
(2019) 02 CAT CK 0192

In the Central Administrative Tribunal

Case No : Original Application No. 3898 Of 2013

Zaheer Ahmad

APPELLANT

Vs

Commissioner Of Police

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0192

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

Bench : Division Bench

Advocate : B.N.P. Pathak, Ajesh Luthra

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1.We have heard Mr. Ajesh Luthra, counsel for applicant and Mr.B.N.P.Pathak, 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, A/2 and A/3 with all 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 has not properly investigated and delayed the investigation in a criminal case and also he has conducted out station raids on 2 occasions without permission of the competent authority, a summary of allegation was served on the applicant. The said summary of allegation is extracted below:

"It is alleged against you, ASI Zaheer Ahmed No.3583/E (PIS No. 28750038), that while posted at P.S.Anand Vihar, you were entrusted the investigation of Case FIR No. 260/07 U/S 376/328/380/34 IPC P.S. Anand Vihar registered on dt. 9.5.07. In the said case the offence was committed on dt. 18.4.17 and FIR has been registered on dt. 9.5.07 but you failed to record the reasons for such inordinate delay. In this case the allegation have been by the complainant that she as well as her mother were raped by Vijay and Durgesh by making them drink intoxicated Pepsi and also theft gold chain and mobile phone from her jhuggi. In this case one accused namely Vijay S/o Sohan Lal was arrested on dt. 9.5.07 and taken on public remand and interrogated. The said accused confessed that he alongwith Durgesh the co-accused raped the complainant and her mother and also took away the mobile phone and gold chain of complainant. You further confessed that you can get the stolen property recovered and co-accused arrested. But you being the I.O of this case made no sincere efforts for the same despite the fact that it has been clearly mentioned in the confessional statement of accused Vijay. You also failed to brought the fact on record through case Diary in case file. Further in her statement recorded u/s 164 Cr.P.C. prosecutrix stated that Shiv Kumar the real brother of accused Vijay Kumar was performing watchman's job outside the Jhuggi while Vijay and Durgesh were committing the offence. But you being the I.O of this case did not arrest the accused nor made any efforts to arrest him. As N.B.W in respect of Shiv Kumar has also not been got issued from the Ld. Court. You also failed to ascertain the fact that whether the D.J.B.Tanker was used in the offence or it was a hired tanker by Jal Board on contract basis as alleged in the FIR. In this connection no official of Delhi Jal Board was examined to which Ld. Court raise objections. You also failed to take the intoxicated Pepsi bottle, cloths, of the prosecutrix and any other relevant piece of evidence into possession and mention any reason for this lapse in case file at all. In this case he conducted outstation raids at two occasions without the permission from competent authority making the genuinity of these raids objectionable. The above act on your part amounts to gross misconduct, negligence and dereliction while performing official duties. The same is liable to be dealt under the provisions of Delhi Police (Punishment and Appeal Rules."

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 charge, an Inquiry Officer was appointed. The Inquiry Officer following the principles of natural justice as well as all the relevant rules concerning the holding of the departmental enquiry examined PW1 to PW7 and DW1 and taken on record the defence statement filed by the applicant and discussed the evidence of all the witnesses and came to the conclusion that the charge levelled against the applicant was proved vide his inquiry report dated 04.04.2011. The inquiry report was served on the applicant. The applicant submitted his representation against the inquiry report. The disciplinary authority after considering the entire deposition of all the witnesses and carefully examining the representation of the applicant against the inquiry report, and hearing the applicant in orderly room on

30.05.2011, imposed a penalty of forfeiture of one year approved service temporarily on the applicant vide order dated 03.06.2011. The applicant filed an appeal. The appellate authority also considered once again all the evidence recorded in the departmental proceedings and by a reasoned and speaking order dismissed the appeal after hearing the applicant in orderly room on 24.05.2013 vide order dated 24.05.2013.

5. The counsel for the applicant vehemently contended that it is a case of no evidence and that the impugned orders of disciplinary authority and appellate authority are perverse. The counsel for the applicant further vehemently contended that there is no allegation of wilfulness or bad motive on the part of the applicant nor they have proved wilful or bad motive in the departmental enquiry, as such the misconduct alleged to have been proved should be held to be not a misconduct. In support of his contention, the counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of Inspector Prem Chand Vs. Govt. of NCT of Delhi and others (Appeal (Civil) 1815/2007).

6. The counsel for the respondents took us through the deposition of all the witnesses. There is sufficient material to held that the applicant acted wilfully in not conducting the investigation properly, particularly in conducting out station raids without permission of the competent authority, as such the law laid down by the Hon'ble Supreme Court in the above case of Inspector Prem Chand (supra) is not applicable in the present case.

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 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 is devoid of merit.

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