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**(2018) 09 CAT CK 0018**  
**In the Central Administrative Tribunal**  
**Case No : Original Application No. 1602 Of 2013**

SI Hira Lal

APPELLANT

Vs

Govt. Of NCTD And Ors

RESPONDENT

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**Date of Decision :** 28-09-2018

**Acts Referred:**

Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 15(2)  
Constitution Of India, 1950 — Article 226, 227

**Citation :** (2018) 09 CAT CK 0018

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

**Bench :** Division Bench

**Advocate :** Rajesh Chauhan, Sachin Chauhan, Sumedha Sharma

**Final Decision :** Dismissed

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## Judgement

S.N. Terdal, J

1. We have heard Mr. Rajesh Chauhan for Shri Sachin Chauhan, counsel for applicant and Mrs. Sumedha Sharma, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

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

"(i). To set aside the impugned order dated 17.5.10 whereby the major punishment i.e. forfeiture of five(5) years approved service permanently with cumulative effect entailing proportionate reduction in pay at A-2 and order dated 16.10.12 whereby the appeal of the applicant is rejected by the Appellate Authority at A-3 and to further direct the respondents that the forfeited years of service alongwith pay scale and increment be restored as it was never forfeited with all consequential benefits including seniority and promotion and pay and allowances.

(ii). To set aside the finding of enquiry officer A-4.

(iii). To set aside the order of initiation of D.E dated 17.5.10 at A-1.

(iv). To further direct the respondents to remove the name of the applicant from secret list of doubtful integrity of List D-1 from the date of inception.

(v) 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 for not taking prompt action on the complaint of one Shri Rishi Pal, which was registered as FIR no.14/09 dated 22.01.2009 u/s 448/426/468/471/385/506/120-B IPC particularly in tracing the real accused for nearly 6 to 7 months and also for demanding and accepting Rs.25000/- from the complainant as illegal gratification for favouring him, which amount was returned after the intervention of the senior officers, a departmental enquiry was initiated against the applicant. The summary of allegation is extracted below:

"It is alleged that against SI Hira Lal, No. D-1493 (PIS No. 16040050) that on 05.01.2009 a PCR call vide DD No. 14A regarding unauthorised possession of flat No. 69-B, CA Block, Shalimar Bagh was received at PS Shalimar Bagh which was marked to ASI Azad Singh per enquiry, who reached the spot and found one lady Sonia w/o Anis and other occupying the said flats, Complainant Sh. Rishi Pal was found that the spot who told that he is the owner of the said flat and had called the Police. The DD entry was kept pending by the ASI for further enquiry and later on the same was marked to SI Hira Lal, No. D-1493, for further necessary action into the matter.

After the enquiry, case FIR No.14/09 dated 22.01.2009 u/s 448/420/468/471/506/34 IPC PS Shalimar Bagh was registered and investigation of the said case handed over to SI Hira Lal No. D-1493, during the investigation of the case, SI Hira Lal, No.D-1493, did not conduct any investigation into the matter except collecting photocopies of the some documents from the complainant. He did not make any effort to arrest the alleged accused persons who were found occupying the flat at the time and he also did not make any effort to arrest to alleged accused Arun Kumar Gupta and his wife Smt. Nirmal Gupta. Due to in action on the part of SI Hira LaL No.D-1493 one Anil Kumar S/o Zile Singh R/o A-466 Village Azad Pur, Delhi occupied the said flat claiming to be a bonafide purchaser from Smt. Nirmal Gupta W/o Sh. Arun Kumar Gupta with registered documents (GPA etc.) on 10.02.2009 and thus the alleged party (Present occupier) managed to get a stay order from civil court regarding the said flat because the case was not properly investigated and represented by the SI Hira Lal, No. D-1493.

Suspected foul play on the part of SI Hira Lal, No. D-1493, the investigation of the case was marked to Insp. Puran Chand on 20.07.2009. During the course of investigation, the alleged accused person Arun Kumar Gupta and his wife Smt. Nirmal Gupta were traced at Rajpura, Patiala (Punjab) and were arrested in the above noticed case on 13.08.2009 by the Insp./investigation, whereas SI Hira Lal, No. D-1493 did not arrest them knowingly and deliberately with malafide

intention.

SI Hira Lal, No. 1493 kept the case file pending with malafide intention and ulterior motive and did not take interest and instead of facilitated and unauthorized occupations of the said flat by Anil Kumar Gupta. After taking the documents from Anil Kumar he slept over the case file and in the meantime, Anil Kumar Managed to get a stay order from the Hon'ble Court and also the real culprits Arun Kumar Gupta and his wife remained untraced till 12.08.2009.

It is also alleged against SI Hira Lal, No. D-1493 that he also demanded and accepted Rs.25,000/- from Sh. Rishi Pal, the Complainant of the case as illegal gratification for favouring him in the case and when the matter was reported to the senior officers the SI Hira Lal, No.D-1493 returned back Rs.25,000/- to the complainant.

4. Alongwith the statement of allegation, list of witnesses and list of documents were served on the applicant. Thereafter, following the procedural rules and principles of natural justice, the Inquiry Officer conducted the enquiry. The Inquiry Officer examined 6PWs in presence of the applicant and submitted his enquiry report after considering defence statement filed by the applicant holding that the charge levelled against the applicant was proved.

5. The disciplinary authority after hearing the applicant in orderly room on 20.04.2011 and after thoroughly examined the entire records of the inquiry report, imposed a penalty of forfeiture of 5(five) year approved service permanently with cumulative effect entailing proportionate reduction in pay of the applicant vide impugned order dated 27.05.2011. The appeal filed by the applicant was dismissed by the appellate authority vide impugned order dated 16.10.2012.

6. The counsel for the applicant vehemently and strenuously submitted that the departmental enquiry proceedings are vitiated as the same is held in violation of Rule 15 (2) of the Delhi Police (Punishment and Appeal) Rules, 1980.

7. In the reply filed by the respondents, it is categorically stated that the disciplinary proceedings have been started only after getting approval from the then Joint CP/Northern Range under Rule 15 (2) of the said Rules on 12.04.2010 by submitting a detailed note. In view of the categorical statement made by the respondents, we are of the opinion that Rule 15 (2) is complied with. The counsel for the applicant further contended that there are material contradictions in the deposition of the complainant Rishipal who was examined as PW6. We have gone through to the deposition of all the 6 PWs including the deposition of PW6 Rishi Pal. From the perusal of the entire evidence it is crystal clear that the applicant did not take prompt and effective steps on the FIR filed by the complainant Rishi Pal for 6 to 7 months.

Though there are certain contradictions, but, however, it has come in the deposition that the applicant demanded Rs.25000/- and he had returned the said

amount after the intervention of the senior officers.

We have also perused the impugned order passed by the disciplinary authority dated 27.05.2011 and that passed by the appellate authority dated 16.10.2012, both the orders are reasoned orders. 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."

8. In view of the facts of the case and in view of the law laid down by the Hon'ble Supreme Court referred to above and in view of the fact that apart from Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980, the counsel for the applicant has not brought to our notice any violation of principles of natural justice or any other procedural rules, the OA is devoid of merit.

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