
(2019) 02 CAT CK 0083

In the Central Administrative Tribunal

Case No : Original Application No. 1270 Of 2014

ASI Suraj Bhan

APPELLANT

Vs

G.N.C.T Of Delhi

RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0083

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : S.C. Sagar, Amit Anand

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr. S.C.Sagar, counsel for applicant and Mr.Amit Anand, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"1. Setting aside of the impugned order dated 28.06.13 passed by the respondent no.3 forfeiting two years of service of the applicant and entailing proportionate reduction in the pay/salary of the applicant.

2. Setting aside of the impugned order dated 11.02.14 passed by the respondent no.2 whereby order dated 28.06.13 was challenged by way of appeal and the same was rejected."

3. The relevant facts of the case are that on the allegation that the applicant has not conducted an impartial enquiry and conducted a one sided partial enquiry before filing a status report in the Court of Shri Sonu Agnihotri, MM, Karkardooma Courts, Delhi and that he did not disclose his family relationship with one of the parties in holding the said enquiry, a summary of allegation was

issued against the applicant vide order dated 20.05.2013. The relevant portion of the allegations is extracted below:

"It has been alleged against ASI (Exe.) that during the course of enquiry into the complaint of Shri Rajbeer Bansal, it was revealed that a complaint of Smt. Lali Devi in connection with plot measuring 100 sq.yards situated in Khasra No. 260, Village Sabhapur, Delhi received from the Hon'ble Court of Shri Sonu Agnihotri, MM, Karkardooma Courts, Delhi u/s 156(3) Cr PC against Harpal Singh was marked to him for enquiry and report while he was posted at PS Sonia Vihar (North-East Distt.) in the year 2009. He had family relations with Harpal Singh, alleged person in the complaint of Smt. Lali Devi. He conducted one sided enquiry in favour of Harpal Singh and filed the status report in the Court of Shri Sonu Agnihotri, MM, Karkardooma Courts, Delhi. He did not disclose to SHO/ Sonia Vihar that he had family relationship and had transaction of money/loan with the alleged Harpal Singh. As such, he concealed the fact that one of the parties in property dispute between Smt. Lali Devi and Shri Harpal Singh was well known to him and conducted one sided enquiry to favour Harpal Singh."

4. Alongwith the summary of allegation, as per rules, the list of documents and list of witnesses were served on the applicant. On the denial of the charge, an Inquiry Officer was appointed to hold the enquiry. The Inquiry Officer following the relevant procedural rules and principles of natural justice held the departmental enquiry and examined 7PWs and came to the conclusion that the charge framed against the applicant was proved vide its inquiry report dated 09.06.2013. The disciplinary authority after considering the representation made by the applicant alongwith the inquiry report and the entire evidence produced before the inquiry officer and after hearing the applicant in orderly room on 25.06.2013 by reasoned and speaking order imposed a penalty of forfeiture of two years approved service permanently on the applicant vide order dated 28.06.2013. The applicant filed an appeal before the appellate authority. The appellate authority after thoroughly considering his appeal and hearing him in orderly room on 07.02.2014 upheld the punishment order passed by the disciplinary authority vide order dated 11.02.2014.

5. The counsel for the applicant vehemently submitted that there is no appreciation of evidence by the Inquiry Officer, the findings is perverse and as such there is violation of principles of natural justice. When a specific query was made the counsel for the respondents specifically stated that there is no violation of any of the rules governing conducting of departmental enquiry. The counsel for the respondents equally vehemently contended and took us through the inquiry report as well as the orders passed by the disciplinary authority as well as the appellate authority. From the perusal of the inquiry report as well as the impugned orders passed by the disciplinary authority as well as the appellate authority, we are of the opinion that there is no perversity in passing any of the order.

6. 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:-

"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".

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."

7. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that the counsel for the applicant has specifically stated that there is no violation of any procedural rules and we find that there is no violation of principles of natural justice, the OA requires to be dismissed.

8. Accordingly, OA is dismissed. No order as to costs.