

(2019) 02 CAT CK 0145

In the Central Administrative Tribunal

Case No : Original Application No. 4645 Of 2014

Rajpal Singh

APPELLANT

Vs

Commissioner Of Police & Ors

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0145

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

Bench : Division Bench

Advocate : M.K. Bhardwaj, Sangita Rai, Kumud Roy

Final Decision : Dismissed

Judgement

1. We have heard Mr.M.K.Bhardwaj, counsel for applicant and Mrs. Sangita Rai, 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 quash and set aside the impugned order dated 16.08.2013 and appellate authority order dated 15.04.2014 (A-2).

ii) To declare the Disciplinary proceedings initiated against the applicants as unjustified and direct the respondents to release all consequential benefits included arrears of pay and seniority.

iii) To direct the respondents to reinstate the applicant in service with all consequential benefits including arrears of by treating the suspension period from 20.11.2003 to 04.03.2004 as spent on duty.

iv) To allow the OA with costs."

3. The relevant facts of the case are that on the allegation that the applicant was involved in illegal trade of illicit liquor of 528 quarter bottles along with some other peoples, a summary of allegation was served on the applicant. The said

allegation is extracted below:

"CHARGE

I, Inspr. Raj Rani Sharma Charge you Const. Raj Pal No. 8858/DAP (now 3516/PCR)(PIS No.28883792) that while you involved in case FIR No.671/03, Dated 25.10.03 US 61/1/14 Excise Act, which was registered in PS Mangol Puri on the allegation that on 25.10.2003 at about 1:38 PM in gali in front of H.No.R-591, Mangol Puri, Delhi within the jurisdiction of PS Mangol Puri, were found along with Rajesh S/o Sh.Kartar Singh r/o Vill. & P.O. Nazafgarh, Delhi and Smt. Maina @ Sita (B.C.of Mangol Puri) w/o Sh. Subhash /R/o H.No.R-591, Mangol Puri, Delhi and were found in possession of eleven petty/carton boxes, each containing 48 quarters bottles (total 528 quarter bottles) full of illicit liquor with labels of Bonny scott Special Malted whiskey, for sale in Rajasthan, in Maruti Car no. HR 10E-1065, without any permit or license and thus you along with other two i.e Rajesh and Smt. Maina @ Sita have there by committed an offence punishable U/ S-61 Punjab Excise Act, 1914 by hatching criminal conspiracy and common intention for smuggling of illicit liquor in Delhi.

You Const. Raj Pal No. 8858/DAP (now 3516/PCR)(PIS 28883792) were present on Driver seat as per the investigation conducted there were sufficient evidences against you in regard to prove your involvement in illegal trade being member of Police force. Moreover, you also misused your knowledge & position as Police to commit the above act with habitual criminals.

Therefore you, Const. Raj Pal No. 8858/DAP (now 3516/PCR)(PIS No 28883792) committed gross misconduct, negligence, carelessness, irresponsible attitude and dereliction in discharge of your official duties. These faults are sufficient for unbecoming of a police officer and these will render you to be liable to be dealt with departmentally under the provision of Delhi Police (Punishment and Appeal) Rule, 1980."

4. Alongwith the summary of allegation, list of documents and list of witnesses 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 as well as the applicable rules for conducting the departmental enquiry examined PW1 to PW5 and DW1 to DW2, discussed the entire evidence and taken into account the defence statement filed by the applicant and came to the conclusion that the charge levelled against the applicant was proved vide order dated 28.06.2013. The Inquiry report was served on the applicant and applicant submitted his representation against the inquiry report. The disciplinary authority after discussing the entire evidence taking into account all the points raised by the applicant in his representation against the inquiry report and after hearing him in orderly room on 6.08.2013 imposed a penalty of dismissal from service vide order 16.08.2013. The applicant filed an appeal. The appellate authority also thoroughly examined all the deposition and the entire material on record and discussed the points raised by the applicant in his appeal and after

hearing him in orderly room on 9.03.2013 rejected the appeal vide order dated 15.04.2014.

5. The counsel for the applicant vehemently submitted that it is a case of no evidence, that the applicant was not knowing anything about what was kept in the car, as such he was not at all having knowledge of the illicit liquor kept in the vehicle which he was driving and that he had many family problems and that all the orders including the inquiry report are not reasoned orders, as such the entire proceedings be set aside. He has filed on 06.11.2017 a copy of judgment passed by the Court of Shri Shirish Aggarwal, Metropolitan Magistrate, (North West) Rohini in FIR No.671/03 PS Mangol Puri in which case on the same facts, he was acquitted giving the benefit of doubt vide judgment dated 30.01.2017. On the basis of the said judgment, counsel for the applicant submitted that respondents should have revisited the impugned punishment passed by them in support of his submissions the counsel for the applicant is relied upon the judgment of Supreme Court in the case of Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr (JT 1999(2) SC 456).

6. The counsel for the respondents equally vehemently contended that all the impugned orders as well as the inquiry report are based on proper appreciation of evidence and they are speaking and reasoned orders. She took us through the entire evidence recorded in the inquiry report. We are convinced that there is sufficient evidence and all the orders are reasoned and speaking orders and the inquiry report is well reasoned order. Counsel for the respondents in support of her contention relied upon the latest judgment of Hon'ble Supreme Court in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao (2012) 1 SCC 442). The counsel for the respondents drawn our attention to para 31 and 32 of the above said judgment which are extracted below:-

"31. The instant case requires to be examined in the light of the aforesaid settled legal proposition and keeping in view that judicial review is concerned primarily with the decision making process and not the decision itself. More so, it is a settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate. (Vide: Pandiyan Roadways Corpn. Ltd. (supra); and U.P. State Road Transport Corporation v.Suresh Chand Sharma, (2010) 6 SCC 555).

32. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry report was accepted by the Disciplinary Authority and there is no grievance on behalf of the respondent-workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The Disciplinary Authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent

employee. However, considering the difference in the standard of proof required in domestic enquiry, vis-a-vis that applicable to a criminal case, the Labour Court repelled the argument of respondent-workman that once he stood acquitted he was entitled for all reliefs including re-instatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of delinquent employee and nothing else. In view of the law laid down by the Hon'ble Supreme Court in the case of M.G.Vittal Rao (supra), we are of the opinion that the judgment passed in the criminal court acquitting the accused is of no relevance at this stage, particularly in view of the fact that the impugned dismissal order has been passed as long back as on 16.08.2013.

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 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 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 and circumstances of the case narrated above and in view of the law laid down by the 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 requires to be dismissed.

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