CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI

O.A. NO.3657 of 2018

Orders reserved on : 29.08.2019

Orders pronounced on : 05.09.2019

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

Satish Chand Yadav
Age, 55 years, Desi- Assistant Section Officer Group-B
s/o Late Sh. Krishan Kumar Yadav
R/o C-1/136 A, Keshav Puram,
Delhi-110035.

....Applicant

(By Advocate : Shri R.K. Jain)

VERSUS

1. The Delhi Jal Board,
   Through its Chief Executive Officer,
   Varunalaya Phase-II, Karol Bagh,
   New Delhi-110005.

2. The Member Administrative,
   Delhi Jal Board,
   VArunalaya Phase-II, Karol Bagh,
   New Delhi-110005.

.....Respondents

(By Advocate : Ms. Aishwarya Dobhal and Ms. Chandni for Mr. Hilal Haider)

O R D E R

In the instant OA, the applicant is seeking the following reliefs:-

"I. To quash and set aside order dated 24.05.2016, vide which the punishment of censure has been imposed of the applicant and the order dated 08.03.2018, vide which the appeal of the applicant has been rejected.

II. The respondents may kindly be directed to grant all consequential benefits.

III. cost of proceedings may also be awarded to applicant.

IV. any other relief which this Hon'ble Tribunal may also be passed in favour of the applicant.

2. The relevant facts of the case are that applicant while working as Upper Division Clerk (now Assistant Section Officer) in the respondents department was served a show cause notice dated 2.9.2015 on the following allegations:-

> "A complaint was received from Sh. Prem Raj, President, All India Schedule Caste Yuvjan Samaj, Delhi State, in the vigilance department, in which the allegations were made that new water connections, which were entered at diary no. 713 and 714 dated 02.07.2013 in the office of Zonal Revenue Officer [Centre] Second, there bills were not prepared by the allotment clerk Sh. Satish Chand Yadav, even after their approval. Sh. Prem Raj had made other allegation that five files of new water connections, which were of Sh. Vinod Anand resident of 11255/5-6, Doriwalan and were entered in diary at diary no.501 to 505 dated 17.05.2013, their bills were prepared by Sh. Satish Chand Yadav before the approval of the water connection.
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> In the enquiry of vigilance department, no fault of Shri Satish Chand Yadav in respect of files of new water connections diary no.713 and 714 was found. But it was found in the files of new water connections entered at diary No.501 to 505 dated 17.05.2013 that the above new water connections were approved by Regional Revenue Officer on 04.09.2013, but the allotment clerk Sh. Satish Chand Yadav had allotted above water connections on 10.06.2013 and the bills were prepared. Hence the bills were prepared before the approval.
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> Sh. Satish Chand Yadav, UDC, had not obeyed the orders of the Director (Revenue) and the ESLA Rules under Delhi Water & Sewer [Tariff and Metering] Regulations, 2012, by preparing the bills before the approval of the new water connections. This shows that Sh. Satish Chand Yadav, UDCC, is irresponsible and careless employee.

> From the above, it is clear that Sh. Satish Chand Yadav S/o Late Sh. K K Yadav, UDC has been failed in maintaining faithfulness towards his duty and has not obeyed the conduct of a Govt. employee. The same is a grave misconduct. Hence, Sh. Satish Chand Yadav S/o Late Sh. K K Yadav, UDC had violated the Rule no.3 (i)(i)(iii) of Central Civil Service [Conduct] Rules, 1964, which are applicable to the employee of Delhi Jal Board."

2.1 Applicant submitted his reply to the said show cause notice denying the allegation levelled against him vide aforesaid show cause notice and gave his explanation as mentioned in his reply. The applicant was also given personal hearing as the disciplinary authority heard him personally on 7.4.2016. Thereafter the disciplinary authority passed order no.131 dated 24.05.2016 after, keeping in view the charges levelled against the applicant, reply submitted and all the other facts and evidence, imposed the penalty of 'CENSURE' upon the applicant.

2.2 Thereafter the applicant sought certain information from the respondents under RTI Act, which were provided to him in which they informed that the bills of new water connections of ZRO CC/II's diary no.501-505 dated 17.05.2013, property no.11255/5-6, Doriwalan, were prepared on the ID of the then ZRO.

2.3 Thereafter on 30.11.2017, the applicant submitted his review application to the respondents against the order passed by the respondent no.2 on the basis of information

given to him under RTI. However, when the applicant was pursued his above review, he was verbally told that now the appeal is only maintainable against the punishment order and review is not maintainable.

2.4 Thereafter on 5.12.2017, the applicant submitted his appeal against the aforesaid order of the disciplinary authority in which he also prayed for condonation of delay.

2.5 However, according to the applicant, the appellate authority also without assigning any reasons dismissed the same vide Order dated 8.3.2018 on the ground of delay as well as merit. The operative part of the said order reads as under:-

> "AND WHEREAS in response to the above mentioned Memorandum, he submitted his reply. Accordingly, the penalty of "Censure" was imposed by the Disciplinary Authority i.e. Member (A) vide Order No.131 dated 24.05.2016 upon Sh. Satish Chand Yadav, UDC.
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> AND WHEREAS Sh. Satish Chand Yadav, Head Clerk has filed an appeal against the above orders of the Disciplinary Authority before the undersigned on 04.12.2017 i.e. after a lapse of period of about 18 months As per the CCS (CCA) Rules, 1965 the period of filing of appeal is under 45 days, from the date of receipt of order. Sh. Satish Chand Yadav received the copy of order on 26.05.2016, therefore, the appeal is time barred.
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> NOW, THEREFORE, on going through the facts of the case on record and the circumstantial evidence and also as no new facts have been submitted by the charged official in his defence, I, Anil Kumar Singh, Chief Executive Officer, being the Appellate Authority, hereby, reject the appeal of Shri Satish Chand Yadav, UDC (now Head Clerk), and hold good the penalty imposed by Member (A), the disciplinary authority."

2.6 Aggrieved by the aforesaid orders of the disciplinary as well as appellate authorities, the applicant has filed this OA seeking the reliefs as quoted above.

3. During the course of hearing, learned counsel for the applicant submitted that impugned orders of both the authorities, i.e., disciplinary and appellate are non-speaking and unreasoned as the same have been passed without even considering the pleas of the applicant raised by him in his reply as well as appeal. Counsel also urged that the alleged bills were prepared on the ID and password of the then ZRO by the TCS staff and the applicant was not even given any training to prepare the bills on the software, which was recently installed by the TCS for preparing the bills and that the applicant was not given any independent ID and password to prepare the bills. Hence, there was no fault of the applicant as alleged by the respondents.

3.1 Counsel further submitted that appellate authority without considering to the prayer being made by the applicant for the condonation of delay has dismissed his appeal on the ground of delay as well as merit that too without giving his findings on his pleas as raised by him in his appeal. Counsel for the applicant further pleaded that the punishment awarded to the applicant is disproportionate and not commensurate with the gravity of charges levelled against him.

4. On the other hand, learned counsel for the respondents by referring to the counter affidavit submitted that after proper investigation it was found that the applicant has committed misconduct, therefore, disciplinary authority issued the charge-sheet for minor penalty for the misconduct committed by him and after considering upon his reply to the charge-sheet and hearing him in person, disciplinary authority imposed an appropriate penalty for the said misconduct.

4.1 Counsel further submitted that applicant has filed his appeal after lapse of about 18 months as in terms of CCS (CCA) Rules, 1965, the period of filing an appeal is 45 days and the applicant has received the order of the disciplinary authority on 26.5.2016 and the appeal was filed on 5.12.2017 and in the appeal, the applicant pleaded the ground for condonation is the reply which was given to him on his application preferred by him under RTI but the same is not sustainable in the eyes of law as the said plea for condonation of delay is untenable in view of the fact that RTI Act had come into existence in the year 2005 itself. He also submitted that appellate authority also considered his appeal on merit and when no new facts have been submitted by the applicant in his defence, the appeal of the applicant was also dismissed on merit by upholding the order of the disciplinary authority and lastly he submitted that impugned orders are passed by the respondents in accordance with the rules and law on the

subject and therefore the present OA is liable to be dismissed by this Tribunal.

5. Heard the learned counsel for the parties and carefully perused the pleadings available on record. First of all, it is observed that with regard to 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, 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.
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> 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 office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate 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 of 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.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate 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".

Recently 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:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
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> 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;
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> 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."

6. Having regard to the aforesaid observations of the Apex Court and the fact that the grounds taken by the applicant for condonation of delay in filing the appeal is not sustainable in law as clearly the limitation period had ended in his case on 30.6.2016 itself i.e. before filing of the RTI application. Hence, huge delay of about 18 months cannot be condoned on the ground of filing an RTI application and getting its reply when the said RTI Act was very much in existence from the year 2005. We also find that appellate authority had also considered the appeal of the applicant on merit but when no new facts have been submitted by the applicant and after going through the facts of the case on record and circumstantial evidence, the appellate authority has rightly rejected the appeal of the applicant.

7. 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) ALSLJ 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".

8. In view of the facts of the case and in view of the law laid down by the Hon'ble Supreme Court supra and as no violation of any procedural formalities is alleged nor found and further this court is of the considered view that punishment of censure imposed by the impugned order is not so disproportionate that it shocks the conscience of the court, therefore, no case is made out for interference by the Tribunal even on the question of quantum of punishment.

9. In the result, the present OA being devoid of merit is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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