

(2018) 12 CAT CK 0098

In the Central Administrative Tribunal

Case No : Original Application No. 3393 Of 2014

Umesh Kumar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 12 CAT CK 0098

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

Bench : Division Bench

Advocate : R.K. Jain, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. R.K.Jain, counsel for applicant and Mrs. Harvinder Oberoi, 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) Quash and set aside the punishment order Dt. 16.04.2013 passed by the disciplinary authority being without evidence All consequential benefits may be granted to the Applicant.

ii) Quash and set aside the order Dt. 22.05.2014 passed by the respondents.

iii) Quash and set aside the findings of the Enquiry Officer's.

iv) The respondents may be directed to reinstate the applicant with all consequential benefits of seniority and backwages, fixation of pay etc.

v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicant.

vi) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant on the allegation that the complainant secured appointment as Constable in Delhi Police against the reservation quota of OBC on the basis of OBC certificate whereas he belongs to a Brahmin caste (General category). The summary of allegation is extracted below:

"It is alleged against Constable Umesh Kumar No. 1501/SD that he was appointed as constable in Delhi Police in 2006 against the reservation quota of other backward classes on the basis of 'OBC' certificate whereas he belong to Brahmin caste (General Category) On the complaint of Sh. Krishan Kumar S/o Sh. Chander Bhan r/o Village Parrawar Dist. Rohtak (Haryana), a Vigilance inquiry was conducted in which it was established that Constable Umesh Kumar s/o Sh.Gheesa Ram r/o Village Sayana Nagar, Distt. Rewari belongs to 'Brahmin' caste while applying for the recruitment of Constable in Delhi Police, he had mentioned his category as 'OBC' and submitted 'OBC' certificate of Ahir caste. Thus Ct. Umesh Kumar concealed his actual caste and recruited himself in the reserved category of 'OBC' by submitted forged 'OBC' Certificate' Ahir caste'. He obtained undue advantage in 'OBC' category by submitting certificate of backward class.

The above act on the part of Constable Umesh Kumar No.1501/SD amount to gross misconduct and unbecoming of a Police officer for which is liable to be dealt with departmentally under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980."

4. Along with the summary of allegation, list of witnesses and list of documents were furnished to the applicant and an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice and the relevant procedural rules conducted the departmental enquiry and examined 5 PWs and 1 DW and discussing the entire evidence, came to the conclusion that the charge leveled against the applicant was proved vide his report dated 20.11.2012. The relevant portion of discussion of the evidence by the Inquiry Officer is extracted below:-

"It is beyond understanding that if a child is born in one family of a particular caste and is adopted by another family of a different caste, he will have to adopt one caste and cannot switch between them for seeking an opportunity. The documents and statements given by PW1, PW2, PW3 & PW4s fully proves that the delinquent constable belonged to Brahmin Caste as it is evident from his school record. Whereas in his application form for Delhi police he has shown himself as ahir/OBC. Thus he can either be a Brahmin or a Ahir but not both. Further the delinquent constable was enlisted in Delhi Police on the basis of Ahir caste certificate and thereafter got married to a girl of Brahmin Caste. On further examination of the OBC caste certificate, the father's name of the delinquent has

been mentioned as Ghisa Ram, who he has mentioned as his adopted father of Brahmin caste, i.e. why a person of Brahmin Caste (Ghisa Ram) has been shown to be of Ahir Caste. The delinquent constable failed to justify the reason for not mentioning his biological father, as stated by him, as Suraj Bhan Yadav in his OBC certificate, if he was his father and not Ghisa Ram. Thus it is proved that the delinquent constable had submitted fake OBC/Ahir caste certificate at the time of enlistment in Delhi Police.

Conclusion: In view of the above discussion on evidence, it is concluded that charge framed against the delinquent Constable Umesh Kumar, No. 1501/SD, PIS No.28061591, stands, fully proved."

5. The disciplinary authority after considering the representation of the applicant against the inquiry report and going through the entire material before the inquiry officer and after hearing the applicant in orderly room on 13.04.2013 came to the conclusion that the finding of the inquiry officer is correct. He also imposed a penalty of dismissal from service on the applicant vide order dated 16.04.2013. The appeal filed by the applicant was also dismissed by the appellate authority after taking into account all the evidence before the inquiry officer, findings of the inquiry officer and that of the disciplinary authority and also hearing him in the orderly room vide order dated 22.05.2014.

6. The counsel for the applicant vehemently and strenuously submitted that the procedure followed by the inquiry officer was against the principles of natural justice in so far as he put questions to DW1 Smt. Bimla Devi and therefore it is a case of no evidence. We have perused the deposition of all the witnesses. The purpose of asking questions by the Inquiry Officer to DW1 is to find out the facts, as such simply because the inquiry officer himself has put question to DW does not amount to violation of natural justice. We have perused the deposition of PW1 to PW5 and that of DW1 also. There is sufficient evidence before the inquiry officer to come to the conclusion that the charge is proved against the applicant.

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 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."

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.