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

+ **W.P.(C) 2799/2019**

RAJENDER SINGHPetitioner

Through: **Mr. Jai Singh Mann, Adv.**

versus

DELHI TRANSPORT CORPORATIONRespondent

Through: **Ms. Aditi Gupta, Adv.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **16.10.2024**

C. HARI SHANKAR, J.

1. The order passed by the learned Central Administrative Tribunal¹, under challenge in this writ petition, is so unsatisfactory that we deem it appropriate to reproduce it in its entirety:

“We have heard Mr.B.R.Kaushik, counsel for applicant and Ms. Mona Sinha for Ms. Ruchira Gupta, 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 the order dated 05.12.2013 passed by the Regional Manager (North), thereby dismissing the appeal of the applicant;



- (b) Quash the removal order dated 26.06.2013 passed by Depot Manager, Rohini Depot-III, Delhi and order of punishment from 22.08.2008 to 27.02.2009;
- (c) Pass an order thereby directing the respondent to give all the service benefits of the applicant to him with all the allowances;
- (d) Pass an order thereby directing the respondent to fix the pension of the applicant;
- (e) Pass any order/direction in favour of the applicant and against the respondents which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case;
- (f) Award cost of the proceedings."

3. The relevant facts of the case are that as the applicant remained absent from his duty 22.08.2008 to 27.02.2009 willfully and un- authorizedly without prior any permission from the competent authority, a departmental enquiry was held against the applicant as per rules. The applicant did not even attend the departmental enquiry. An Inquiry Officer held the applicant guilty of the above said charges. The disciplinary authority vide order dated 26.06.2013 dismissed him from service. The appeal filed by the applicant was also dismissed by the appellate authority by a speaking and reasoned order dated 05.12.2013. As the applicant had put in about 26 years of service, we directed the respondents to state whether any Voluntary Retirement Scheme (VRS) is operating in the respondent-DTC. The counsel for the respondents on instructions submitted that there is no scheme of VRS operating in the respondent organization.

4. 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*², 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*³ 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*⁴ 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 of 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*⁵, 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 influence 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."

5. 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 requires to be dismissed.

6. Accordingly, OA is dismissed. No order as to costs."

2. We are constrained to observe that passing of such orders does little justice to the confidence which had been imposed on the learned Tribunal at the time when it was constituted. There is no discussion



whatsoever of the merits of the case. The learned Tribunal recites, in one para, the facts. Thereafter, four decisions of the Supreme Court are cited. Even as per the said decisions, notably the decision in ***P. Gunasekaran***, a Court, faced with a challenge to punishment awarded consequent on disciplinary proceedings, is required to take various factors into consideration, even if the scope of interference is somewhat circumscribed. No such exercise has been undertaken by the learned Tribunal. There is no reference to the contentions of the parties before it, or even of the petitioner. In one sentence, the OA has been dismissed on the ground that no violation of procedure or principles of natural justice has been pointed out. The order is totally mechanical, and is vitiated by complete non-application of mind.

3. We say no more, except to observe that such orders eventually result in multiplicity of litigation, and avoidable prejudice to the litigant.

4. We are left with no option but to set aside the impugned order passed by the learned Tribunal. The order is accordingly set aside. OA 4398/2014 stands remanded to the learned Tribunal for reconsideration on merits.

5. Let both sides appear before the learned Tribunal on 7 November 2024. We request the learned Tribunal to decide the OA as expeditiously as possible.

6. We are spared the necessity of entering the customary caveat that the learned Tribunal would not be influenced by the order under



challenge, as there is nothing in the order under challenge which can influence the learned Tribunal.

7. The petition is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 16, 2024/N

Click here to check corrigendum, if any