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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.176/90

DATE OF DECISION: 15.5.90

SHRI SWAPAN CHAKRAVORTY

APPLICANT

SHRI G.D. BHANDARI

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI ANIL DEV SINGH
WITH MRS. B. RANASENIOR COUNSEL
COUNSEL FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

The case of the applicant briefly is that he is working as an Upper Division Clerk(UDC) in the Union Public Service Commission (UPSC) where he is an active member of the Central Government Clerks Union. Besides his normal duties, he has been generally involved in representing to the authorities various demands of the employees. He had participated/organised meetings/ demonstrations of the Central Government Clerks Union during lunch hour, during the period 6.11.1986 - 18.11.1986 to highlight the grievances of the employees in the office of the respondents. These meetings were held even though the permission to hold such meetings had been refused by the respondents vide letter dated 6.11.1986. These meetings are said to have been

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held meticulously in accordance with the guidelines issued by the Ministry of Home Affairs vide Office Memorandum dated 6.3.1984 Annexure A-2 (page 32 of the paper book). The applicant has further submitted that refusal to permit holding of the meetings/demonstration was malafide, as on earlier occasions permissions to hold similar meetings, etc. were granted by the respondents, in the office premises in similar circumstances. Consequent to holding of meetings/demonstrations during the period 6-18th November, 1986, the respondents suspended the applicant under Rule 10(1) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 [CCS(CCA) Rules]. He was issued a memorandum of charges on 27.2.1987, Annexure A-5 (page 35 of the paper book). The articles of charges framed against the applicant are that the applicant:

- (a) violated Rule 7 of the Central Civil Service (Conduct) Rules, 1964 as he failed to maintain devotion to duty in violation of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964 and exhibited conduct unbecoming of a government servant by indulging in acts of gross indiscipline and gross misconduct. During the period from 6.11.1986 to 18.11.1986 inasmuch as he organised/participated in demonstrations/meetings/rallies in the office premises of the UPSC, although the permission for holding such demonstration etc. had been refused;
- (b) Instigated and abetted in a pen down strike in the office of the UPSC during the same period; and

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(c) raised /shouted defamatory slogans in a highly intemperate language besides putting up objectionable posters at various places within the UPSC precincts during the course of aforesaid demonstration and pen down strike. This caused great disturbance and distraction to the candidates of the Civil Service Main Examination, 1986 which commenced on 7.11.1986.

2.1 The enquiry against the charges was conducted under Rule 14 of the CCS (CCA) Rules by the authority appointed for the purpose. The applicant asked for inspection of some documents and submitted an additional list of witnesses to ensure proper defence for himself, to the Inquiring Authority (IA). The IA however acted in a biased manner and did not supply him additional documents nor did he record the evidence of additional defence witnesses. On the other hand certain additional witnesses were added by the prosecution who were holding high offices in the UPSC. The applicant represented on several occasions to the disciplinary authority, the last being on 11.10.1988 stating that the inquiry was not being conducted in an impartial manner and that the IA had been working with biased mind and partisan spirit. He, therefore, requested for a change in the Inquiry Officer in the interest of justice. The applicant also requested for staying the proceedings of the inquiry in view of his representation seeking change of the Inquiry Officer. The disciplinary authority, however, vide memorandum dated 31.10.1988 at Annexure A-23 (page 58 of the paper book) passed the following

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order:

"I have carefully considered the representation dated 11.10.1988 preferred by Shri Swapan Chakravarty, UDC (under suspension) for change of Shri B.D. Sharma, Inquiry Officer. The charged officer has made allegations of bias, on grounds of certain observations made by the Inquiry Officer during the course of inquiry. He has also alleged that the Inquiry Officer has prejudged the issue and there exists personal animosity between him and the Inquiry Officer. Further he has also claimed certain procedural irregularities in the conduct of the proceedings by the Inquiry Authority.

I find that under Rule 14, the regular hearing is currently in progress. He has appended his signature on daily order sheets. Therefore the allegation that the Inquiry officer has pre-judged the issue is baseless and without any merit. No records exist as regards his claims that Shri B.D. Sharma was deputed for submitting the reports on the happenings between 6.11.1986 to 18.11.1986.

Shri Swapan Chakravarty's allegations of personal enmity between him and the Inquiry Officer appears to be an after thought. Such an animosity, if any should have been brought to the notice of disciplinary authority immediately after his appointment as Inquiry Officer and not after a period of two years.

I further hold that if there is any procedural

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irregularity committed by the Inquiry Authority during the course of inquiry under Rule 14 of the CCA (CCA) Rules, there is provision in rule 15 ibid empowering the disciplinary authority to remit the case to the Inquiry Authority but the power can be exercised by the disciplinary authority on the facts of each case after the inquiry authority has submitted to the disciplinary authority the records of inquiry including the findings of the Inquiry Authority on each articles of charge and the reasons therefor.

In view of the above facts, I, as the Disciplinary Authority, reject the representation dated 11.10.1988 of Shri Chakravarty, the Charged Official for change of Shri B.D. Sharma as the Inquiring Authority who may proceed further with the inquiry against the Charged Official".

2.2 Thereafter the applicant submitted an additional list of 36 defence witnesses to the IA on 6.2.1989 and later submitted an additional list of 29 defence witness on 20.2.1989. The Inquiry Officer however rejected the request for examination of 29 defence witnesses stating that the charged officer has failed to give sufficient material to the IA about the relevance of the witnesses in spite of enough opportunity given to him. The IA thus prevented the deposition/examination of the defence witnesses. The representations of the applicant were of no avail and the IA finalised his inquiry report. A copy of the report was

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supplied to the applicant under memorandum dated 27.7.1989 by the disciplinary authority directing him to submit any representation, if he so wishes, to the disciplinary authority within 15 days from the date of receipt of the memorandum. The applicant made representation on 14.8.1989 listing out various objections alleging that IA has not heard the defence side at all and has worked with a biased mind. The disciplinary authority after considering the representation remitted the case to the Inquiry Officer vide order dated 20.12.1989 under Rule 15 (i) of the CCS (CCA) Rules with a direction that

"the Inquiry Authority may give adequate opportunity to the charged official to produce his defence witnesses. It would be difficult to lay down rigidly as to how many defence witnesses would be permitted for each article of charge in this matter, justice demands that not more than reasonable number of defence witnesses should be allowed to be produced by the charged official and examined by the defence and cross examined by the prosecution. What should be the reasonable number of defence witnesses in the circumstances of the case should in fact be more appropriately decided by the Inquiring Authority."

2.3 The applicant is aggrieved by the above order of the disciplinary authority and has prayed that the said order and the subsequent order of the disciplinary authority appointing Shri C.S. Prasad, Deputy Secretary as IA in place of original IA to

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hold inquiry against the charged official vide order dated 19th January, 1990, Annexure A-I (page 31 of the paper book) should be quashed.

3. The respondents in their written statement have detailed the circumstances culminating in suspending, and charge sheeting the delinquent official and thereafter conducting inquiry under Rule 14 of the CCS (CCA) Rules. The respondents have vehemently emphasised that organising/holding meetings/demonstrations during the period when the Civil Service Examination was being conducted from 7.11.1986 to 18.11.1986 caused serious distraction and disturbance of the candidates appearing in the examination. These demonstrations/meetings were held despite the fact that the permission to hold such meetings had been refused in the special situation and after necessary communication to that effect has been handed over to the leader staff (JCM) of the UPSC. It has been affirmed that the deposition of the witnesses have been fully and properly recorded and taken into consideration by the IA. Regarding recording of evidence of the defence witnesses, it has been submitted that the applicant had initially submitted a list of 54 witnesses without giving relevance of the concerned witnesses. He was, therefore, asked to give the necessary information. He, however, submitted a list of 36 witnesses on 14.2.1989 which was modified to 29 vide his letter dated 20.2.1989 without giving any satisfactory answer. The IA did not consider it necessary to permit examination of these witnesses in absence of their relevancy in the case. The grievance of the applicant has nevertheless been removed by the disciplinary authority with a view to provide him fair opportunity for

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defending himself by remitting the case for further inquiry. It has further been averred that the applicant had appended his signature on daily order sheets without demur and hence the allegation that the Inquiry Officer acted with biased mind etc. is without merit.

4. The main issue that has emerged is whether the disciplinary authority can appoint a new Inquiry Officer when remitting the case for further inquiry. Rule 15(1) of the CCS (CCA) Rules provides that:

"the disciplinary authority, if it is not itself the inquiry 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 inquiry authority thereupon proceed to hold further inquiry according to the provisions of Rule 14, as far as may be"

It is clear from the above that the power of the disciplinary authority is to remit the case to the inquiry authority for 'further' inquiry and report. There are two aspects to be noted from the provisions in Rule 15(1) of CCS (CCA) Rules, 1965. First is remit to 'the' IA. This means the particular officer who conducted the inquiry and no one else. Secondly, the remission is to be for further inquiry and not for de novo inquiry. The word 'further' is significant. We are not concerned with the second aspect.

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The disciplinary authority's order dated 20.12.1989, Annexure A-31, (page 73 of the paper book) is strictly in accordance with Rule 15(1) as the case has been remitted for further inquiry to the IA. In the subsequent order dated 19th January, 1990, however, the disciplinary authority has recorded that the original IA was not available to conduct the aforesaid inquiry and it was, therefore, necessary to appoint another IA, which has been done in the said order.

The order appointing a new IA to conduct further inquiry has been contested by the learned counsel for the applicant. He has relied on ATC-1989(9)141 - CAT - Madras Bench - Romeo Charley Vs. DG, CSIR and another and a few other judicial pronouncements to support his arguments.

5. The learned counsel for the respondents however has contested that the disciplinary authority has been compelled to appoint another IA only in the circumstances when the original IA is not available. Further the applicant has been alleging bias & partisan attitude against the original IA and therefore he should have no cause for grievance in the appointment of the new IA. In support of his argument the learned counsel has relied on 1982 (3) SLR 145 - Syed Syfulla Vs. Supdt. of Police, Shimoga, Karnataka High Court where it was held that:

"if the very same inquiry officer is available, it would be proper to direct that very inquiry officer to hold the 'further' inquiry. But, if for unavoidable circumstances like death of the inquiry officer, then

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the necessity of appointing a new inquiry officer will have to be examined and decided. But even there the direction should be to hold a 'further' inquiry and not a de novo inquiry."

In AIR 1961-Kerala 299 - Raghava Menon Vs. IG of Police, the High Court observed:

"We do not think the Supreme Court in the later case meant to overrule what has been decided in the earlier, and by use of the word 'hearing' in the later case their Lordships were sustaining the principle that the deciding authority must himself consciously and satisfactorily deal with the records, on which the order is being passed.

6. We have heard the learned counsel of both the parties and considered their rival contentions. We have also gone through the case law relied upon by them. Normally in a case like this where the applicant himself has been agitating for a change in the Inquiry Officer alleging bias, partisanship, malafides etc. it should be only rational for him to accept the change in the Inquiry officer for conducting the 'further' inquiry. This, however, is not so because he is now before us seeking quashing of the respondent's order dated 20.12.1989 remitting the case of a newly appointed IA from an intermediate stage for evidence being arbitrary, malafide, illegal and violative of Rule 15 of the CCS (CCA) Rules, 1965. Be that as it may, the rule position is that the IA can be changed in a case remitted for 'further' inquiry only in unavoidable circumstances. No material has been brought before us to substantiate the

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'unavoidable' circumstances in which the original IA is said to be not available. The only alternative course open in such a situation would be for the disciplinary authority to record evidence of reasonable number of defence witnesses himself and to 'consciously and satisfactorily' deal with the records including the additional evidence recorded and after taking into account in totality, the proceedings of the inquiry, to pass an order as warranted. The disciplinary authority, which is the deciding authority, has enough powers to record and consider evidence itself in totality, and to come to a final decision under the relevant CCS (CCA) Rules.

In the facts and circumstances of the case, we are, therefore, not persuaded to quash the order dated 20.12.1989 nor to set aside the memorandum/charge-sheet dated 27.2.1987. We, however, set aside the order No. C-14013/2/87-Admn-II dated 19th January, 1990 appointing Shri C.S. Prasad, Deputy Secretary, UPSC as the new IA to hold the 'further' inquiry remitted for the purpose.

There shall be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) 15/5/90

T.S. Oberoi 15-5-90
(T.S. Oberoi)
Member (J)