

**(2018) 08 CAT CK 0105**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 3020 Of 2013**

Purushottam Lal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision : 10-08-2018**

**Acts Referred:**

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 29A  
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)  
Constitution Of India, 1950 — Article 226, 227

**Citation : (2018) 08 CAT CK 0105**

**Hon'ble Judges :** Nita Chowdhury, Member (A); S.N. Terdal, J

**Bench :** Division Bench

**Advocate :** Archarya Santosh Prasad Chaurasia

**Final Decision :** Dismissed

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## **Judgement**

S.N. Terdal, J

1. Heard, applicant, who is present in person and Shri Mr. Archarya Santosh Prasad Chaurasia, counsel for the respondents, perused the pleadings and all the documents produced by both the parties.

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

"(1) Quash and set aside the Disciplinary Authority's order dated 17.05.2010 which runs counter to the CCS (CCA) Rules, 1965, as amended by the DoPT's Notification dated 02.02.2010;

(2) Quash and set aside the Appellate Authority's order dated 22.10.2010; Revisionary Authority's order dated 29.02.2012; and President's order dated 22.04.2013, under Rule 29-A of CCS (CCA) Rules, rejecting the review petition, which were passed by the authorities based on the wrong premise of the Disciplinary Authority's order dated 17.05.2010;

(3) Direct respondents to pay consequential relief of restoration from basic pay

of Rs.13500/- reduced to lower grade post of IPO to the basic pay of Rs.21740/- in the post of ASP as was drawn by the applicant w.e.f. 17.05.2010 till 31.12.2010 on which date his basic pay stood restored as per Secretary (Post)'s Order dated 29.02.2012;

(4) Direct respondents to pay 12 per cent interest on the arrears accruable to the applicant as a result of restoration to his post grade of ASP drawing basic pay of Rs.21,740/-from the due date till the date of payment;

(5) Direct respondents to pay cost for this uncalled for litigation;

(6) Pass such further or other order(s) in favour of the applicant as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant for the following article of charge.

#### Article of Charge 1

That the said Sh. Purushottam Lal while functioning as ASPO's Ist Sub Dn., New Delhi South Division, New Delhi-110003, during the period from September 1998 to June 2000 allegedly committed irregularities in the appointment of EDAs (Gramin Dak Sewaks) with malafide intention.

The statement of imputation of misconduct or misbehaviour in support of article of charge framed against Sh.Purushottam Lal, Asstt. Supt. Post (PG) New Delhi South West Division stated that the said Sh. Purushottam Lal while functioning as ASPO's Ist Sub Dn., New Delhi South Dn. During the period from September 1998 to June 2000 initiated recruitment process on 22.03.1999 for making appointment to the posts of EDA's (Gramin Dak Sewaks) lying vacant in his Sub Dn. on the basis of permission granted on two different dates to fill up 08 posts of EDA's by SSPOs New Delhi South Dn. vide letter No.A2/7/97-98 dt. 9.7.1997 and A2/7/97-98 dt.2.9.1997. He committed the following irregularities:

i) The recruitment process was initiated after lapse of more than 1 ½ years without examining the justification of posts;

ii) He sent a requisition to the Employment Officer, Employment Exchange, Kirby Place vide his letter no.ASP-1/EDSV/98-99 dated 22.03.1999 in which the number of posts to be filled up were shown as six, but did not mention where these posts were lying vacant.

iii) The category wise reservation of posts was not shown in the requisition letter.

iv) He did not issue any open notification.

v) No. of posts were not mentioned while calling for applications from part time officials vide letter no.ASP/EDA's/98 dt. 9.4.1999.

vi) The said Sh.Purushottam Lal appointed 08 EDA's instead of 06 as shown in the requisition letter sent to the Employment Exchange.

vii) He approved eight candidates after considering merit of marks obtained in 10th standard vide memo no.ASP-1/Recruitment/EDA's/1999 dated 9.7.1999.

The details of candidates appointed are given below:

S.No.

Name of the Candidate

Community

% of marks in matriculation

1

Hari Om Sharma

OC

54.8%

2.

Anil Kumar

OBC

65.3%

3.

Satyavir

OBC

56.1%

4.

Rajesh Kumar Sharma

OC

56%

5.

Pritam Singh

SC

46.5%

6

Jitender Singh

OC

55.1%

7.

Ravinder Kumar

OC

57.5%

8.

Sunita Rani

SC

56.5%

However, the following candidates, who got higher marks in the 10th Standard, were not appointed and rejected for the reasons given below:

S.No.

Name of the Candidates

Community

% of marks in matriculation

Reasons for rejection

1.

Purshotam

OC

60%

Employment Exchange Card not attested

2.

Ms.Babita Chauhan

OC

58.8%

Employment Exchange Card not attested

3.

Sarod Gaur

OC

65.8%

Employment Exchange Card not attested

4.

Ms.Suman Rathore

OC

61.3%

Employment Exchange Card not attested

5.

Sh. Harish Kumar Singh

OC

61.1%

Employment Exchange Card not attested

6.

Sh.Anil Kumar Sharma

OC

65.3%

Employment Exchange Card not attested

7.

Ms.Saroj

SC

48.9%

Employment Exchange Card not attested

8.

Laxmi Narain Singh

SC

54.1%

SC certificate not attested

9.

Nagendra Pratap

SC

49.6%

Employment Exchange Card not attested

10.

Om Prakash

SC

51.2%

Employment Exchange Card not attested

11.

Om Pal Singh

SC

46.6%

Reason not given

12.

Vinod Kumar

SC

58.8%

Mark sheet and Employment Exchange card not attested.

Thus Sh. Purshottam Lal made recruitment to the posts of EDA's in violation of instructions contained in DG Posts letter no.19-4/97-ED & Trg. Dt. 19.8.1998 and letter no.41-313-87 PE-II dt. 11.11.98 and thereby failed to maintain absolute integrity, showed lack of devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby, contravening provisions of Rule 3(1) (i), 3(1) (ii) and 3 (1) (iii) of CCS (Conduct) Rules, 1964."

Along with the memorandum of charge, statement of imputation of misconduct, list of 19 documents and list of 16 witnesses were furnished to the applicant. When the applicant did not plead guilty, an Enquiry Officer was appointed and the Enquiry Officer following the procedural rules and the principles of natural justice examined 7 witnesses and several documents. After the enquiry was over, he has given an opportunity to file defence brief to the applicant and after evaluating the evidence came to the following conclusion.

Findings:

"In the light of above narration of oral, documentary evidence adduced during the enquiry and depositions of witnesses who attended enquiry and brief of the PO and CO, I hold charged contained in Article-1 (i) Not proved, Article-1 (ii) Proved, Article-1 (iii) Proved, Article-1 (iv) Not proved, Article-1(v) Proved, Article-1 (vi) Proved and further hold Article-1 (vii) First part proved and 2nd

part not proved."

Disciplinary authority disagreed with the findings of the enquiry officer with respect to charge 1(i), (iv) and IInd part of (vii) and issued a disagreement note. The applicant submitted representation against the enquiry report as well as disagreement note. The disciplinary authority after going through the entire evidence collected by the inquiry officer and carefully considering the representation given by the applicant and discussing the various applicable provisions of law which the applicant had violated passed a penalty of reducing the applicant who was Assistant Superintendent Post Offices to the lower grade post of Inspector of Post Offices at the basic pay of Rs.13,500 until he is found fit by the competent authority to be restored to the higher grade post of Assistant Supdt. of Post Offices. The applicant filed an appeal. The appellate authority after thoroughly going through the entire evidence and all the other material modified the punishment order of reduction to the lower grade from 17.05.2010 to 28.02.2011 and further stated that the pay and allowance of the applicant will get restored w.e.f 1.03.2011. The applicant filed a review application and the revisional authority after thoroughly considering the entire material modified the=penalty order of reducing the grade of the applicant from 17.05.2010 to 31.12.2010 and further stated that the applicant pay and allowance will get restored w.e.f. 01.01.2011. The applicant filed further review petition before the President of India under Rule 29-A of the CCS (CCA) Rules, 1965 against the revisional order. The said review petition was rejected after thoroughly considering entire material of the departmental enquiry.

4. The applicant who appeared in person vehemently and strenuously contended that the enquiry report and the disagreement note is not supported by any evidence. But, however, in the enquiry report, the Inquiry officer after examining several witnesses and going through several documents brought on record in the enquiry evaluated the evidence and as such it cannot be said that it is a case of no evidence. Regarding the scope of judicial review to be exercised by the Tribunal in so far as the departmental enquiries are concerned, the Hon'ble Supreme Court has laid down the law in several cases, which have been enumerated below:-

(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 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".

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."

5. In view of the facts and circumstances enumerated above, the OA is devoid of merit.

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