
(2019) 02 CAT CK 0205

In the Central Administrative Tribunal

Case No : Original Application No. 2925 With 2013

Satender Kumar

APPELLANT

Vs

Govt. Of NCTD Through

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Central Administrative Tribunals (Procedure) Rules, 1987 — Rule 16
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 15(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 02 CAT CK 0205

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

Bench : Division Bench

Advocate : Rajesh Chauhan, Sachin Chauhan

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr. Rajesh Chauhan for Mr. Sachin Chauhan, counsel for applicant. No one is present on behalf of respondents. We proceed to adjudicate this OA as per the provisions of Rule 16 of the Central Administrative Tribunals (Procedure) Rules, 1987 after perusing the pleadings and all the documents available on record.

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

"i) To set aside the impugned order dated 3.1.2012 whereby the major punishment i.e. penalty of withholding of next increment for a period of three years temporarily at A-2 and order dated 12.3.2013 whereby the appeal of the applicant is rejected by the Appellate Authority at A-3 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 05.05.2011 to 31.08.2011 be treated as 'Spent on Duty' for all intent and purposes.

iii) To set aside the finding of enquiry officer.

iv) To set aside the order of initiation of D.E. Dated 19.5.2011

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 awarded to the applicant."

3. The relevant facts of the case are that on an allegation that the applicant had taken bribe for using his position in facilitating clearing of immigration documents, a summary of allegation was served on him. The said summary of allegation is extracted below:-

"On 05.05.2011 at around 12.10.PM, Shri S.K.Beniwal, AFRRO/Shift-C received a call on official mobile phone from one Jitender Singh, Security Officer of DIAL. He told AFRRO/Shift-C that two passengers bound for Canada on flight No.C1-182 want to make a complaint against Immigration Officers and they are waiting in Security Hold Area. Shri S.K. Beniwal, AFRRO/Shift-C went to the Security Hold Area where he met Shri Jitender Singh, Security Manager of DIAL who introduced him to two passengers standing behind him. On enquiring one of the pax stated that two officers of Immigration had taken 200 Canadian Dollars from him. AFRRO/Shift-C assured them of prompt action and told them to wait there. AFRRO/Shift immediately called I/C Wing Inspr. Vinod Kapoor and CO JIO-1 Shri R.C. Yadav in AFRRO's room and told them about the incident and asked them to go to the Security Hold Area. After 15-20 Minutes Inspr. Vinod Kapoor and JIO-1 R.C. Yadav came to AFRRO's office and handed over to AFRRO a written complaint made by one Baghail Bhuller an Indian National holder of PP No.H-1684342 which was signed by him in their presence. In the complaint it was alleged that two officers of Immigration were sitting in Counter No. 26 & 25 intentionally tried to damage his passport and taken 200 Canadian Dollars from the complainant. On checking the roster of departure, it was found that Ct.(Exe.) Jeetender Singh, No. 369/F (PIS No.28030200) and Ct. Satender Kumar, No. 242/F (PIS No. 28030479) were deployed as clearing officers at counter No. 25 & 26 respectively. Both the CO's were called in the office of AFRRO/Shift by AFRRO/Shift and they were asked whether they had taken any money from any pax. Ct. Satender Kumar, No. 242/F admitted to have taken the money. I/C Wing was directed by AFRRO to go alongwith Ct. (Exe.) Satender Kumar, No. 242/F to his counter. Ct. (Exe.) Satender Kumar, No. 242/F picked up a folded piece of paper and took out 180 Canadian Dollar. Then I/C Wing and Ct. (Exe.) Satender Kumar came back to AFRRO office and produced 180 Canadian Dollars, the details of which are given below:-

1. One note of 100 Canadian Dollar denomination bearing No. EJZ 1184215.
2. One note of 50 Canadian Dollar denomination bearing No. AHL 4335219
3. One note of 20 Canadian Dollar denomination bearing No. ARM 7051091
4. One note of IO Canadian Dollar denomination bearing No. BTZ 3538555

The above mentioned currency i.e. 180 Candian Dollars were seized by way of a seizure memo in the presence of I/C Wing Inspr. Vinod Kapoor and JIO-1 Shri R.C.Yadav. The matter was immediately brought to the notice of the DCP/FRRO, New Delhi. The CCTV footage was obtained in a CD. From the footage it can be seen that the complainant i.e. Baghail Singh Bhullar and his uncle Hakam Singh Bhullar were standing in front of counter No.26 and having a prolonged discussion with the CO Ct. Jeetender Singh. The discussion lasted for about 3 minutes after which CO Ct. Jeetender Singh was seen pointing with his hand towards pax Hakam Singh Bhullar and pax was seen going towards the backside of CO's counter. After this, the other pax i.e Baghail Singh Bhullar moved in favour of counter No. 25. After few minutes pax Hakam Singh Bhullar came from behind and handed over a piece of paper to Ct. (Exe.) Satender Kumar and west back. At this point of time a pax already standing in front of counter No.25 manned by Ct.(Exe.) Satender Kumar was ignored and instead Baghail Singh Bhullar was called out of turn. He (C.O) then took the documents from him and immediately left his counter. When he came back to his counter, he took only 20 seconds to clear Baghail Singh Bhullar. For the above said gross misconduct, Ct. (Exe.) Jeetender Singh, No. 269/F (PIS No. 28030200) and Ct. Satender Kumar, No. 242/F (PIS No. 28030479) were placed under suspension vide DD No.14/FRRO IGIA dated 05.05.2011 and the suspension was approved vide this office order No. 1920-45/For (HAP) (P-1) dated 05.05.2011.

The above act on the part of Ct (Exe.) Jeetender Singh, No. 369/F (PIS No. 28030200) and Ct. Satender Kumar, No. 242/F (PIS No. 28030479) amounts to gross misconduct, misuse of their official powers by involving themselves in corrupt activities and unbecoming of police officials in violation of rule-3 of CCS (Conduct) Rules, 1964, which renders them liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980 punishable as envisaged under the provision of Delhi Police Act, 1978."

4. Alongwith the summary of allegation, list of witnesses and list of documents were served on the applicant. As the applicant did not admit the allegation levelled against him, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and also the relevant rules regarding conducting the departmental enquiry examined PW1 to PW8 and taken on record defence statement submitted by the applicant and discussed and analyzed the deposition of all the 8PWs and came to the conclusion that the charge levelled against the applicant was proved vide his inquiry report dated 2.11.2011. The said inquiry report was served on the applicant on 28.11.2011. The applicant submitted his representation against the inquiry report on 12.12.2011. The

disciplinary authority after carefully considering all the evidence on record and the representation made by the applicant on the inquiry report and hearing him in orderly room on 19.12.2011 imposed a penalty of withholding of next increment temporarily for a period of 3 years on the applicant vide order dated 03.01.2012. The applicant filed an appeal. The appellate authority also considered the entire material before him and carefully considered the grounds raised in his appeal and heard the applicant in orderly room on 19.02.2013 and by a reasoned and speaking order rejected the appeal vide order dated 12.03.2013.

5. The counsel for the applicant vehemently and strenuously contended that it is a case of no evidence that the applicant was discriminated and it was wrongly recorded that the applicant had admitted the guilt and that there is procedural lapse in the seizure memo and that the documents requested by the applicant were not supplied to him and that there is violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 and as such the inquiry report and all the impugned orders require to be set aside. But on perusal of the inquiry report it is seen that there is sufficient evidence by way of evidence of PW1 to PW8 and there is no discrimination nor any prejudice caused to the applicant as the departmental enquiry was conducted as per the relevant rules and reasonable opportunity was provided to the applicant at every stage and that there is no violation of Rule 15(2) of the above said rules as the respondents counsel on 23.02.2019 produced annexure 'B' to demonstrates that the Rule 15(2) is not violated. In view of the entire departmental enquiry records, we are of the view that the inquiry report is well considered cogent report based on evidence and there is no violation of Rule 15(2) of the Delhi Police and that the orders passed by the disciplinary authority and the appellate authority are well considered, reasoned and speaking orders.

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 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."

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 there is no violation of any procedural rules or principles of natural justice, the OA is devoid of merit.

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