

(2019) 03 CAT CK 0104

In the Central Administrative Tribunal

Case No : Original Application No. 2304 Of 2013

Mukesh Kumar

APPELLANT

Vs

Govt. Of NCTD Through

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Delhi Police Act, 1978 — Section 21
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 03 CAT CK 0104

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

Bench : Division Bench

Advocate : Sachin Chauhan, Pratima Gupta

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr. Sachin Chauhan, counsel for applicant and Mrs. Pratima 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 impugned order dated 15.02.2012 whereby the major punishment i.e. penalty of withholding increments for a period of next two years permanently at A-1 and order dated 22.04.2013 whereby the appeal of the applicant is rejected by the Appellate Authority at A-2 and to further direct the respondent that withholding increments be restored as it was never withheld with all consequential benefits including seniority and promotion and pay and allowances.

(ii) To direct the respondent that Suspension period of the applicant from 04.02.2011 to 09.03.2011 be treated as 'Spent on Duty' for all intent and purposes.

(iii) To set aside the finding of enquiry officer A-3.

(iv) To set aside the order of initiation of D.E. dated 1.3.11

(v) To remove the name of the applicant from secret list from the date of inception.

Or/and

(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 an allegation that the applicant influenced the concerned official, namely, Om Prakash by telling that he knew the passengers and that their documents are okay and thereby facilitating issuance of immigration documents to those passengers, a departmental enquiry was initiated against him. The summary of allegation is extracted below:

"That the said Ct. Mukesh Kumar, No. 318/F that during the casual conversation Sh. J.S. Sajwan, Air India Security Official disclosed to Sh. L.S. Bhist, the then AFRRO/Shift-A that on the intervening night of 07/08.01.2011, two Pax namely Nagrathna Venkatesh (D.O.B. 01.08.1979) holder of passport No. E-3716831 and Venkatesh (DOB 11.05.1975) holder of passport No. F-9463208 travelling by AI-187 were cleared by Sh. Om Prakash, ACIO-II/Ex Ser. PIS No. 105445 from counter No. 27. These passports were subsequently found to be counterfeited.

Shri Om Prakash, ACIO-II/Ex. Ser in his written statement disclosed that both the above mentioned Pax were referred to him by you Ct. (Exe.) Mukesh Kumar, No. 318/F as his known persons. He also stated that you Ct. Mukesh Kumar, No. 318-F had disclosed that Pax would be identified by the black Jackets worn by them and one of them would be wearing a cap bearing letter "R". He further stated that you Ct. (Exe.) Mukesh Kumar, No. 318/F also got both the Pax identified to him while they were standing in queue in the departure wing of immigration.

The above act on the part of you Ct. Mukesh Kumar, No. 318/F amounts to gross misconduct, misuse of official power, blatant disregard of orders of Seniors, mala fide intention to gain something and unbecoming of a police officer, violation of Rule 3 of CCS (conduct) Rules, 1964 which renders you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980 as envisaged under Section 21 of the DP Act, 1978".

4. Along with the summary of allegation, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegation, an Inquiry Officer was appointed. The inquiry officer following the principles of natural justice and also the relevant rules regarding holding of departmental enquiry, examined PW1 to PW8 and taken on record the defence statement filed by the applicant and thereafter discussed and analysed depositions of all the witnesses and came to the conclusion that the charge levelled against the

applicant was substantiated vide his inquiry report dated 30.08.2011. A copy of the inquiry report was served on the applicant. The applicant filed representation against the inquiry report. The disciplinary authority went through the entire deposition of all the witnesses and recorded all the grounds raised by the applicant in his representation against the inquiry report and after hearing the applicant in orderly room on 22.09.2011 imposed a penalty of withholding of next increment for a period of two years permanently vide order dated 15.02.2012. The applicant filed an appeal. The appellate authority perused the entire material in the departmental enquiry and also perused the order passed by the disciplinary authority and recorded the grounds raised by the applicant in his appeal and by a speaking and reasoned order rejected the appeal vide order dated 22.04.2013.

5. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence, that the inquiry officer based his finding only on the basis of the evidence of co-delinquent employee namely Om Prakash, that there is no corroboration to the deposition of the co delinquent by any independent witnesses, that the evidence given by PW1 is only a hear-say evidence and that the so called passengers were not cited as witnesses and examined to corroborate the allegations made against the applicant and as such the applicant was put to great pre judice. He further submitted that he is subjected to hostile discrimination vis-à-vis the said Om Prakash. In support of his contention he took us through the deposition of PW1 and PW 4 and submitted that the depositions of all other witnesses are irrelevant. In support of his contention, he relied upon the orders of this Tribunal passed in the case of SI Jaibir Singh Vs. Govt. of NCTD (OA No. 131/2006), SI Ram Singh Yadav Vs. UOI and Ors. (OA No. 2349/1999).

6. The counsel for the respondents equally vehemently and strenuously contented that there is sufficient evidence on record. She took us through the deposition of all the witnesses and submitted that PW1 is an independent witness and she submitted that by no stretch of imagination it is hear-say evidence, and that the deposition of PW1 is corroborated by PW4 the so called co delinquent, and that a witness being co delinquent does not debar him to be a witness and as sufficient evidence is available on records, there was no need to call for the beneficiary of the conduct of the applicant to prove the case of the department and that there is no hostile discrimination vis-à-vis the said Om Prakash. From the perusal of the depositions, we are of the view that there is sufficient evidence on record and the findings of the inquiry officer is not perverse.

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:-

"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."

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, as such there is no ground for interfering with the impugned orders.

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