K.L.Shinde Vs. State of Mysore*** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

“9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross - examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada - bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in *State of Mysore v. Shivabasappa*, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

Again in the case of **B.C.Chaturvedi Vs. UOI & Others** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H. C. Goel* (1964) 4 SCR 718 : (AIR 1964 SC 364), this

Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”.

Further, in the case of ***Union of India and Others Vs.***

P.Gunasekaran (2015 (2) SCC 610), the Hon’ble Supreme

Court has observed as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.”

9. So far as aforesaid contentions of the applicant as noted above are concerned, it is observed that besides other DE proceedings, another DE proceeding initiated against one Constable Vikas Kumar vide order dated 7.8.2014, was also entrusted to the applicant on 11.6.2015 ***with a specific directions to conduct the same on day to day basis and to submit his findings expeditiously*** but on perusal of the statement of departmental enquiries pending with the applicant over one year, the SO to the Joint CP/Eastern Range, Delhi asked him to send the position of departmental enquiries pending over one year along with comments of the applicant on the delay in completion of those departmental enquiries, whether permission was taken for extension of time or otherwise. The SO sent various UO dated 22.07.2016, 08.08.2016, 09.09.2016, 19.09.2016 and 22.09.2016 to the applicant in this regard but he neither sought permission of the Joint CP/Eastern Range, Delhi for extension of time in the DE pending with him over one year nor responded. It is not the case of the applicant that he has sought permission for extension of time in compliance of the said UOs despite of the fact that the said particular DE was required to be completed on day to day basis and he took more than one year, as evidently proved in this case, in concluding the same

and no permission was sought by him despite various UOs were sent to him as he has not responded to the same. As such the said act of the applicant cannot be said to be a case of no misconduct. The judgments relied upon by the applicant are not relevant to the facts of this case.

10. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against him is concerned, it is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad**, reported in 2010 (3) ALSJ SC 28, it has been held by Hon'ble Supreme Court as under:-

“The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal”.

We do not find anything shocking in the order passed by the disciplinary authority as well as appellate authority. Rather the orders are clear and comprehensive and have stated the

full reasons for not accepting the contentions of the applicant and for coming to the conclusion that this applicant deserves to be censured for his conduct. Hence, in view of the facts of the case and law laid down by the Hon'ble Supreme Court (supra) on the subject of disciplinary proceedings and for the reasons stated hereinabove, this Tribunal does not find any merit in this case and the same is accordingly dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/