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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.2712/2013

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Judgement Reserved on: **24th April, 2014**

Judgement pronounced on: **19th September, 2014**

RAJESH SHARMA & ORS. Petitioners

Through: **Mr. V.K. Mishra, Adv.**

versus

DELHI TRANSPORT CORPORATION Respondent

Through: **Ms. Avnish Ahlawat,
Adv.**

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

DEEPA SHARMA, J.

JUDGMENT

1. The present writ petition has been filed by the legal heirs of Sh. Ram Phool Sharma challenging the order dated 26th April, 2012 passed by Central Administrative Tribunal, Principal Bench, Delhi.

2. The brief facts necessary for determination of the dispute

are that Sh. Ram Phool Sharma was working as Assistant Traffic Inspector with the respondents. His services were terminated vide order dated 24th April, 2006 on the charges of having received illegal gratification. Mr. Ram Phool Sharma had expired in February, 2010 and thereafter his legal heirs including his son, daughters and wife were brought on record. They had challenged the termination of Sh. Ram Phool Sharma in OA No. 2976/2011 in case titled as Rajesh Sharma and others v. Delhi Transport Corporation. In this OA, the learned Tribunal had upheld the order dated 21st December, 2010 passed in departmental appeal whereby, the order of removal from services of Sh. Ram Phool Sharma was upheld.

3. OA No. 2976/2011 was the fourth in series of the litigation. Department issued charge sheet to Sh. Ram Phool Sharma on the charges that he was found involved in a case of accepting Rs.1000/- as illegal gratification by the Anti Corruption Branch on 31st January, 1996 and an FIR No. 05/1996 under Sections 7 & 13 of Prevention of Corruption Act, 1998 read with Section 120 B of Indian Penal Code was registered against him.

He was also arrested on the same day i.e. 31st January, 1996.

4. He was suspended w.e.f. 31st January, 1996. A charge sheet dated 10th November, 1998 was issued to him for mis-conduct within paras 19 (b) (d) (f) (h) and (m) of the Standing Orders governing the conduct of DTC's employees. In the chargesheet, it was mentioned that his past record would also be taken into consideration while taking disciplinary action against him. Sh. Ram Phool Sharma filed a reply dated 21st November, 1998 to the charge sheet and asked the respondent not to proceed with the disciplinary proceedings. However, enquiry had begun and Investigating Officer was appointed vide order dated 12th January, 1999 under the notification/intimation to Sh. Ram Phool Sharma.

5. The enquiry was fixed for 25th January, 1999 but Sh. Ram Phool Sharma did not participate in the proceedings. Thereafter, the enquiry proceedings were scheduled for 12th April, 1999 and 26th April, 1999 but even on those dates Sh. Ram Phool Sharma did not participate in the enquiry proceedings.

6. On 22nd December, 1999, again an intimation was sent about the date fixed in the enquiry which was on 30th January, 2000, however, on 7th January, 2000 on receiving a letter dated 5th January, 2000 by the Inquiry Officer from the Anti Corruption Branch, Directorate of Vigilance, Government of National Capital Territory of Delhi, re-commending and advising him not to proceed with the enquiry proceedings in view of the pendency of the criminal case and recommending that the examination of the prosecution witnesses in the departmental proceedings be not proceeded, the enquiry was kept in abeyance.

7. The suspension order of Sh. Ram Phool Sharma was also revoked vide an order dated 6th January, 2003. Since no intimation had been received by the department from Anti Corruption Branch, Delhi, vide an order dated 6th April, 2004, it was decided to proceed with the departmental proceedings on the ground that departmental proceedings and the criminal proceedings were separate issues and the departmental proceedings should not be kept under abeyance.

8. The departmental proceedings commenced vide an order

dated 14th September, 2004 and the Inquiry Officer was requested to re-commence the enquiry proceedings. The enquiry proceedings were scheduled for 6th October, 2004. A letter was also sent to Sh. Ram Phool Sharma but he did not appear before the enquiry proceedings to join the inquiry. The enquiry was re-scheduled for 1st November, 2004 and an intimation was sent to Sh. Ram Phool Sharma but he again failed to join the enquiry proceedings.

9. The intimation dated 14th January, 2005 was again sent to Sh. Ram Phool Sharma for joining the inquiry proceedings to be held on 25th January, 2005 but vide the intimation letter, it was informed that Sh. Ram Phool Sharma had met with an accident and was admitted in Apollo Hospital, New Delhi and due to this reason, the enquiry proceedings were postponed.

10. Sh. Ram Phool Sharma, thereafter did not join his duties. His date of superannuation was 30th April, 2006. It was held that the workman was playing truant and therefore, the enquiry was again fixed for 25th January, 2006 and intimation to this effect was sent to Sh. Ram Phool Sharma vide letter dated 6th January,

2006. Another intimation was sent on 6th March, 2006, asking Sh. Ram Phool Sharma to join the enquiry on 17th March, 2006. A reply dated 17th March, 2006 was received by the respondents written by Sh. Rajesh Sharma s/o Sh. Ram Phool Sharma informing that Sh. Ram Phool Sharma was not likely to recover from his illness till the end of April, 2006. It was also mentioned in the letter that on 13th January, 2006, the medical Board of Delhi Transport Corporation had examined Sh. Ram Phool Sharma thoroughly and had granted him leave till 12th April, 2006. However, the intimation was not supported by any document of the Medical Board of Delhi Transport Corporation.

11. The Inquiry Officer, thereafter, proceeded ex-parte against Sh. Ram Phool Sharma on 17th March, 2006 and vide a detailed order dated 31st March, 2006, the Inquiry Officer found Sh. Ram Phool Sharma guilty of the charges.

12. A show-cause notice dated 4th April, 2006 was thereafter issued to Sh. Ram Phool Sharma before passing an order on the basis of enquiry report. A reply had been received from his son Rajesh Sharma s/o Sh. Ram Phool Sharma. After considering the

reply and taking into consideration, the conduct of Sh. Ram Phool Sharma and his past record, his services were terminated w.e.f. 25th April, 2006 and the order was duly served upon him.

13. The said order was challenged in W.P.(C) No. 3754/2007 which was withdrawn on technical grounds with an opportunity to file a departmental appeal at the appropriate Forum. On 15th April, 2007, Sh. Ram Phool Sharma was acquitted on merit in criminal case in FIR No.05/1996 by the court of Sh. S.K. Kaushik, Special Judge, Delhi. Sh. Ram Phool Sharma, thereafter, filed an appeal on 30th July, 2006 before the Chairman of the respondent. The appeal was rejected and the order was communicated to him vide letter dated 10th December, 2007. The dismissal orders against Sh. Ram Phool Sharma were challenged by way of writ petition before this court which was later on transferred to the Central Administrative Tribunal which was numbered as TA No. 1225/2009 and was disposed of vide an order dated 20th August, 2009, whereby, the matter was remanded back with the directions to re-consider the matter after giving an opportunity to make oral submissions and also taking into

consideration the circumstance that he was acquitted by the criminal court.

14. On 13th November, 2009, the appeal was decided afresh and the order of dismissal was again confirmed. Sh. Ram Phool Sharma filed an OA No. 478/2010 against the order dated 13th November, 2009 which was disposed of vide an order dated 27th August, 2010, whereby, the directions were again issued to the Appellate Authority to dispose of the matter afresh after taking into consideration the principles of natural justice and to pass a detailed order. Meanwhile, Sh. Ram Phool Sharma had expired due to bad health on 12th February, 2010 and the present petitioners were substituted in the said OA. The petitioners participated in the hearing before the Appellate Authority subsequent to the order of the Central Administrative Tribunal dated 27th August, 2010. Thereafter, again the Appellate Authority dismissed the appeal of charged employee vide its order dated 21st December, 2010. It was this order that the legal heirs of deceased charged employee have challenged before the Central Administrative Tribunal vide OA No. 2976/2011 and,

they are before this court against the order of dismissal of their OA by the Central Administrative Tribunal vide order dated 26th April, 2012.

15. It is argued on behalf of the appellants that it is a case of no evidence. Finding of the Inquiry Officer is not supported by any evidence on record. It is based on conjunctures and surmises. There was no allegation that Sh. Ram Phool Sharma had demanded the bribe or that he had accepted the bribe. It is further argued that as per the FIR No. 05/1996, itself, it was Sh. Jai Bhagwan, Conductor, Batch No. 8910 who had accepted the sum of Rs.1000/- and the same were recovered from him. It is argued that late Sh. Ram Phool Sharma was working as Assistant Traffic Inspector and his posting was at Hari Nagar Depot and in that capacity, he was present in the Hari Nagar Depot and he had nothing to do with Sh. Jai Bhagwan. It was also argued that he had been falsely implicated merely because he was present on the spot. It is argued that there was no evidence before the Inquiry Officer to reach to the conclusion that the money was received by Sh. Jai Bhagwan at his instance or on his behalf. It is argued that

it is a case of no evidence and learned Special Judge, Sh. S.K. Kaushik in FIR No.05/1996 vide judgment dated 15th January, 2007 has acquitted the charged employee Sh. Ram Phool Sharma on the ground that there was no evidence against him.

16. It is further submitted that Sh. Ram Phool Sharma could not participate in the enquiry due to his ill health, that the charges had been framed on the basis of report of Security Guard, Sh. Jai Narain, Batch No. 759 and Security Havildar, Sh. Dharam Singh, Batch No. 485. Sh. Jai Narain did not depose in the enquiry proceedings because of his untimely demise. Only Sh. Dharam Singh had been examined and it is argued that he had not stated that Sh. Ram Phool Sharma had demanded or accepted the bribe or that the bribe money was recovered from him.

17. The plea taken by the respondent, through the Counter Affidavit filed before the Central Administrative Tribunal was that the charged employee did not participate in the enquiry despite number of opportunities given to him and that the enquiry was completed ex-parte because the charged employee was to retire from services and entire enquiry proceedings would have

become infructuous. The Inquiry Officer proceeded with the proceedings in the presence of Labour Welfare Inspector and submitted his report.

18. It is denied that it is a case of no evidence and that the deceased charged employee was not involved in taking the bribe. It is submitted that a proper disciplinary enquiry was initiated against him and he was found guilty and the factual consideration cannot be adjudicated by this court in the present proceedings. It is further submitted that the acquittal of the charged employee in the criminal proceedings does not affect the disciplinary proceedings since the standard of proof of allegations in both the proceedings are entirely different.

19. It is submitted that the grounds taken by the appellants are frivolous and the writ petition is liable to be dismissed.

20. The appellant has invoked the writ jurisdiction of this court while assailing the impugned order. The jurisdiction of this court under Article 226 is very limited. It is a settled law that this court cannot sit as an appellate court over the findings of a quasi

judicial authority and also cannot substitute its opinion on the subject matter where an alternate view was even possible in exercise of the jurisdiction under Article 226 of Constitution of India. The Constitution Bench of the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan (1964) 5 SCR 64 has elaborately explained the powers and jurisdiction of this court over the findings by the inferior courts or Tribunal. Speaking for the majority of the Constitution Bench, Hon'ble Mr. Justice P.B. Gajendragadkar, has observed as under:-

“A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure

adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we

must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.”

21. It, therefore, is very clear that this court has limited jurisdiction and can interfere with the findings of a Tribunal only if it is based on no evidence. The delinquent employee, Sh. Ram Phool Sharma in this case was dismissed pursuant to the disciplinary proceedings. The Charge sheet was issued on 10th November, 1998 on the ground that on 31st January, 1996, he had demanded and accepted at about 1145 hours, a sum of Rs.1000/- through Sh. Jai Bhagwan Chand as illegal gratification from one Sh. Subhash Chander, Ex-Sweeper/ Cleaner in consideration for

getting him reinstated on duty. Although in this case, the inquiry was ex-parte since the delinquent employee did not participate in it but still the contention that there was no evidence on record to bring home the guilt of the charged employee can be raised by the delinquent employee and there is no bar to it. In this case, the charges were on the basis of the report by the Security Guard, Sh. Jai Narain and Security Havildar Sh. Dharam Singh. Admittedly, Sh. Jai Narain could not be examined due to his unfortunate demise and only the statement of Dharam Singh was recorded. From the testimony of Sh. Dharam Singh, it is apparent that he had not seen the delinquent employee receiving the money or demanding bribe from the complainant Sh. Subhash Chander. He has only deposed that three persons from CBI came to the depot and arrested Sh. Jai Bhagwan Chand and the delinquent employee, Sh. Ram Phool Sharma and Sh. Subhash Chander, Ex-sweeper (from whom allegedly the demand of bribe was made).

22. The statement of the only witness examined during the enquiry proceedings Sh. Dharam Singh, clearly relates to the arrest of the delinquent employee by the CBI on 31.01.1996. He has not deposed anything about the charge i.e. that the delinquent employee had demanded bribe from Sh. Subhash Chander (Ex-sweeper).

23. As per the Charge sheet submitted in the criminal trial in FIR No. 5/1996, although, delinquent employee, Sh. Ram Phool Sharma was present in the depot, the money was paid to Sh. Jai

Bhagwan Chand and was received by him and was also recovered by the CBI from him. The criminal court in its order dated 15th January, 2007 has ruled out, after discussing the evidence produced in the criminal trial on record, any conspiracy between Sh. Jai Bhagwan Chand and the delinquent employee Sh. Ram Phool Sharma. It was an acquittal of the delinquent employee Sh. Ram Phool Sharma in the criminal case on merits and not that the simple benefit of doubt on account of some technical reason has been given to the delinquent employee Sh. Ram Phool Sharma. The learned Special Judge of CBI has ruled out the existence of any criminal conspiracy between the delinquent employee Sh. Ram Phool Sharma and Sh. Jai Bhagwan Chand. No evidence had been adduced during the enquiry in the enquiry proceedings that the delinquent employee Sh. Ram Phool Sharma had connived with Sh. Jai Bhagwan Chand and pursuant to that Sh. Jai Bhagwan Chand had allegedly received the bribe. Even, the learned Special Judge of CBI in its order dated 15th January, 2007 has given clear findings that the money given to Sh. Jai Bhagwan Chand and recovered from his possession had no relevance with any demand of bribery by him.

24. In the disciplinary proceedings against the delinquent employee Sh. Ram Phool Sharma. Sh. Subhash Chander, Ex-Sweeper who had allegedly given the bribe to Sh. Jai Bhagwan Chand, has not been examined. There is no dispute to the settled law that the standard of proof in criminal trial and in domestic

enquiry is different. While in criminal trial, the proof of guilt is required to be beyond reasonable doubts, in domestic enquiry, no strict proof of guilt beyond reasonable doubt is required and rule of preponderance is to be followed. If evidence on record shows by preponderance that the delinquent employee is guilty of the mis-conduct listed in the Charge sheet, is sufficient proof to deal with him departmentally.

25. But even in domestic enquiry some evidence ought to have been produced which can by preponderance show that the delinquent employee is guilty of the charges shown in the Charge sheet. In this case, except of the evidence that the delinquent employee Sh. Ram Phool Sharma was arrested in criminal case, there was not an iota of evidence to suggest even by preponderance that the delinquent employee Sh. Ram Phool Sharma had taken the bribe or connived with Sh. Jai Bhagwan Chand who then on his behalf had accepted the bribe. If he was arrested in the criminal case, he was also acquitted on merits, of the charges in the criminal case. It is also apparent from the findings of the learned Special Judge in the criminal case FIR No. 05/1996 dated 15th January, 2007 that the delinquent employee Sh. Ram Phool Sharma had been acquitted on merit and it is not that he was given the benefit of doubt.

26. Since there was no evidence against the delinquent employee Sh. Ram Phool Sharma to prove the charges levelled against him in the enquiry, the findings of the Enquiry Officer are

bad in law. All the subsequent proceedings on the basis of the report of Enquiry Officer are also vitiated. It, therefore, is apparent that that dismissal of the delinquent employee Sh. Ram Phool Sharma vide order dated 24th April, 2006 passed by Shri. K.C.Gupta, Depot Manager is liable to be set aside.

26. Accordingly, the dismissal order dated 24th April, 2006 as well as appellate order against the delinquent employee Sh. Ram Phool Sharma are set aside. In view of this order, the impugned order dated 26th April, 2012 of the Central Administrative Tribunal cannot be sustained and is hereby set aside.

27. The delinquent employee Sh. Ram Phool Sharma, who is now deceased, is held entitled to reinstatement from the date of his dismissal till his superannuation with all the consequential benefits. He, however, will not be entitled for the back wages on the ground that he has not worked during that period. From the record produced before us, it is apparent that Sh. Ram Phool Sharma was appointed as daily rated conductor on 27.03.1965 and was appointed on monthly rate conductor w.e.f. 01.02.1966. His probation was completed on 31.01.1987. His due date of retirement was 31.04.2006, but for his removal from service w.e.f. 25.04.2006. Since this Court has set aside his dismissal and ordered for his reinstatement and since his date of superannuation has already been expired, we hold that he is entitled for the pension and other consequential benefits from the date of his superannuation, i.e., 31.04.2006 till his death, i.e., in

February, 2010 and thereafter his legal heirs shall be entitled to pension as per rules and regulations. The respondents are directed to complete the computation of pension within 90 days from the date of this order and make the payment within 30 days thereafter.

28. The writ petition is disposed of in the above terms.

29. No order as to costs.

(DEEPA SHARMA)
JUDGE

(GITA MITTAL)
JUDGE

SEPTEMBER 19, 2014

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