Central Administrative Tribunal
Principal Bench

OA No.4319/2014

Order Reserved on :23.10.2019

Pronounced on:14.11.2019

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)

Tarun
S/o Shri Ved Pal
R/o H.No.33, Vill. Shahpur Garhi
Narela, Delhi-110040
(Ex. Constable – Delhi Police)
Age : 27 years.

.. Applicant

(By Advocate : Shri Ajesh Luthra)

Versus

1. Commissioner of Police
   PHQ, MSO Building
   I.P. Estate, New Delhi.

2. Joint Commissioner of Police
   (New Delhi Range), New Delhi
   PHQ, MSO Building
   I.P. Estate, New Delhi.

3. Deputy Commissioner of Police
   New Delhi District
   Police Station
   Parliament Street, Delhi.

.. Respondents

(By Advocate : Ms. Asiya for Mrs. Rashmi Chopra)

O R D E R

Mr. Ashish Kalia, Member (J):

Brief facts of the case are that the applicant joined the Delhi Police as a Constable on 07.04.2009. He was dealt with departmentally vide order dated 08.12.2011 on the following allegations:

> It is alleged Const. Tarun No.1786/ND (PIS No.28090252) that while he was posted at 1st Bn. DAP, PS Tuglak Road, Distt. Lines/NDD had absented himself from duties, wilfully and unauthorizedly without any intimation to the department on the following occasions which is a clear violation of CCS (Leave) Rules 1972 and S.O. No.111 of Delhi Police:

S. No.	DD No. & date of absence	DD No. & date of arrival	Period of absence		
			Day	Hours	Minutes
1.	DD No.8 dt. 29.11.10, PP Seva Kutir, Mukherji Nagar, Delhi (Guard 1st Bn. DAP)	17-B, dt. 02.01.11, 1st Bn. DAP, NPL	34	3	--
2.	DD No.12, dt. 14.01.11, Distt. Lines/NDD	DD No.21, dt. 15.02.11, Distt. Lines/NDD	31	4	40
3.	DD No.42B, dt. 26.02.11 PS Tuglak Road	DD No.50B, dt. 15.03.11, PS Tuglak Road	17	6	15
4.	DD No.47B, dt. 27.03.11 PS Tuglak Road	DD No.30B dt. 02.04.11, Tuglak Road	5	16	5
5.	DD No.34, dt. 20.06.11, Distt. Lines/NDD	DD No.20, dt. 23.07.11, Distt. Lines/NDD	33	6	5
6.	DD No.29 dt. 05.08.11, Distt. Lines/NDD	DD No.24 dt. 22.09.11 Distt. Lines/NDD	49	6	--
7.	DD No.13, dt. 01.10.11 Distt. Lines/NDD	Still running absent			

2. Thereafter, Enquiry Officer (EO) was appointed who has submitted his report and the charge of unauthorized absence, against the applicant, was proved.

3. Thereafter the Disciplinary Authority (DA) has imposed the penalty of dismissal from service upon him vide impugned order dated 28.11.2013.

4. The applicant submitted an appeal before the Appellate Authority (AA) and annexed all his medical papers with the appeal. It is pleaded that these have not been considered and the AA failed to consider the facts and circumstances and rejected the appeal.

5. It is lastly submitted that the applicant's appointment was made on compassionate grounds as his father late Shri Ved Pal, who was employed as a Head Constable (Driver) in Delhi Police passed away due to Cancer and he has been given appointment in lieu thereof.

6. The impugned orders have been challenged on the ground that the applicant was deprived from attending the duties due to medical reasons and the penalty order is

completely in violation of Rules 8 and 10 of the Delhi Police (Punishment & Appeal) Rules, 1980 and the penalty was imposed arbitrarily by the DA as well as by the AA.

7. Notice were issued to the respondents who have filed their reply wherein it is submitted that the applicant has absented himself wilfully and unauthorizedly without intimation to the department on several occasions. The absentee notices were issued to him on 30.01.2011 and 28.06.2011 at his permanent residential address, i.e., H.No.33, Village Shahpur Garhi, Narela, Delhi-110040 with the direction to resume duty at once failing which departmental action will be taken. Both the absentee notices were received by the applicant himself on 09.02.2011 and 11.07.2011 respectively but he did not bother to join duties. On the basis of the enquiry report and recommendations of the EO the applicant was removed from service.

8. The short question raised by the applicant in the present OA is whether the medical certificate submitted by the applicant could have been considered by the concerned

authority or not and whether the punishment awarded is harsh or commensurate with the misconduct?

9. In support of his argument, the learned counsel for the applicant has cited a judgment of Hon'ble Apex Court in the matter of **Krushnakanat B. Parmar v. Union of India**, [(2012) 3 SCC 178] and also **Chhel Singh v. M.G.B. Gramin Bank**, [(2014) 13 SCC 166]. It was neither the case of the DA nor EO that the medical record submitted by the applicant was either forged or not admissible even though applicant claimed that he was ill during the period. The basic thrust of the ratio of these two relied upon cases is if the delinquent has submitted medical certificates, the DA should have taken these into consideration and thereafter pass appropriate orders.

The ratio of these cases, is not applicable in the present case, as the applicant has not submitted any medical certificate to EO or to the DA. Medical certificates were directly submitted to the AA only. The AA has observed that the applicant is a habitual absentee and absented himself on many occasions as indicated hereinabove and no single information was sent by him to the department. The medical

certificates at such belated stage are not liable to be considered.

In **Krushnakant B. Parmar** (supra) the Hon'ble Apex Court has distinguished the wilful absence vis-a-vis unauthorized absence. If there are compelling circumstances which prevented the applicant to join duty, it can be termed as a case of unauthorized absence and not as wilful absence.

10. On the other hand, the learned counsel for the respondents has cited an order passed by this Tribunal in the matter of **Ex. Co. Karan Singh v. GNCTD & Ors.**, [OA No.90/2013, decided on 14.12.2018] where this Tribunal has dealt with the similar issue and rejected the case. The relevant observations of the Tribunal are extracted below:

> "8. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments: (1). 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:-
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> > "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:

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. In view of the facts and circumstances of the case and in view of the law laid down by the Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice and also in view of the submission made by the counsel for the respondent supported by the judgment produced by her referred to above, we are of the opinion that the punishment imposed is not grossly disproportionate to the alleged misconduct. 10. Accordingly, OA is dismissed. No order as to costs."

11. In our considered view the applicant has annexed the medical certificates as an OPD patient where the treating Doctor has prescribed him rest. However, these medical

records had never been submitted to the competent authority. No reason, whatsoever, has been disclosed for non-submission of these certificates to the EO or the DA.

12. After considering the facts and circumstances of the case and legal position discussed hereinabove and the very limited jurisdiction being available with Tribunal in the disciplinary matters as enumerated hereinabove, the OA is found bereft of merit and the same is dismissed. No costs.

(Ashish Kalia)
Member (J)

(Pradeep Kumar)
Member (A)

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