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Oa.269/2020

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/269/2020

Date of Order: 19.8.2020

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member**

Dr. Ravi Inder Singh,
IAS (1994 Batch : West Bengal), 52 years age, son
of Shri Rajinder Singh, Principal Secretary,
Department of Mass Education Extension and
Library Services, Government of West Bengal, 9th
Floor Bikash Bhawan, Salt Lake, Kolkata -
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--Applicant

-Versus-

Union of India through
The Secretary,
Department of Personnel and Training
Ministry of Personnel, Public Grievances and
pensions, North Block, New Delhi - 110001.

--Respondent

For The Applicant(s): Mr. T. R. Mohanty, Counsel

For The Respondent(s): Mr. S. Paul, Counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for both sides. Perused documents on record.

2. The applicant is a direct recruit officer of 1994 Batch of the Indian Administrative Service of West Bengal Cadre, selected through the Civil Service Examination, 1993, conducted by Union Public Service Commission, has preferred this O.A to seek the following reliefs:

"8.1. to allow the present Application;

8.2. to declare that the impugned Major Penalty Charge-Sheet dated 16.09.2015 (Annexure : A-1) has lapsed; and/or

8.3. to quash and set aside and the impugned Major Penalty Charge-Sheet dated 16.09.2015 (Annexure : A-1), as being non-est and bad in law;

8.4. and to quash and set aside the impugned Order dated 09.01.2020 for Further Inquiry (Annexure : A-2), as being bad in law;

8.5. consequently, direct the Respondent to accept the Inquiry Report dated Inquiry Report dated 12.11.2018 and Close the Disciplinary Proceedings;

8.6. to grant all consequential benefits permissible under the Rules and the Law in this regard;

8.7. to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

8.8. to allow exemplary cost of the Application to the Applicant."

3. The challenge to the major penalty charge-sheet dated 16.09.2015, has been made on the following grounds:



"a) The Charge Sheet is accentuated by undue delay.

(b) The Charge Sheet is a fraud, as the reply of the applicant to the charge sheet was not considered before appointing the Inquiring Authority.

(c) The Ministry does not have its facts right, and the allegations in the Charge sheet are false, motivated and manufactured, besides being contrary to law.

(d) There is total non-application of mind by the competent authority.

(e) There is no misconduct made out from the face of the records for at least one article of charge.

(f) The Charge Sheet is accentuated by malice; and

(g) There is total violation of the principles of natural justice by the Respondent Ministry while dealing with the present case."

It is the contention of the applicant that due to the delay in conclusion of disciplinary proceedings beyond the period of one year from the date of receipt of major penalty charge sheet, it should be deemed to have lapsed. In support, Ld. Counsel would place the following decision in support,

(i) Hon'ble Apex Court in the case of *Prem Nath Bali v. Registrar, High Court of Delhi and Another (2015) 16 SCC 415; and*

(ii) Honble High Court judgement dated 12.03.2019 in *WP (C) No. 5653 of 2018 – Union of India v. M.R. Diwan.*

The order dated 09.01.2020, whereby and whereunder the disciplinary authority has remanded the matter for further enquiry before a new enquiry officer, has been challenged on the following grounds:

(a) The appointment of a New Inquiring Authority is violative of the mandate of Hon'ble Apex Court as rendered in the following cases:

- (i) *K.R. Deb. V. Collector of Central Excise, AIR 1971 SC 1447: 1971 SCR 375; 1971 SCC (2) 102.*
- (ii) *Decision of the Central Administrative Tribunal in the case of M.S. Halwe v. Union of India, 1987 (3) SLJ 687.*
- (iii) *Office Memorandum dated 14.10.2013 of the Department of Personnel and Training.*

(b) That, a direction to the new Inquiring authority to examine the prosecution documents, is violative of the mandate of the Hon'ble Supreme Court as propounded in the following decisions;



- (i) *Roop Singh Negi v. Punjab National Bank, 2009 (1) Scale 284*
- (ii) *L.I.C of India vs. Ram Pal Singh Bisen (2010) 4 SCC 491.*
- (iii) It is also violative of the decision of the Hon'ble High Court of Madras in *W.P. no. 20896 of 2003 (R. Balakrishnan v. Food Corporation of India.*

(c) That the principles of natural justice has been deliberately violated while dealing with the present case in as much as the deficiencies in the Inquiry report are directed to be removed, but a copy of the Inquiry report has not been provided to the applicant.

4. Ld. counsel appearing for the applicant in support of his contention, that although the enquiry could be remitted back to the same enquiring authority, it could not have been to an altogether new enquiry authority, would place the following decisions:

- (i) *K.R. Deb. V. Collector of Central Excise, AIR 1971 SC 1447: 1971 SCR 375; 1971 SCC (2) 102.*
- (ii) *Central Administrative Tribunal judgement in the case of M.S. Halwe v. Union of India, 1987 (3) SLJ 687.*

He would contend that under Rule 15 (1 & 2) of the CCS (CCA) Rules, 1965 it was open for the disciplinary authority to differ from the evidence

for reason to be recorded in writing and it was open for the disciplinary authority under Rule 14 21 (b), that "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", order further cross examinations or examinations to specify witnesses but it was not open to the disciplinary authority to relegate the enquiry to a new enquiry officer or to order a denovo enquiry afresh. The relevant extracts of the decisions would run thus:



(i) **K.R. Deb. V. Collector of Central Excise (supra)**

"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 inquiry 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 r. 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 r. 9. [379 H]

The rules do not contemplate an action such as taken by the Collector in appointing a third Inquiry Officer. It seems 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 against the rules but also harassing to the appellant. [380 B]

In the result it must be held that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Art. 311(2) of the Constitution. [380 E]"

(ii) **M.S. Halwe v. Union of India (supra),**

"(10) The question that arise now for determination are whether Document No. 3 that is the original charge has been vitiated because the Disciplinary Authority, i.e. the Director, Postal Services had neither approved it nor signed it, whether the senior Supdt. Post Office's further comments in his letter dated 22.8.1986 on record of the D.E. Case and the Director Postal Service's imposed orders (Document No. 6, 6A & 6-B) on the face of exoneration by the Enquiry Officer without an opportunity of hearing to the petitioner has caused prejudiced to the petitioner and are against the principle of natural justice.

On receipt of 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) & (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 interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

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

Rule 15(2) The disciplinary authority shall, if it disagree with the finding of the inquiring 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;

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

It will be seen from the above provisions that under Rule 15(2) it is open to the Disciplinary authority to differ from the findings of the enquiry officer for reasons to be recorded in writing. This has not been done by the disciplinary authority i.e. the Director Postal Services in this case. He has only recorded reasons for change in the Enquiry Officer. It is open to the Disciplinary Authority under Rule 14, 21(b) to direct recall of certain witnesses and order further cross examination or examination of specified witnesses. This course had not been adopted by the Disciplinary Authority. Apparently action has been taken by the Disciplinary Authority under Rule 15(1) of CCS(CCA) Rules 1965 as also recorded in the departmental note date 21-2-1986. However, under this rule read with rule 14(22) the change in the Enquiry Officer can take place only when the Enquiry Officer in the normal course ceases to exercise jurisdiction and evidence is partly recorded. When the evidence has been fully recorded by the Enquiry Officer who has submitted his report and findings a change in the Enquiry Officer at this state is not contemplated under Rule 15(1). Therefore, the impugned order appointing Shri D.P. Shrivastava Asst Director for a further enquiry at this stage is bad in law, however, sound other reasons for the action may be. Moreover self contained reasons have to be recorded in writing by the Disciplinary Authority himself under Rule 15(1) for directing the further enquiry. The letter No. STA-10475 dated 22-11-1986 sent by Asst. Post Master General (Document 6) is not a sufficient acquittance of the rule.



For the reasons discussed above the disciplinary authority is empowered to order a limited further enquiry but not an entirely de-novo enquiry afresh. In the instant case virtually the disciplinary authority ordered a de novo enquiry afresh."

(iii) Order passed by Cuttack Bench in O.A 16/16 and O.A 17/2016, wherein the Tribunal has recorded as under;

"16. In the factual circumstances as discussed above, on the issue non.(i) of para 7 relating to violation of the rule 15, it is noted that the DA has not issued a note of disagreement indicating tentative reasons for which he did not agree with the report of the IO and after considering the representation of the applicant, the DA has passed the order to conduct the inquiry afresh through another IO. Applying the ratio of the judgment of Hon'ble Apex Court in the case of K.R. Deb (supra) as extracted in para 11 above, we are of the view that there has been gross violation of the rule 15 of the CCS (CCA) Rules, 1965 by the disciplinary authority in not communicating the reasons for his disagreement with the inquiry report and for ordering fresh inquiry by a different IO, which violate the provisions of the rule 15. We are unable to agree with the contentions of the respondents that there is no violation of the rules in this case. The ratio of the judgment of Hon'ble Apex Court in the case of K.R. Deb (supra) will be applicable to this case. Accordingly, the order dated 17.07.2015 and 04.01.2016 passed by the Disciplinary Authority have to be considered as violative of the Rule 15 of CCS (CCA) Rules, 1965 and the issue no (i) of para 7 has to be decided against the respondents."



In support of his contention that the allegations being of 2010, January to November, the proceedings being initiated with a charge sheet of 2015, the proceedings ought to have been deemed to be abetted after one year in terms of the decision of Hon'ble Apex Court in **Prem Nath Bali v.**

Registrar, High Court of Delhi and Another (2015) 16 SCC 415, as held under;

"31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee."

32) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion."

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

In *WP (C) No. 5653 of 2018 – Union of India v. M.R. Diwan*, it is held as under:

"19. It is therefore the clear mandate of the Supreme Court that a departmental enquiry must be concluded in a period of not more than one year.

20. XXXXXXXX

21. We are also of the view that apart from being in the teeth of the mandate of Supreme Court in *Prem Nath Bali* (supra), such delay is unreasonable, even unconscionable; and even purely on the touchstone of fairness, such delay vitiates the entire process. XXXXXXXXXXXX

22. From the legal standpoint, the timeframe laid-down by the Supreme Court in *Prem Nath Bali* (supra) is not for adherence only by one department or the other; but by all entities and persons involved in conducting the departmental enquiry proceedings, in this case the Ministry, the UPSC and the DoPT. The aggregate time for completion of departmental enquiry proceedings must not be more than one year from the date of commencement; and the date of commencement of proceedings, it is settled law, is the date when charge sheet is issued to a delinquent employee [cf. *CMD, Coal India Ltd. & Ors. vs. Ananta Saha & Ors.* (2011) 5 SCC 142 para 27].

23. XXXXXXXX

24. To be clear, we are not holding that the departmental enquiry proceedings have lapsed because they were not completed within the two month period stipulated by the Tribunal but because they are well beyond the maximum period of one year laid-down by the Supreme Court in *Prem Nath Bali* (supra)."

5. Ld. counsel for the respondents on the contrary would place Rule 8 (i) and (ii) of All India Services (Discipline and Appeal) Rules 1969, which is reproduced hereunder for clarity:

"8. Procedure for imposing major penalties –

8(1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10, or provided by the Public Servants (Inquiries) Act 1850 (37 of 1850) where such inquiry is held under that Act.

8(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or mis-behaviour against a member of the Service, it may appoint under this rule or under the



provisions of the Public Servants (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth thereof."

6. Ld. counsel at hearing would place the decision of **State Bank of India v. S.S. Koshal**, 1994 SCC, Supl. (2) 468, the extracts whereof is reproduced hereunder:

"So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India'. The second contention accordingly stands rejected."



7. Ld. counsel for the applicant would also place **Rule 8 Sub Rule 23** of the **All India Services (Discipline and Appeal) Rules, 1969**, which reads as under:

"8(23) Whenever an inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, cases 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:

Provided that, if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witness as here in before provided."

10. That Sub-Rule 24 of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, which is also relevant to the issue at hand, is quoted again here for ready reference:

"8(24)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

- (a) the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (b) the defence of the member of the Service in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge; and
- (d) the findings on each article of charge and the reasons therefore.

Explanation. – If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiry authority shall forward to the disciplinary authority the records of inquiry which shall include –

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the member of the Service;
- (c) the oral and documentary evidence produced in the course of the inquiry;"



Placing the above, Ld. counsel would contend that an enquiry report is prepared after conclusion of the enquiry and that but before conclusion of enquiry with a final report it is always open for the disciplinary authority to remit the matter to the enquiring authority for further enquiry, it is not open to remit it to an altogether new enquiring authority as the Department Rules do not support such action.

8. We would note that in *S.S Kaushal* (supra), the matter was remanded by the Appellate Authority which is not the present case. Hence, *S. S. Kaushal* may not apply to the present facts and situation.

In *Punjab National Bank & Ors. vs Kunj Bihari Misra* AIR 1998 SC 2713, Hon'ble Apex Court while discussing the implication of *S. S. Kaushal* supra, propounded that, (extracted with emphasis for clarity)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have

already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law."

In K.R. Deb vs The Collector Central Excise, Shillong, AIR 1971 SC 1447, the Hon'ble Apex Court while examining the implication of Rule 15(1) of CCS (CCA) Rules held 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."

(emphasis added)

9. In view of the enumerations as above, we feel that it was expedient in the interest of justice for the disciplinary authority to issue a disagreement note on the enquiry officer report with tentative reasons for disagreement with an opportunity to the delinquent to represent, seek a representation on the same and only thereafter to remit the matter for further enquiry, whereas no such procedure was adopted in the present case after the conclusion of the enquiry with a final report. It appears that the enquiry was straightaway remitted to a newly appointed enquiry officer, albeit after conclusion of the previous enquiry by the inquiring authority/officer, but such course is not permissible in law.

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10. Accordingly, we quash the order dated 16.09.2015 and remand the matter back to the Disciplinary Authority to issue orders, in accordance with law.

11. The present O.A stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)



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