

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 490/2001

This the 3rd day of April, 2002

Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Kuldip Singh, Member (J)

Gurvinder Kumar
S/o Shri Somnath,
R/o House No. B-35, 'G' Block,
Prem Nagar Part-II, Papravat Road,
Najafgarh,
New Delhi-110 043.

-Applicant

(By Advocate: Shri G.S. Chaman &
Shri H.K. Gupta)

Versus

1. Union of India
Through the Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Central Secretariat, North Block,
New Delhi.

-Respondent

(By Advocate: Shri R.N. Singh)

O R D E R

Hon'ble Shri V.K. Majotra, Member (A)

Applicant has challenged the following:-

i) Memo No. 1/Vig/98(166)-1966 dated
09.12.1998 placing the applicant under
suspension (Annexure A-1).

ii) Memo No.1/Vig./98(165)-773-774 dated
11.5.99 serving charge-sheet under Rule 14,
CCS (CCA) Rules, 1965 on the applicant
{nnexure A-2(i)}.

iii) Memo No. 1/Vig./98(165)-1821-24 dated 11.9.2000 directing fresh inquiry after the 1st enquiry was over {Annexure A-2(ii)}.

iv) Memo No. ADZ/2000-2745 dated 13.10.2000 issued by Respondent No.2 informing the applicant about commencement of fresh enquiry {Annexure A-2(iii)}.

2. Learned counsel of the applicant stated that charge against the applicant is vague inasmuch as who had caused nuisance by banging on the care-taker's room on 1.12.98 has not been specified. In this connection it is noticed that whereas the charge sheet had been issued on 11.5.99, the applicant had participated in the enquiry without raising any objection against that till the filing of this OA, which is extremely delayed. This objection is unacceptable at this stage.

3. Learned counsel of the applicant further contended that the respondents have initiated the 3rd enquiry on the same charges. Referring to Rule-15(1) of CCS(CCA) Rules, learned counsel stated that whereas the disciplinary authority can order a further enquiry, it cannot order a de novo enquiry. He relied on Shri S.P. Bansal Vs. Union of India & Ors. ATR 1987 (1) CAT 215 in which it was held that Rule 15(1) is not meant to support de novo enquiry as it can fill up the gaps and also transform the character of enquiry. Learned counsel of the respondents in this behalf stated that in Annexure R-1 dated 11.9.2000, it was

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clarified why it was necessary to hold enquiry from the stage of examination/cross examination ^{of witnesses} and vide Annexure A-2(ii) dated 11.9.1.2000, an enquiry officer was appointed. Learned counsel stated that basically it was not a fresh enquiry. The earlier enquiry officer had completed proceedings and submitted his report on 18.4.2000. The case was remitted back to the enquiry officer on 31.5.2000 with the request to send report along with written briefs of charged officer and depositions of the witnesses recorded during the enquiry. The enquiry officer obtained written statement dated 21.6.2000 from a witness and forwarded the same along with the enquiry report dated 18.4.2000. The enquiry officer did not provide the statements of other witnesses. It was found that details of examination/cross-examination of prosecution/defence witnesses were not recorded during the course of enquiry proceedings. The minutes of proceedings were also not attached with the enquiry report. Apart from that, whereas the representation/written briefs submitted by charged officers were dated 27.6.2000, the enquiry officer's report was dated 18.4.2000. Thus, the enquiry officer was asked to conduct the enquiry 'afresh' from the stage of examination of the witnesses as per the prescribed procedure. Learned counsel stated that in these circumstances, the enquiry ordered was not a fresh enquiry but only a 'further' enquiry.

4. Rule 15(1) of CCS(CCA) Rules reads as follows:-

"The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing,

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remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be".

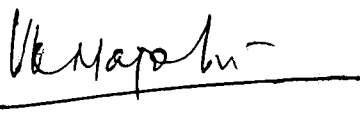
5. In Annexure R-1 dated 11.9.2000, respondents have given detailed circumstances such as non-provision of written statements by the enquiry officer to the disciplinary authority, non-production of minutes of the proceedings and non-consideration of representation/written briefs of the charged officers by the enquiry officer, as they were received after the report had already been finalised, and why the enquiry officer was asked to conduct the enquiry from the stage of examination of the witnesses as per the prescribed procedure. In Annexure A-2(ii) the word 'afresh' has been used but in effect, in view of the circumstances explained in Annexure R-1, the disciplinary authority cannot be stated to have ordered a fresh enquiry; it was only a further enquiry which was to be conducted from the stage of examination/cross-examination of witnesses in the background of the circumstances explained above. As a matter of fact, respondents issued Annexure R-II dated 9.1.2001 as well stating that the discrepancies pointed out in Memorandum of 11.9.2000 had not been rectified by the enquiry officer and, therefore, this Memorandum was also issued to conduct the enquiry from the stage of examination of the witnesses as per the prescribed procedures. It is observed that the applicant has not challenged Annexure R-II dated 9.1.2001.

6. The learned counsel of the respondents stated that suspension of the applicant has already been revoked.

7. We are satisfied about the circumstances described in Annexure R-1 detailing the background of ordering enquiry from the stage of examination of witnesses as per the prescribed procedure. In our view, it is not in the nature of a fresh enquiry which is prohibited under Rule-15(1). The applicant has also not challenged Annexure R-II dated 9.1.2001 which is in effect repetition of Annexure A-2(ii).

8. Having regard to the reasons recorded and discussion made above, we do not find any infirmity in the orders challenged by the applicant. This OA is, therefore, dismissed being devoid of merit. No costs.


(Kuldip Singh)
Member (J)


(V.K. Majotra)
Member (A)

cc.