



**Central Administrative Tribunal  
Principal Bench**

**OA No.1487/2018**

New Delhi, this the 15<sup>th</sup> day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**  
**Hon'ble Mr. Mohd. Jamshed, Member (A)**

Macchita Malik  
S/o Sh. Satbir Singh  
R/o H. No.232, Pocket-I,  
Sector-23, Rohini,  
New Delhi 110 085.

... Applicant.

Aged about 35 years,  
Group 'C',  
DASS Grade II, GNCT of Delhi.

(By Advocate : Shri Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi  
Through its Chief Secretary  
5<sup>th</sup> Floor, Delhi Sachivalaya  
New Delhi.
2. Department of Trade & Taxes  
Through its Commissioner  
GNCT of Delhi  
Vyapar Bhawan, IP Estate,  
New Delhi.

... Respondents.

(By Advocate : Shri Amit Anand)

**: O R D E R :****Justice L. Narasimha Reddy, Chairman:**

The applicant is an officer of Delhi Administration Subordinate Services (DASS). An FIR No.73/13 in PS Crime Branch, Rohini, was registered against him alleging offences punishable under Sections 420, 120B, 511 and 34 IPC read with Section 66 of Income Tax Act. He was also arrested and placed under suspension; and was released on bail.

2. A charge memo dated 09.05.2014 was issued to him alleging acts of misconduct. The applicant submitted his reply on 23.05.2014 denying the charges. Not satisfied with the explanation, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO) on 27.06.2014. The IO was changed on 22.06.2015, and ultimately a report was submitted on 01.09.2016 holding that the charges against the applicant are not proved. The DA, however, directed further inquiry through order dated 28.11.2016. After conducting such an inquiry, the IO submitted a report on 04.07.2017. The DA, however, did not accept the report and directed *de novo* inquiry through an order dated 17.01.2018. By a communication dated 23.02.2018, the DA informed the applicant that since *de novo* inquiry was ordered, the Inquiry Report dated 04.07.2017 cannot be provided to





him. This OA is filed challenging the order dated 17.01.2018 and various steps taken by the DA.

3. The applicant contends that the very ordering of further inquiry was improper, once the charges were held not proved, and all the same he participated in the further inquiry. He contends that the report submitted on conclusion of the further inquiry ought to have been furnished to him, and there was absolutely no basis or legality for ordering *de novo* inquiry.

4. Respondents filed the counter affidavit opposing the OA. It is stated that the inquiry report submitted by the IO on 01.09.2016 was found to be defective by the DA, and accordingly further inquiry was ordered. It is also stated that in the further inquiry also, the DA has noticed several infirmities and accordingly directed *de novo* inquiry and that the same is permissible under Rule 15 of CCS (CCA) Rules.

5. We heard Shri Ajesh Luthra, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents.

6. The disciplinary proceedings were initiated against the applicant by issuing a charge memo dated 09.05.2014. The Article of charge reads as under:-

“ARTICLE-I



Shri Macchita Malik, VATI/Grade-II (DASS) (under suspension) while functioning as VATI in the Trade & Taxes Department committed irregularities as Shri Macchita Malik, VATI/Grade-II (DASS) (under suspension) was arrested by Crime Branch, on account of leakage of paper of Staff Selection Commission for the Combined Graduate Level examination 2013 (All India Basis) held on 21.04.2013. Out of nine accused, one Macchita Malik son of Shri Satbir Singh was arrested on 21.04.2013 by Crime Branch, Delhi.

By doing so, the said Shri Macchita Malik, VATI/Grade-II (DASS) (under suspension) committed misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”

7. The applicant denied the allegation by submitting a reply. The DA was not satisfied with the reply and appointed an IO. Vide report dated 01.09.2016, the IO held the charge against the applicant as not proved.

8. Rule 15 of CCS (CCA) Rules gives three options to a DA. The 1<sup>st</sup> is to accept the report of the IO as it is. The 2<sup>nd</sup> is to differ with the findings by issuing a disagreement note in accordance with law. The 3<sup>rd</sup> is to order further inquiry. The 3<sup>rd</sup> option was chosen and further inquiry was directed by the DA through order dated 28.11.2016. On conclusion of the further inquiry, the IO submitted a report on 04.07.2017. The copy of the report was not furnished to the applicant and even now it is not clear as to what

findings, the IO has recorded. The DA passed an order dated 17.01.2018, which reads as under:-



“ORDER

Whereas an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is being held against Sh. Macchita Malik, VATI/Gr-II Sales Tax Department (Now Department of Trade & Taxes).

AND WHEREAS Ms. Rakhi Singhal, Asstt. Commissioner, Trade & Taxes, Govt. of NCT of Delhi was appointed as Inquiry Officer to inquire into the charges framed against the said Sh. Macchita Malik.

AND WHEREAS Ms. Rakhi Singhal, Asstt. Commissioner, Trade & Taxes Department performed a deficient and flawed inquiry by not considering the facts relevant to the inquiry with the inquiry report apparently based on the findings of inquiry report of Inspector K. P. Malik, Delhi Police, against Sh. Ajit Singh, Head Constable, Delhi Police who was proceeded against department by Delhi Police being a co accused with Macchita Malik in the police case.

NOW, THEREFORE, the undersigned in exercise of the powers conferred by sub-rule (5) (c) of Rule 14 of the said rules, hereby appoints Sh. Dinesh Gandhi, Asstt. Commissioner, Ward-91 as the Inquiry Officer to conduct the inquiry de-novo.”

From a perusal of this, it becomes clear that the DA found the report of the IO not proper and has chosen to order *de novo* inquiry. The copy of the report was not furnished to the applicant and when a representation was made in this behalf, a reply was given on 23.02.2018, which reads as under:-



“To

Sh. Macchita Malik,  
C/o Sh. Satbir Singh  
R/o H. No.2323, Pocket-1,  
Sector-23, Rohini,  
New Delhi 110 085.

Sub : Representation regarding order of denovo enquiry and supply of the Enquiry Report.

Sir,

With reference to your letter dated 07.02.2018 regarding the above cited subject, it is stated that

1. The order for a denovo enquiry was made by the Disciplinary Authority after taking all the facts and circumstances of the case into consideration.
2. As regards the supply of the Inquiry Report dated 04.07.2017, the copy of the same cannot be provided as the inquiry report was not accepted by the Disciplinary Authority.
3. The matter for the revocation of the suspension depends upon the recommendations made by the Suspension Review Committee in its meetings held from time to time and on the basis of the said recommendations the suspension period was extended by the Disciplinary Authority in this case.”

9. The entire approach of the DA is contrary to the settled principles of law. The only person who is immediately concerned with the report of the IO is the charged officer. There is no confidentiality about the report and it is just un-understandable as to how and on what basis the report was withheld from the applicant. The order dated 17.01.2018 cannot be sustained in law and the



respondents ought to have furnished a copy of the report of the IO to the applicant.

10. As observed in the preceding paragraphs, three options are available to a DA, once a report is submitted by the IO. None of them include the one, of ordering *de novo* inquiry. Such a step would negate the very spirit of the procedure under the CCS (CCA) Rules. If permitted, the opportunity can be utilised by a DA to order as many inquiries as are required, till he gets a report of his liking. The protection given to a civil servant under Article 311 of the Constitution of India would not permit such a course.

11. In ***K. R. Deb vs. Collector of Central Excise*** 1971 AIR 1447, the Hon'ble Supreme Court interpreted Rule 15 of CCS (CCA) Rules. It reads as under:-

“It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get ‘some



officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.”



12. Whether one examines the case on facts or applies principles of law, the impugned order cannot be sustained in law.

13. The OA is accordingly allowed. The impugned order dated 17.01.2018 is set aside. It is left open to the DA either to; (a) accept the report of the IO dated 04.07.2017 and drop the proceedings or (b) to issue a disagreement note and arrive at his conclusion, depending upon the explanation which the applicant may offer. There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

/pj/