

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2285/01

(2)

Monday, this the 22nd day of April, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Hardwari Lal
s/o Shri Amichand
Aged 44 yrs (DOB: 29/5/85)
E-30 Preet Vihar
Delhi-92

..Applicant

(By Advocate: Dr.D.C.Vohra)

Versus

1. Union of India
through the Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi-11
2. Commissioner of Central Excise
Central Excise Commissionerate
Delhi-1
CR Building, I.P.Estate
New Delhi-2
3. The Additional Commissioner (P&V)
Central Excise Commissionerate
Delhi-1
CR Building, I.P.Estate
New Delhi-2

..Respondents

(By Advocate: Shri R.R.Bharti)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, VC (J):

We have heard Dr. D.C.Vohra, learned counsel for the applicant and Shri R.R.Bharti, learned counsel for the respondents.

2. In this application, the applicant is aggrieved that in spite of a lapse of several years since the charge-sheet was issued against him, no final order has yet been passed and two enquiries have been held by the respondents in which the inquiry officers have held the charges as 'not proved'.

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3. The brief relevant facts of the case are that the applicant while working as Inspector of Customs was issued charge-sheet/Memorandum dated 11.3.1994 containing three articles of charge. The inquiry officer Shri Satish Kumar vide his report dated 13.7.1998 has stated that he was appointed as inquiring authority to inquire into the charges against the applicant. He had accordingly conducted an inquiry on the three articles of charge. In his report, he has discussed the documents and evidence which were brought on record during the Departmental inquiry proceedings. Having seen the documents and evidence and discussed the same, he has concluded in paragraph 8.10 of his report that none of the charges are proved based on the documents and evidence which has come on record during the inquiry proceedings.

4. The next order that was passed, according to Shri R.R.Bharti, learned counsel, after the aforesaid report submitted by Shri Satish Kumar, inquiry officer in the Departmental proceedings held against the applicant, was the letter dated 27.3.2000. In this order, it has been stated, inter alia, that Shri Satish Kumar, Asstt. Commissioner (Inquiry Authority) has been transferred and it is necessary to appoint another officer as Inquiring Authority to inquire into the charges, under the provisions of Rule 14 (2) and (22) of the CCS (CCA) Rules, 1965 (hereinafter referred to as "the Rules") the Disciplinary authority/Joint Commissioner (P&V) has appointed Shri Bhima Shanker, Deputy Commissioner as inquiring authority. Shri Bhima Shanker, inquiring authority has submitted his report on 29.9.2000, in which

he has also come to the same findings as the earlier inquiry officer that the three articles of charge framed against the applicant are not proved. It is relevant to note that both the inquiry officers who had enquired into the articles of charge against the applicant have found that this is a case of no evidence. Thereafter, copy of the inquiry officer's report dated 29.9.2000 together with a note from the disciplinary authority disagreeing with the findings of the inquiry authority was given to the applicant. The learned counsel for the applicant has submitted that the reply to this has also been submitted by the applicant on 27.11.2000 to which no final order has been passed by the respondents till date.

5. A number of objections have been taken by Dr. D.C. Vohra, learned counsel. One of the contentions of the learned counsel is that in the order dated 27.3.2000, the respondents have relied on sub-rules (2) & (22) of Rule 14 of the Rules, which do not permit them to hold a fresh/de-novo inquiry. He has submitted that Shri Satish Kumar, the earlier inquiry officer has already submitted his report exonerating the applicant from the charges vide his report dated 13.7.1998. In the circumstances, he has contended that there was no question of appointing another inquiry officer as, according to him, Shri Satish Kumar had already submitted his report before he was transferred. The learned counsel for the respondents has not submitted that these facts are incorrect or by which order Shri Satish Kumar was transferred to show when he had been transferred, i.e., after or before he had submitted his report on 13.7.1998 on the charges levelled against the applicant.

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6. We have perused the report dated 13.7.1998 submitted by Shri Satish Kumar, Assistant Commissioner as an inquiring authority, copy of which has been annexed by the applicant. We note that he has come to the conclusion that the charges are not proved based on the evidence and the documents brought on record during the inquiry proceedings. It is also relevant to note that by respondents' letter dated 27.3.2000, they have appointed another inquiry officer Shri Bhima Shanker as inquiring authority to inquire into the same charges framed against the applicant. This order nowhere states that the second inquiry officer is to continue with the inquiry from the stage where Shri Satish Kumar, the earlier inquiry officer had left it after he was transferred. Rule 14, sub-rule (22) of the Rules provides as follows:-

"(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in any inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself."

7. It is further relevant to note that under sub-rule 23 clause (1) of Rule 14 of the Rules, after the conclusion of the inquiry, a report shall be prepared and it shall contain the articles of charge, the statement of imputations of misconduct or misbehaviour, the defence of the Government servant in respect of each article of charge, an assessment of the evidence in respect of each article of charge and the findings on each article of

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charge and reasons therefor. A perusal of the inquiry officer's report dated 13.7.1998 shows that the requirement of sub-rule 23 of Rule 14 has been complied with. A perusal of the later inquiry officer's report dated 29.9.2000 shows that he has also dealt with the inquiry as if he has been appointed as the initial inquiry officer. In the brief history in the report submitted by Shri Bhima Shanker, the second inquiry officer, he has, *inter alia*, stated as follows:

"... Shri Satish Kumar finally conducted the inquiry and was transferred. Thereafter under orders C.Nos. 3-Vig./94/ Pt-II/563 dated 27.3.2000 and C.No. 3-Vig./Pt.II/568 dated 27.03.2000. I was appointed under Rule 14 (22) and 15 (1) of the Rules to conduct the inquiry."

8. A perusal of the aforesaid report submitted on 29.9.2000 shows that the earlier inquiry officer, i.e., Shri Satish Kumar had "finally conducted the inquiry and was transferred". However, Shri Bhima Shanker, who was appointed as inquiry officer by order dated 27.3.2000, proceeded to conduct the inquiry again as a *de-novo* inquiry and not in continuation of the earlier inquiry as provided under Rule 15 (1) of the Rules. It is also relevant to note that in the inquiry officer's report dated 29.9.2000, the requirement of Rule 14 (23) of the Rules has been complied with.

9. Rule 15 (1) of the Rules provides as follows:

"15 (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall

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thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be."

(emphasis added)

Under the above Rule, the disciplinary authority is empowered to remit the case to the inquiring authority for further inquiry and report. In the present case, the respondents have stated in their reply to paragraphs 4 (7) and 4 (8) that after the receipt of the said report dated 13.7.1998, i.e., that of Shri Satish Kumar, the case was remitted by the disciplinary authority to the inquiring authority for further inquiry and report under Rule 15 (1) of the Rules. However, from the facts and circumstances referred to above, we are unable to agree with the contentions of the learned counsel for the respondents that Shri Bhima Shanker, who was appointed as inquiring authority by order dated 27.3.2000, has only further conducted the inquiry. In other words, there appears to be two inquiry reports on the articles of charge against the applicant which were originally issued vide Memorandum dated 11.3.1994 conducted by two inquiry officers, they have found that none of the charges are proved against the applicant based on the evidence and documents on record. However, the disciplinary authority has issued a dissenting note on 13.11.2000 along with the copy of the second report of inquiry officer dated 29.9.2000. It has been submitted that till date the respondents have not taken any final decision in the matter, although reply to this note has also been given by the applicant as far back as 27.11.2000.

10. From the facts mentioned above, we find force in the submissions made by Dr. D.C.Vohra, learned counsel

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that there is an inordinate delay on the part of the respondents in taking an appropriate decision in the Departmental proceedings which has been pending against the applicant for a number of years. We are unable to agree with the contentions of Shri R.R. Bharti, learned counsel that the second inquiry report dated 29.9.2000 is not a de-novo or fresh inquiry on the same charges after the earlier inquiry officer had come to his conclusions in his report dated 13.7.1998.

11. Dr. D.C. Vohra, learned counsel has relied on the judgement of this Tribunal in Balvir Singh Vs. Union of India & Anr. decided on 12.9.2001 (Swamy's News 91 P.B., New Delhi, in which one of us Smt. Lakshmi Swaminathan, VC (J) was also a Member). In that case, it has been held that the Rules do not permit fresh/de-novo inquiry. It has not been brought to our notice that the judgement in Balvir Singh's case (supra) has been modified or set aside by any higher Court. In the facts and circumstances of the present case, therefore, we do not find any good reason not to follow the decision in Balvir Singh's case (supra).

12. Accordingly, the second inquiry officer's report submitted by Shri Bhima Shanker dated 29.9.2000 which is not in accordance with Rule 14 (2) and (22) and Rule 15 (1) of the Rules and is quashed and set aside. Dr. D.C. Vohra, learned counsel has submitted that as the applicant has already faced Departmental inquiry proceedings for a number of years, the Memorandum of charges and further proceedings should also be quashed and set aside. We are

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unable to agree with this contention as the respondents have proceeded in the matter as if they were continuing with the inquiry when they had appointed Shri Bhima Shanker as an inquiry officer, whereas the inquiry officer's report submitted by Shri Satish Kumar dated 13.7.1998 was already before them. It is also relevant to mention that both the inquiry officers in their reports have come to the conclusions that the charges levelled against the applicant are not proved. The disciplinary authority has on the basis of the second inquiry officer's report dated 29.9.2000 given a dissenting note on 13.11.2000, on which a final decision has yet to be taken by them.

13. In the facts and circumstances of the case, the OA is disposed of with the following directions:-

- i) The inquiry officer's report dated 29.9.2000 followed by the subsequent order passed by the disciplinary authority dated 13.11.2000 are quashed and set aside;
- ii) However, in the peculiar facts and circumstances of the case, liberty is granted to the respondents/disciplinary authority to proceed in the matter, following the earlier inquiry officer's report dated 13.7.1998, as expeditiously as possible and to pass appropriate orders in the matter within a period of three months from the date of receipt of a copy of this order;

Yours

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iii) Having regard to the fact that the charge-sheet has been issued on 11.3.1994 involving incidents of 1989, which the respondents/disciplinary authority should keep in view and the aforesaid findings of the enquiry officers, in case they do not issue any final order within the time stipulated above, the charges shall be deemed to have been dropped.

No order as to costs.


(S.A.T.Rizvi)
Member (A)


(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

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