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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1841 of 2000

New Delhi, this 27th day of September, 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. M.P. Singh, Member(A)

Shri Durga Prasad  
S/o Shri Khazan Singh  
R/o Flat No.2/7 Court Lane  
Delhi-110054

... Applicant

(By Advocate: Shri M.K.Gupta)

versus

1. Government of National Capital  
Territory of Delhi  
Through its Chief Secretary  
5 Sham Nath Marg  
Delhi-110054.
2. Ms. Suman Swarup  
Principal Secretary(Urban Development)  
Govt. of N.C.T. of Delhi  
(Enquiry Officer) Vikas Sadan  
New Delhi.
3. Lt. Governor  
Govt. of N.C.T. Delhi  
Raj Niwas, Delhi.
4. Union of India  
through its Secretary  
Ministry of Home Affairs  
North Block  
New Delhi-110001.

... Respondents

(By Advocate: None)

ORDER(Oral)

By Mr. Justice Ashok Agarwal

Respondents, though served, have remained absent.  
In the circumstances, the present OA is being heard and  
disposed of on merits in terms of Rule 16 of the  
C.A.T.(Procedure) Rules, 1987 in their absence.

2. Heard Shri M.K. Gupta, counsel for the  
applicant.

3. In disciplinary proceedings initiated against the applicant, enquiry officer by his report of 28.1.1999 has exonerated him. The disciplinary authority, however, by the impugned order issued on 6.8.1999 at Annexure A-1 has purported to disagree with the report of the enquiry officer and has ordered in terms of Rule 15(1) of the CCS(CCA) Rules, 1965 a de novo enquiry to be conducted against the applicant without issue of a show cause notice and without affording him a reasonable opportunity of being heard. In the circumstances, it is contended by Shri M.K.Gupta that the said order deserves to be quashed as the same smacks of violation of the principles of natural justice.

4. It is further contended by Shri M.K.Gupta that provisions of Rule 15(1) of CCS(CCA) Rules, 1965 do not contemplate a de novo enquiry as directed by the disciplinary authority, but the same contemplates further enquiry into the matter. In support of this contention, apart from the provisions of Rule 15(1) of the aforesaid Rules, reliance has been placed on a decision of the Tribunal in the case of S.M. Bhaskar Vs UOI and others in OA.No.1661/94 rendered on 15.12.1999.

5. In our view the contention advanced by Shri M.K. Gupta is well-founded and deserves to be accepted. Rule 15 of the aforesaid Rules, no doubt, empowers the disciplinary authority to differ from the findings of the enquiry officer. However, before doing so, he is required to issue a show cause notice to the delinquent

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and he is required to afford him a reasonable opportunity of being heard. This not having been done, the aforesaid impugned order deserves to be quashed and set aside.

6. Further-more, we find that the disciplinary authority is also not justified in ordering a de novo enquiry. If one has regard to the aforesaid Rule 15 and decision in the case of S.M. Bhaskar (supra) all that he could have ordered was a further enquiry and not a de novo enquiry. In the circumstances, the impugned order passed by the disciplinary authority on 6.8.1999 at Annexure A-1 is quashed and set aside.


7. Consequent upon the aforesaid order of the disciplinary authority of 6.8.1999, a corrigendum has been issued by the disciplinary authority on 7.10.1999 at Annexure A-3 colly, whereby an amended charge has been framed. Since the order of the disciplinary authority of <sup>6.8.1999</sup>~~28.1.1999~~ is set aside, aforesaid consequential corrigendum of 7.10.1999 is also quashed and set aside.

8. In view of the aforesaid order, we find that it would be open to the disciplinary authority, if he is so advised, to issue fresh orders disagreeing with the findings of the enquiry officer, but this he can do only after issue of a notice and after affording applicant a reasonable opportunity of being heard. Thereafter in case he is inclined to issue a direction for a fresh

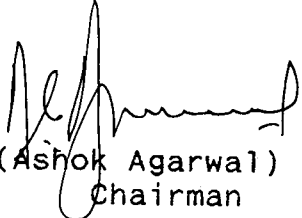


enquiry, the same would not be a de novo enquiry in the matter.

9. Present OA is allowed in the afore-stated terms.  
No order as to costs.

  
(M. P. Singh)  
Member(A)

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(Ashok Agarwal)  
Chairman