

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A. No. 479/89

New Delhi this the 9th of June 1994

Hon'ble Mr. J.P. Sharma, Member(J)

Hon'ble Mr. B.K. Singh, Member (A)

Shri G.S.V. Baburao,
S/o Late Shri G. Ranganayakulu,
R/o A-3/281 Janakpuri,
New Delhi 110 058.

... Applicant

By Advocate : Shri G.D. Gupta

Vs.

1. Union of India,
through Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.

2. The Director General,
Armed Forces Medical Services,
Ministry of Defence,
DHQ P.O. M, Block,
New Delhi-110 001.

... Respondents

By Advocate : Shri Vijay Mehta

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant at the relevant time was working as Assistant Technical Engineer in the Office of the Armed Forces Medical Store Depot, Delhi Cantt, under the Ministry of Defence. He was served with a memo chargesheet dated 24.10.1988 and the charges levelled against the applicant are as follows:

1. The applicant got himself employed with M/s. Roneo Vickers India Limited, w.e.f. 16.5.1980 to April 1981; and
2. the applicant did not inform the Government about the business activities of his wife Smt. Vidya Babu Rao as a partner of M/s. Beotech Product Inc., New Delhi.

The Enquiry Officer submitted his report dated 8.9.1987 and found the applicant not-quilty of the charges levelled against him and exonerated him of both the charges. The

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disciplinary authority vide its order dated 24.10.1988 which has been challenged in the present application, remitted the matter to the Enquiry Officer under the provisions of sub-rule⁽¹⁾ of Rule 15 of the CCS (CCA) 1965 rules with the direction that the enquiry be commenced from the preliminary hearing stage and the fresh report be submitted. The applicant has also submitted his representation against the aforesaid order on 15.11.1988 followed by another representation dated 10.1.1989 and since the proceedings of the enquiry had commenced by appointment of Enquiry Officer as well as the Presenting Officer, a communication in that respect was received by the applicant on 23.2.1989, the applicant filed the present application under Sec. 19 of the AT Act, 1985 on 28.2.1989. On 10.3.1989 while admitting the application the Bench ordered staying of the operation of the Order dated 24.10.1988. By the order dated 6.2.1990, the interim order was continued till further orders. In view of the interim stay, the newly appointed Enquiry Officer could not proceed with the Enquiry by the order of remand passed under Rule 15(1) of the CCS (CCA) Rules 1965.

2. The applicant has prayed for the grant of the following reliefs:

1. For quashing the impugned order of the Disciplinary Authority dated 24.10.1988;
2. restraining the respondents from holding any further enquiry from preliminary hearing stage;
3. directing the respondents to proceed further only on the basis of the enquiry report dated 8.9.1987.

3. The respondents in their reply have opposed the grant of the relief stating that the order of 24.10.1988 has been passed under Rule 15(1) of the CCS(CCA) Rules, 1965. During the course of the enquiry, the charged officer disowned the letters alleged to have been written to him or received by him from the private firm on the ground that the signatures on these letters differ from his own. These letters were quoted as documentary evidence of his having worked in the private firm. The Presenting Officer who should have got the opinion of the handwriting expert failed to do so. As a result, the Enquiry Officer could not come to any firm conclusion on whether the letters were actually signed by the charged officer or not. It is further stated that the Presenting Officer also did not produce evidence contradicting the stand taken by the defence that the charged officer was actually either on leave or temporary duty during the period in which he was alleged to have been served in the private firm. After taking the opinion from the Dept. of Personnel and Training, the case was remitted for further enquiry. In the meantime the opinion of the Government Examiner of Questioned Documents, SHIMLA has been obtained by the Office of the DGAFMS. Thus the remand of the case by the disciplinary authority under Sub Rule (1) of the Rule 15 of CCS (CCA) Rules 1965 does not call for any interference and the order is legal, fair and just in the circumstances of the case.

4. The applicant has also filed the rejoinder reiterating the same facts as alleged in the O.A. It is further pointed out that after the Presenting Officer failed to get the opinion of the handwriting expert, it was not the fault of the charged officer. If that evidence is taken against the applicant that will

amount for filling up the gap which has occurred due to laxity of the Presenting Officer. The fresh enquiry cannot be conducted which is illegal and not provided under Rule 15(1) of the CCS (CCA) Rules 1965. The documents were produced in support of the defence stand that the charged officer was not continuously on leave or absented himself from his official duty but was away on official temporary duty on the date of the alleged interview/appointment. This has been established from the authenticated official record from the AFMSD, Delhi Cantt. It is further contended that the lapses on the part of the Presenting Officer could not ^{be} condoned by the disciplinary authority as the Enquiry Officer has submitted his report on the basis of evidence on record. No second or subsequent enquiry is permissible under Sub Rule (1) of Rule 15 of the CCS (CCA) Rules 1965. The disciplinary authority can remit the matter to the Enquiry Officer after recording reasons and the impugned order does not give any plausible reasons to remit the case.

5. We have heard the learned counsel for the parties and perused the record.

5. The impugned order dated 24.10.1988 has been passed in the name of the President with the observation that the President has considered the report of the Enquiry Officer and has not agreed with his findings because the case in support of the articles of charge on behalf of the President has not been presented properly before the Inquiring Authority. Therefore, the President in exercise of the powers conferred vide Sub Rule (1) of Rule 15 of the CCS(CCA) Rules 1965 remits the case to the Inquiring authority for further inquiry from preliminary hearing stage and report.

6. An assessment of evidence by the Enquiry Officer goes to show that the documents Exh. P1 to P 11 has been placed through the witness Shri T.R. Bhagat, Managing Director, M/s. Roneo Vickers India Ltd. Shri T.R. Bhagat is a witness and he has no particular interest either for or against the applicant. He is the officer in whose possession the documents were held and he is the most suitable witness to verify signatures of Shri R.D. Bhagat, Chairman, Major Gen. Sant Kumar (Retd.) Consultant and Shri N.G. Dutta, Administrative Officer whose signatures are found in Exh. P1 & P2, Exh. P8 and P 10 respectively. But so far as verified signatures of the charges officer is concerned, the enquiry would expect a better proof than a one man deposition especially since the charged officer has vehemently denied having signed in any of these, one of the important factor to decide the authenticity is proving that the signatures found in P2 P 4, P5, P6, P7, P8 and P9 are in fact, those of the charged officer. This fact that the charged officer did not avail of the opportunity of cross examining the witness Shri T.R. Bhagat does not in any way absolve the responsibility of proving this aspect of the disciplinary authority. The Enquiry Officer further observed that an alternate to signature verification could have been the corroborated statement of reliable witnesses whose credibility are beyond question. This not being done the documents would have been ^{un}acceptable as conclusive proof. But in this case, the disciplinary authority contended ^{himself} ~~by~~ introducing documents and did not bring forward any witness to testify ^{them}. As regards the defence witness Shri Sakuja, has not been held to be ^{E.C.} credible and suspected his credibility. The Enquiry Officer further observed that the charged officer did not have any defence except denying involvement. He also could not

say why the firm should involve him? He was absolutely confused and his reply to most of the questions were inconsistent.. While concluding, the Enquiry Officer's observation^{is that} under the circumstances, it is the charged officer's doubt to get the benefit of doubt and the resultant exoneration. It is in the light of the above findings of the Enquiry Officer that the impugned order dated 24.10.1988 has been passed by the disciplinary authority.

7. On receipt of the Enquiry Officer's report the role of the disciplinary authority is limited to what has been stated under Rule 14, 21(b) and Rule 15(1) and (2) of the CCS(CCA) Rules 1965. These are reproduced below:

"14(21)(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with these rules."

"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 inquiry 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.

"15(2) The disciplinary authority shall, if it disagree with the findings of the inquiry authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose".

As regards the role of another enquiry officer this is laid down in Rule 14(22) of the CCS(CCA) Rules 1965. The rule states:

"14(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry case 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".

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The main question involved in this case is that what is the scope of further enquiry under Rule 15(1) of the Rules. Whether a de novo enquiry can be commenced against the delinquent or the Enquiry Officer has to proceed for further enquiry as shall be evident from the order passed with reasons by the disciplinary authority. Both the counsel have placed reliance on the case of K.R. Deb Vs. Collector of Central Excise Reported in AIR 1971 SC 1447. The Hon'ble Supreme Court in this case considered Rule 15 of the Central Civil Service (CCA) Rules 1957. In that case Shri K.R. Deb, Sub Inspector was dismissed from service by the order dated 4th June 1962 which was assailed in the Writ Petition filed in the court of Judicial Commissioner, Tripura. The present appeal came before the Hon'ble Supreme Court. In para 13, the Hon'ble Supreme Court has observed as follows:

"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."

It is not disputed by the counsel for the applicant that the powers under Sub rule (1) of Rule 15 can be exercised by the disciplinary authority after recording reasons to remit the case for further enquiry. But the disciplinary authority cannot order de novo enquiry in the matter. He has placed reliance on the case of M/S. Halwe Vs. Union of India & Ors, CAT, Jabalpur Bench, reported in 1987(3) SLJ 687. Where it has been held that when the Enquiry Officer had submitted its report and records

to the disciplinary authority a de novo enquiry on the same chargesheet cannot be ordered. He has also referred to the case of Negarajan Vs. General Manager, Southern Railway, Madras and ors., CAT Madras, reported in 1988(7) ATC 481 where it has been held that the disciplinary authority requires further examination of certain aspects it could only remit the case back to the Enquiry Officer, it cannot appoint another Enquiry Officer and hold fresh enquiry. The learned counsel has also referred to another case under Delhi Police (Punishment and Appeal) Rules 1980 regarding Rule (X) in the case of Jaipal Singh Vs. Delhi Administration reported in ATR 1988(2) CAT, Principal Bench 506. It has been held that Rule 16(X) does not empower the disciplinary authority to order de novo enquiry on the ground that the report of the Enquiry Officer does not appeal to him. Under Rule 16(X) of the above Rules, the disciplinary authority if considers that some important evidences having a bearing on the charge has not been recorded or brought on the file he may send back the enquiry to the same or some other Enquiry Officer for such evidences to be fully recorded, in view of this Rule 16(X) refers to further enquiry as supplementary enquiry. He has also placed reliance on a decision of CAT Hyderabad Bench M Nageswara Rao Vs. Union of India and 3 Ors reported in 1988(1) CAT P 735, where it has been held that after exoneration a delinquent by the Enquiry Officer, de novo enquiry cannot be ordered only to fill in the gaps. From the above law cited by the learned counsel it is evident that the disciplinary authority has been given the power and authority to remit the case for further enquiry to the Enquiry Officer. Now the main question that arises is what shall be the scope of further

enquiry in the case. The learned counsel has referred to the fact that interpretation of the phrase of the further enquiry will depend squarely on reading of Rule 14(15) and Rule 14(23). In fact after the close of the enquiry the Government servants shall be required to state in his defence orally or in writing as may be preferred. He has also placed an analogy that when the defence has already ^{been} produced by the delinquent he cannot at the later stage of the enquiry produce any other defence after the close of the enquiry. We have given a careful consideration to the rival contention raised in this case. The reasons given by the disciplinary authority in the impugned order are likely fall out from the observations made by the Enquiry Officer which have also been referred to in the earlier part of this order. The Enquiry Officer had in the analysis of the evidence while arrived at his findings had been critical both of the charged officer as well as of the administration. He has given exoneration from the charges to the applicant on the principles of benefits of doubt. The assessment of evidence as well as appreciation in the departmental enquiry of the evidence is not on the pattern of criminal trial where the guilt is to be established beyond doubt. The charge in the case of the departmental enquiry is established on the basis of preponderance of evidences on a number of facts and the inferences drawn from such proved facts. In this light, the order of the disciplinary authority of disagreement with the report of the Enquiry Officer cannot be faulted with. However, the order of the disciplinary authority for initiating departmental enquiry again from the preliminary stage is not visualised under Rule 15(1) of the Rules. At the most he can exercise

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the authority and power under that Rule for remitting the case for further enquiry. Thus, a part of the order of the disciplinary authority that the enquiry be commenced from the preliminary stage cannot be said according to the spirit of the Rules. It is the recognised principle of jurisprudence that statute should be construed after ascertaining legislative intent and in the context scheme of the Act. All interpretations must subserve and help implementation of the intention of the Act. The learned counsel for the respondents, therefore, relied on the decision of the Hon'ble Supreme Court in the case of Ambika Quarry Works Vs. State of Gujarat and Ors. reported in 1987(1) SCC 213. The respondents in their reply have stated that the evidence of the handwriting expert was necessary which has since been obtained and had been adduced before the Enquiry Officer. The counsel for the applicant has taken objection to this fact that this evidence cannot be introduced or inducted while remitting the case for further enquiry as it will amount to filling up of gap or lacuna which has been left out in the proceeding before the Enquiry Officer. In fact a further enquiry by these means that the parties shall be free to place before the Enquiry Officer a further list of witnesses they want to rely. In fact under Rule 14(21)(b) referred to above gives power to the disciplinary authority also for further examination of any of the witnesses in the interest of justice. In fact under Rule 14(15), the Enquiry Officer had been given a discretion to allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall or re-examine any witness and in such case the Government

servants shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on record. The inquiring authority may also allow the Government servant to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice. However, there ^{is a} ~~note~~ appended to the above rule that new evidence shall not be permitted or called for of or any witness shall not be recalled to fill up any gap. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

8. A perusal of the above would go to show that after the case is remitted to the Enquiry Officer the findings of the Enquiry Officer are set at naught and the Enquiry Officer has to again assess the evidence in the further enquiry and in a manner the enquiry has been reopened. The evidence already on record will also be a part as much relevant as the proceedings of the further enquiry or evidence if any which has to be produced by either parties in the further enquiry. To this extent the further enquiry cannot be held by the Enquiry Officer.


9. Since we are not deciding the case on merit, we do not want to place any stress with respect to the examination of any of the witnesses in the further enquiry. Rule 14(15) it is the discretion of the

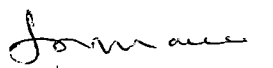
Enquiry Officer to permit any such evidence keeping in mind the note appended below the Sub Rule.

10. The application, therefore, is disposed of with the following direction:

1. The impugned order dated 24.10.1988 so far it orders that the further enquiry be held from preliminary stage is quashed; but the reasons for holding of the further enquiry as well as the remand of the matter to the Enquiry Officer for further enquiry and report is upheld.
2. The stay granted by the Tribunal for staying the operation of the of the order dated 24.10.1988 is vacated and the Enquiry Officer can proceed with the enquiry as directed by the impugned order subject to No. 1 above.

In the circumstances the parties directed to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

Mittal