
(2019) 02 CAT CK 0193
In the Central Administrative Tribunal
Case No : Original Application No. 929 Of 2016

Prem Singh

APPELLANT

Vs

South Delhi Municipal Corporation

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Central Civil Services (Conduct) Rules, 1964 — Rule 3(I)(ii)(iii)

Citation : (2019) 02 CAT CK 0193

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

Bench : Division Bench

Advocate : Garima Sachdeva, Pranav Shadha, S.N. Verma

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. Heard learned counsel for the parties.

2. In this OA, the applicant is seeking the following reliefs:-

"a) Quash the findings of the enquiry report dated 20.06.2013 whereby false charges have been levied upon the applicant;

b) Quash the order dated 02.05.2014 passed by Respondent No.1 whereby a penalty has been wrongly inflicted upon the Applicant;

c) Quash the appellate Order dated 18.11.2014 whereby the Appeal to the Commissioner is rejected;

d) Direct the Respondents to restore the pay of the Applicant in the present pay scale; and Pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper."

2. Brief facts of the case are that the applicant, who while working as Mali was placed under suspension vide order dated 26.12.2006, i.e., the date when he

reported back on duty after availing four days leave, which according to him, was sanctioned to him by the competent authority. However, on being suspended for a period of almost six months, the applicant was reinstated vide letter dated 18.7.2017 till the finalization of the pending enquiry against him.

2. 1 The chargesheet was issued to the applicant by the respondents on 1.9.2010 on the following charges:-

"Sh. Prem Singh was working as Mali in Ward No. 69 (219), Horticulture Department, Shahdara (South) Zone during the year 2006. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct on the following counts"

1. He showed insubordination toward his senior officer as he did not adhere to the instructions issued to him time to time to improve the conditions or the park under his control, due to which the condition of parks were found unsatisfactory and miserable and heaps of malba was found lying there during inspection by Chairman Standing Committee on 7.12.06.

2. He also in drunken state instigated the labour to run away from the sites. He, thereby, contravened Rule 3 (I) (ii) and (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employee of MCD."

2.2 After completion of inquiry proceedings, the inquiry officer submitted his inquiry report dated 20.6.2013 to the disciplinary authority and thereafter the disciplinary authority issued a show cause notice dated 7.3.2014 to the applicant and after considering the reply submitted by the applicant to the said show cause notice dated 11.3.2014 and also examining the record of the case in its entirety, the disciplinary authority confirmed the proposed penalty of reduction of pay in the present time scale of pay by two stages for two years with cumulative effect upon the applicant vide order dated 2.5.2014. Thereafter the applicant has filed his appeal against the said order of the disciplinary authority to the appellate authority and the appellate authority dismissed the same vide order dated 18.11.2014. Being aggrieved by the aforesaid orders, the applicant has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which it is stated that applicant was not suspended for attending the marriage in his village but he was suspended for dereliction of duties. Accordingly, a Memo dated 1.9.2010 was issued to the applicant for the said charges as the applicant was chargesheeted on the ground that an inspection of area (Ward 69) was fixed on 7.12.2006 at 10.00 a.m. with Shri Anil Kumar Chaudhary Mpl. Councilor, the Chairman Standing Committee and other/higher authorities vide letter No.D/507/Ch. Stdg.Comm./dated 27.11.2006, to check the horticultural activities in various parks/sites. Accordingly, a letter bearing No.ADH/SH/S/419 dated 29.11.2006 along with letter NoD-507/06 dated 27.11.2006 were issued to ADH as well as the applicant and Shri Taj Pal, Mali to this effect intimating the programme of inspection, but no improvements to remove the various shortcomings in the

horticulture works were carried out by them. Consequently, they were again directed to be careful vide letter dated 5.12.2006 and they were again directed by Sh. V.S. Harti, Dy. Director (Hort.), Shahdara (South) to carry out the improvements in the works but they did not adhere to the instructions. The said inspection was postponed to 12.12.2006 for which proper instructions were again issued to set right the conditions to the parks. A telephonic complaint was received on 11.12.2006 that they were in drunken state and had instigated the labour to run away from the sites. On 12.12.2006, at the time of inspection by the Chairman Standing Committee the parks of the area in Ward No.69 were found to be in a miserable condition, heaps of malba and unsanitary conditions were also observed, against which the Chairman Standing Committee directed to take disciplinary actions against them for non-compliance of order, non-maintenance of sanitation, non removal of garbage/wastes, hedge, non-cuttings and non-watering etc.

3.1 Thereafter a joint departmental inquiry was conducted by the Special Inquiry Officer against the applicant and other officers. The said Special Inquiry Officer held the charges proved against the applicant. The disciplinary authority in respect of other charged employee, namely, Sh. Tej Pal also imposed penalty of "reduction by two stages by two years with cumulative effect."

3.2 The copy of inquiry report was sent to the applicant to which applicant filed his reply and also sought for personal hearing. The applicant was given an opportunity of personal hearing and heard on 14.2.2014 wherein the applicant requested to consider his reply dated 01.07.2013 given on receipt of Inquiry Report. The disciplinary authority issued a show cause notice dated 14.2.2014 after considering the inquiry report proposing to inflict the penalty of reduction in pay in the present time scale of pay of two stages for a period of two years with cumulative effect and thereafter upon receipt of reply of the applicant and after duly considering the same, the disciplinary authority confirmed the aforesaid proposed punishment vide order dated 2.5.2014. Appeal preferred by the applicant was considered by the appellate authority and dismissed vide order dated 28.10.2014 on merits.

4. The applicant has also filed rejoinder reiterating the averments in the OA and denying the contents of the reply filed by the respondents.

5. Counsel for the applicant submitted that the applicant was held guilty on the basis of wholly made false allegations of misconduct despite the fact that applicant was on leave sanctioned by the respondents themselves and as such the applicant cannot be held guilty for any incident that happened at his duty place in his absence.

5. 1 Counsel further argued that enquiry report is wholly perverse as it fails to even consider the basic fact that the applicant was on leave from 9.12.2006 to 12.12.2006 and therefore, there was no question of his being present in the park on the date of the alleged incident.

5. 2 Counsel further argued that penalty imposed upon the applicant is shockingly disproportionate as it also impacts the applicant's future financial upgradation.

6. Counsel for the respondents argued that the present OA is barred by limitation as per the provisions of Section 21 of the Administrative Tribunals Act, 1985, as the applicant has challenging the inquiry report, disciplinary and authorities orders, which were passed in 2013 and 2014 and the present OA has been filed on 25.2.2016, i.e., after expiry of more than one year from the date of order of the appellate authority dated 28.11.2014. To rebut this contention of the respondents, counsel for the applicant submitted that the applicant has filed Misc. Application no.906/2016 seeking condonation of delay as the applicant on receipt of order dated 28.11.2014 approached to his counsel in December 2015 and the said counsel asked him to obtain a copy of inquiry report dated 20.6.2013 as the said document was essential for challenging the penalty order dated 2.5.2014 and finally applicant was able to trace out the copy of enquiry report dated 20.6.2013 in second week of February from his old files whereafter the present OA was prepared by his counsel and filed on 25.2.2016 and therefore there is a delay of about 88 days in filing the present OA and sought the delay may be condoned in the interest of justice.

7. Having regard to the status of the applicant being Mali, this Court condoned the delay in filing this OA for the reasons stated in the MA.

8. The counsel for the respondents has taken us through the enquiry report. From the perusal of the enquiry report it is crystal clear that there are evidences in the form of deposition of prosecution witnesses. From the evidences it is also clear that the inquiry officer has relied upon the evidences of the PWs and held that the applicant is found to be guilty of the charges levelled against him. Counsel for the respondents submitted that there was no procedural irregularities in holding the departmental proceedings as well as the orders passed by the disciplinary and appellate authorities are reasoned and speaking order and as such the present OA deserves to be dismissed by this Tribunal.

9. 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:

(i) 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." (2) 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 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 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 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."

(3) 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. i. the finding of fact is based on no evidence."

10. 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) ALSJ 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".

11. Having regard to the gravity of the article of charges levelled against the applicant, the punishment awarded by the disciplinary authority vide impugned order dated 2. 5.2014, which is a detailed and a reasoned order, and the same was confirmed by the appellate authority vide detailed and speaking Order dated 28.11.2014, we are of the considered view that punishment imposed by the impugned orders dated 2.5.2014 and dated 28.11.2014 is not so disproportionate that it shocks the conscience of the court, therefore, we do not find any case is made out for interference by the Tribunal even on the question of

quantum of punishment.

12. In view of the facts of the case discussed above and in view of the law laid down by Hon'ble Apex Court referred to above and in view of the fact that no procedural lapses or violation of principles of natural justice was urged by the applicant, as such there is no ground for interference in the impugned orders. Rather the orders of the disciplinary and appellate authorities are reasoned and speaking orders.

13. Accordingly, the OA being devoid of merit is dismissed. No order as to costs.