

(2019) 01 CAT CK 0137

In the Central Administrative Tribunal

Case No : Original Application No. 3218 Of 2013

Ram Kumar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 03-01-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 01 CAT CK 0137

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

Bench : Division Bench

Advocate : Ajesh Luthra, K.M. Singh

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. We have heard Mr. Ajesh Luthra, counsel for applicant and Mr. K.M.Singh, 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:

"(a) quash and set aside the impugned orders placed at Annexure A/1 (to the limited extent) A/2 and A/3 with consequential benefits.

(b) award costs of the proceedings and

(c) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

3. The relevant facts of the case are that on the allegation that the applicant was collecting money regularly from a Bus Operator for exempting his buses from prosecution in the events of violation of traffic offences. The summary of

allegation is extracted below:

"It is alleged against ASI Ram Kumar, No. 2657/D and Ct.Shri Chand, No. 4442/T that on 19.08.08, surveillance was conducted by the team of PRG (T)/Vig. consisting Inspr. H.S.Rawat, No. D-1/793, SI Ram Kumar, No. D/3481, HC Mohd. Iliyas No. 79/SD in the area of North Distt. During the surveillance, PRG team reached near Akhara at 3.40 p.m. and found that one scooterist was talking with the traffic staff. In order to conduct the surveillance and detect malafide if any on the part of traffic staff, PRG team positioned about 100 meters ahead of the point toward Manju-Ka-Tila. After sometime, scooterist left the point and started moving toward Manju-Ka-Tila which was signaled to stop. On his halting the scooter No. DL-7S-1Q-6949, scooterist asked the reason as to why he was standing near the traffic staff as well as to know his identify. He introduced himself as Ajay Kumar S/o Kishan Lal R/o B-25, South Anarkali, Karkardooma East, Delhi and told that he is working as clerk in Krishna Bus Service Pvt. Ltd. Room No. 328, ISBT, Kashmiri Gate, Delhi.

On enquiry, he further told that he was given a sum of Rs.1200/- as a monthly and also produced a list of traffic points where the money is to be delivered. On further enquiry he told that he was going to deliver Rs.1300/- at Manju-Ka-Tila, Rs.1600/- at Wazirabad point and Rs.2000/- at Burari Chowk. He also produced a bundle of Rs.4900/- for the above points. The same were seized as a piece of evidence. Mr. Ajay Kumar also signed the list as well as seizure memos. On perusal of the list, it was revealed that Krishna Bus Service Pvt. Ltd Room No. 328, ISBT, Kashmiri Gate, Delhi is paying Rs.1500/- at Flyover ISBT, Rs. 1200/- at Akhara, Rs.1300/- at Manju-Ka-Tila, Rs.1600/- at Wazirabad, Rs.2000/- at Burari Chowk, Rs. 2700/- at Deepali Chowk, Rs.3200/- at Jaipur Golden, Rs.2300/- at Pitam Pura line, Rs.3000/- at Mangolpuri, Rs. 2700/- at Pera Garhi, Rs.2700/- at Nangloi Ist, DTC at Nangloi 2nd SDM, Rs.2700/- at Ghevera Mor and Rs.8000/- to TI/Civil Lines (Total 48,400/-) to traffic staff at the above said points as protection gratification money. Later, Mr. Ajay Kumar was taken to the Akhara point by PRG team where he identified Ct. Shri Chand, No.4442/T as the person to whom he had given Rs.1200/- Ct. Shri Chand was asked to handover the money which he did not do. On searching the pockets of his pant etc., a bundle of Rs.1200/- in denomination of Rs.100/- (twelve notes) were recovered from his possession and the same was seized after identification by Mr. Ajay Kumar an observation memo mentioning the number of 12 currency notes was prepared and memos were signed by Ct.Shri Chand, No. 4442/T and Mr.Ajay Kumar, ZO/ASI Ram Kumar, No.2657/D was also present at the point and he also signed the recovery memo. Mr. Ajay Kumar was examined and he stated that his cashier had given a slip and monthly to deliver at ISBT Flyover point and thereafter at Akhara point. He was yet to deliver monthly amount at Manju-Ka-Tila, Wazirabad and Burari Chowk. Inspr. H.S.Rawat have recorded the statements of Ajay Kumar, Ct. Shri Chand, No. 4442/T himself had given in writing that he had taken the recovered money from Ajay Kumar at the instance of ZO/ASI Ram Kumar and Ct. Shri Chand were present whereas other

constables namely Raj Kumar, No. 3655/T, Ct. Sanjeev, No. 3229/T, Ct. Sudhir, No. 3843/T were not found present at the point. It has been found from the surveillance and facts it is an organized crime and the amount is being paid by the bus operator in view of exempting his buses from prosecuting from ISBT to Ghevara Mor traffic points as gratification. On the report a case vide FIR No.245/08 u/s 7/13 POC Act was registered at PS Civil Line, Delhi.

The above act on the part of ASI Ram Kumar, No. 2657/D (PIS No. 28750208) and Ct.Shri Chand, No. 4442/T (PIS No. 28932668) amounts to gross misconduct, negligence and carelessness in discharge of their official duties and indulgence in corrupt practices which renders them liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules-1980."

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 allegations, an Inquiry Officer was appointed for holding the departmental enquiry. The inquiry Officer following the principles of natural justice and the relevant procedural rules examined PW1 to PW8 and DW1 and DW2 and given an opportunity to the applicant to file defence statement and thereafter discussing the deposition of each of the witnesses and analyzing them came to the conclusion that the charge leveled against the applicant was proved. The disciplinary authority after perusing the representation filed by the applicant against the inquiry report and also the entire material before the inquiry officer and hearing the applicant in orderly room, imposed a penalty of forfeiture of two years approved service temporarily for a period of two years on the applicant vide order dated 19.07.2011. The appellate authority after going through the appeal filed by the applicant and also appreciating the entire material before the appellate authority took a lenient view and reduced the penalty of forfeiture of two years approved service to one year vide his order dated 9.08.2012.

5. The counsel for the applicant vehemently submitted that it is a case of no evidence as there is no analysis of the evidence by the inquiry officer. The counsel for the applicant taken us through the answers given by some of the witnesses in the cross examination. From the perusal of the entire evidence it is clear that the inquiry officer applying the principles of preponderance of probability came to the conclusion that the charge leveled against the applicant was proved. The counsel for the applicant alongwith the rejoinder submitted an order passed by a criminal court discharging the applicant on the same set of facts and allegations and on that basis submitted that the inquiry report and the impugned order be set aside.

6. 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."

7. 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 requires to be dismissed.

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