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(2019) 02 CAT CK 0196

In the Central Administrative Tribunal

Case No : Original Application No. 3032 Of 2013

HC Babulal Meena — APPELLANT

Vs

Govt. Of N.C.T.D, Through — RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 02 CAT CK 0196

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

Bench : Division Bench

Advocate : Sachin Chauhan, P.K. Gupta

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr. Sachin Chauhan, counsel for applicant and Mrs. P.K.Gupta, 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:

"i) To set aside the order dated 26.12.2011 whereby the Departmental Enquiry was initiated against the applicant, Order dated 23.08.2012 whereby the major punishment was imposed upon the applicant and Order dated 22.05.2013 whereby the appeal of the applicant was rejected by the Appellate Authority although the punishment was reduced and to further that the respondent to restore the increments of the applicant as they were never withheld with all consequential benefits including seniority and promotions and pay and allowances.

ii. To set aside the findings of the Enquiry Officer.

iii. To set aside the Order dated 06.11.2012 whereby the name of the applicant has kept in secret list of doubtful integrity with the further direction that the

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name of the applicant be removed from secret list from the date of inception.

iv. Order dated 02.11.2006 whereby the appeal of the applicant has been rejected by the appellate authority.

v. Finding of the inquiry officer whereby the charge has been proved without dealing with the evidence that has come on record.

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

3. The relevant facts of the case are that on the allegation of trying to facilitate the clearing of immigration of certain persons, a summary of allegation was issued to the applicant. The said summary of allegation is extracted below:-

"During the intervening night of 12/13.11.2011 at about 19:45 hours, Ct (Exe.) Rambir Singh, No. 295/F was seen making a telephonic call from the telephone No. 61232753 installed at departure in the D.O. desk at IGI Airport, New Delhi and after making call, he left from the Immigration area. After his re-entry to immigration area, 10 Nepali girl passengers were seen entering Immigration area from the gate which is only for domestic passengers. All these 10 girls assembled at counter No.1 where Ct. (Exe.) Rambir Singh, No. 295/F was seen discussing with them and giving them directions to move to other counters. HC (Exe) Babu Lal, No. 178/F, who was deployed at counter no. 2 (departure) had left from his counter without making entry in the movement register and he was seen meeting one person who was involved in filling-up forms of two Nepali girls outside Immigration area i.e., Boarding Pass area. He had gone to meet the Nepali girls towards extreme right of the Immigration area at IGI Airport, New Delhi and had discussed with them. After that HC (Exe.) Babu Lal. 178/F was seen entering from outside at his counter with one Nepali girl whose form was filled-up by the person who met HC (Exe.) Babu Lal, 178/F. Later on, HC (Exe.) Babu Lal, No. 178/F cleared that Nepali girls. Out of the two persons who were filling up forms of Nepali girls one has been identified as Vikas, Supervisor Impression/IGIA but identify of other to whom HC (Exe.) Babu Lal, No. 178/F met could not be ascertained. After talking to these Nepali girls, HC (Exe.) Babu Lal, No. 178/F was seen signalling JIO-II (G) Akhilesh Kumar (PIS No. 104828), deployed at counter No.1 (departure) about arrival of these Nepali girls at their counter and also seen calling these Nepali girls at counter No. 1 & 2. HC (Exe.) Babu Lal, No. 178/F seen clearing some other Nepali girls from counter no.2 manned for special assistance for wheelchair borne passengers without consulting I/Cs Wing and AFRRO of Shift 'B'. ACIO-1/G Inderjeet Singh, I/C Wing had suspicion about 20 Nepali girls passengers standing in front of counter no.1 and 2 (Special Assistant Counters). Therefore, ACIO-1/G Inderjeet Singh, SI (Exe.) Jagtar Singh, No. D-1377 and SI (Exe.) Rajesh Kumar Singh, No. D-215, all I/Cs Wings checked the travel documents of these passengers. Out of these Nepali girls, five were found having forged travel documents and cases were registered against them. Out of them, four paxs namely (1) Mrs. Phulmti Thapa

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Magar, Nepali Passport No. 1978721 (FIR No. 518/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA), (2) Mrs. Sarmila Shrestha, Nepali Passport No. 1974009 (FIR No. 520/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA), (3) Anjana Rai, Nepali Passport No.4534345 (FIR No. 521/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA) and (4) Miss Madhuri Dura, Nepali Passport No. 3718250 (FIR No. 522/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA) were apprehended from the counter of HC (Exe.) Babu Lal, No. 178/F and one Miss Shova Rai, Nepali Passport No.3834863 (FIR No. 519/11 dated 13.11.2011 u/s 419/420/468/471 IPC PS IGIA) apprehended from another counter. During the above process, wherever these Nepali girls moved, Ct (Exe.) Rambir Singh, No. 295/F was seen moving with them at counter No.1, 2 & 7. These activities of HC (Exe.) Babu Lal, No. 178/F and Ct. (Exe.) Rambir Singh, No. 295/F indicates that they were facilitating these Nepali passengers with ulterior motives. For this lapse HC (Exe.) Babu Lal, No. 178/F and Ct. (Exe.) Rambir Singh, No. 295/F were placed under suspension with immediate effect vide this office order No. 7273-7365/For (HAP)(P-1) dated 19.12.2011. The above act on the part of HC (Exe.) Babu Lal, No. 178/F (PIS No. 28010169) and Ct.(Exe.) Rambir Singh, No. 295/F (PIS No. 28882608) while posted in Shift 'B' at I.G.I. Airport, New Delhi amounts to gross misconduct, misuse of their official powers, negligence, carelessness and unbecoming of a police officer which renders them liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules 1980 punishable as envisaged under the provision of Delhi Police Act 1978."

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant on 21.02.2012. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The Inquiry Officer conducted the enquiry proceedings following the principles of natural justice and the relevant rules regarding the holding of departmental enquiry and examined PW1 to PW6 and DW1 to DW5 and taken on record defence statement filed by the applicant and he has analsized the deposition of all PWs and DWs and came to the conclusion that the charge levelled against the applicant was established vide his inquiry report dated 31.05.2012. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after carefully considering the entire evidence and the representation filed by the applicant against the inquiry report and hearing the applicant in orderly room on 16.07.2012 imposed a penalty of withholding of next increment for a period of four years permanently vide order dated 23.08.2012. The applicant filed an appeal. The appellate authority after carefully considering the said appeal and all the material before him by a reasoned and speaking order rejected the appeal vide order dated 22.05.2013.

5. The counsel for the applicant vehemently and strenuously contented that the charges are not at all specific and clear and they are vague and as such the applicant was prejudiced in defending his case in the departmental enquiry; and that the findings of the inquiry officer are not cogent nor based on the

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depositions brought on record in the departmental enquiry and that the inquiry report is based only on assumptions and presumptions and as such the findings are perverse; and that the applicant was subjected to hostile discrimination by the inquiry officer. He further submitted that the orders passed by the disciplinary authority as well as the appellate authority are also perverse in nature and are based on assumptions and presumptions and they are also discriminative in nature.

6. Counsel for the respondents took us through the summary of allegations, the entire depositions of all the witnesses, the discussion of the inquiry officer and the impugned orders of the disciplinary authority and the appellate authority. From the perusal of all the above said impugned inquiry report and the impugned orders, we do not find any vagueness in the summary of allegation nor we find any assumption or presumption or perversity in the inquiry report or in the impugned orders. The inquiry report is based on evidence and the orders passed by the disciplinary authority and the appellate authorities are well considered orders based on cogent reasoning.

7. 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:-

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"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 receivh es 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

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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.

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

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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."

8. 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 not brought to our notice violation of any procedural rules or principles of natural justice, the OA is devoid of merit.

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

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