

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2097/90
T.A. No.

199

DATE OF DECISION 18/2/1991

<u>Shri P. Subrmani</u>	Petitioner
<u>Shri Mahav Panikkar</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Anr.</u>	Respondent
<u>Shri P.H. Ramchandani, Sr.</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? no
4. Whether it needs to be circulated to other Benches of the Tribunal? no

J.P. Sharma
(J.P. SHARMA) ^{15/2}
MEMBER(J)

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2097/1990

DATE OF DECISION: /

SHRI P. SUBRAMANI

...APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

...RESPONDENTS

CORAM:

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

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI MADHAV PANIKKAR,
COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,
SENIOR COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri P. Subramani, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order No.F.No. C-13011/17/90-Ad.V dated 17.9.1990 remitting the case to the enquiry officer for further enquiry in view of the reasons specified therein for further enquiry and appointing a new enquiry authority instead of Shri C.N. Raman, Commissioner of Departmental Inquiries (CDI), who had earlier conducted the enquiry and submitted the enquiry report.

2. The applicant has raised the following issues for our consideration:-

- i. Whether the disciplinary authority could remit the enquiry for further enquiry when the enquiry had been concluded and findings submitted to the disciplinary authority.
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- ii. Whether a copy of the enquiry report as submitted by the Enquiry Officer to the disciplinary authority, now remitted back for further enquiry should be supplied to the applicant; and
- iii. if a different Enquiry Officer who is six years junior to the applicant can be appointed as Enquiry Officer.

The impugned order dated 17.9.1990 reads as-under:-

"Whereas an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is being held against Shri P. Subramani, Deputy Director, Directorate General of Inspection (Customs and Central Excise), New Delhi.

And whereas Shri C.N. Raman, C.D.I. was appointed as Inquiry Officer to inquire into the charges framed against Shri Subramani vide order No.C.13011/24/86-Ad.II dated 12.7.90.

And whereas the inquiry Officer in his report dated 31.5.90 has held that the charge against Shri Subramani is not proved.

And whereas, the President, after examining the Inquiry Officer's report has decided not to accept the said report for the following reasons:-

- (a) Though Maj. Hanspal (now Colonel) categorically stated before the C.B.I. that he neither purchased nor lent money to Shri Subramani for purchase of VCR

and, instead, that the Charged Officer gave a draft letter to cover up the purchase by creating a document in favour of Charged Officer, Col. Hanspal has completely retracted from his earlier statement recorded by the C.B.I. investigating officer. The Colonel has now stated that he never made any statement before the C.B.I. Inspector. Unfortunately, Shri Ramraj, Inspector, C.B.I. was not produced as a witness by prosecution. Since evidence of Shri Ramraj, Inspector, C.B.I. is vital in regard to Art. I, the prosecution needs to be given one more opportunity to produce the Inspector so that the statement of Col. Hanspal denying having made any statement before C.B.I. can be tested during RDA proceedings.

(b) Shri M. Ramchandran, Assistant Manager of N.C.C.F. had given a statement before the C.B.I. Inspector that the VCR was sold to Charged Officer but the bill was drawn in the name of the Maj. Hanspal. This witness also has retracted from his earlier statement and has deposed that he has not given any statement to Shri Ramraj, Inspector, C.B.I. and Shri Ramraj did not appear before the Inquiry Officer to confirm or deny this contention. Hence, Shri Ramchandran's statement needs to be tested against the statement of the C.B.I. Inspector without which truth will not come out.

(c) In regard to Art. II of the chargesheet which alleged that the Charged Officer declared cost of Rs.1,30,000/- for his house at Flat No.529, IVth Block, Koramang 1, as against actual cost of Rs.2,99,040.33/Shri K.N. Rangaswani, Contractor, who supervised the construction of this house, appeared as witness and has denied his statement at Ex.8-12 and categorically stated that he had not given any statement to Shri Ramraj, Inspector, C.B.I. as usual, Shri Ramraj also did not appear before the Inquiry Officer to confirm or deny the contention of Shri Rang Swami with the result that it is not clear as to how far the statement of Shri Rangaswami is correct.

(d) The charge that actual cost of the house was Rs.2.99 lakhs and not Rs.1.30 lakhs is based on report of Shri H.K. Arora, Techn. Examiner, CTE's Orgn., but Shri Arora was not produced as a witness by prosecution for deposition and crossexamination and hence, the prosecution case has been crippled due to absence of this crucial witness.

(e) In respect of Art. III, Shri A.K. Singh, brother-in-law of the Charged Officer has also deposed that Shri Ramraj, C.B.I. Inspector did not record any statement from him and after seeing the statement purported to have been recorded by Shri Ramraj (Ex.S-14), Shri A.K. Singh deposed that he did not agree with all that was recorded therein since the

[Signature]

statement was factually incorrect. Shri Ramraj did not appear before the Inquiry Officer has no alternative but to accept the contention of Shri A.K. Singh in absence of any other evidence.

(f) It has appeared from the correspondence folder of C.D.I. that he had not given sufficient time to Presenting Officer to produce the witnesses.

And whereas it has been decided by the Disciplinary Authority to remit the case to the Inquiry Officer for further inquiry, due to the reasons stated in above paras.

And whereas the services of Shri C.N. Raman, C.D.I. are no longer available and it is necessary to appoint another Inquiry Officer to inquire into the charges framed against Shri Subramani.

Now therefore, the President in exercise of powers conferred by sub-rule (2) read with sub-rule (22) of Rule 14 of the CCS (CCA) Rules, 1965 hereby appoints Shri S.K. Roy, C.D.I. as Inquiry Authority into the charges framed against Shri P. Subramani from the stage of recording the evidence of all absentee witnesses.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

Sd/-

UNDER SECRETARY TO THE GOVT. OF INDIA

Shri S.K. Roy, C.D.I.

THROUGH

Shri Harinder Singh, Director
Central Vigilance Commission."

3. It is apparent from the above order that on consideration of the enquiry report and the proceedings of the enquiry etc. and for the reasons recorded in the said order, the disciplinary authority had decided to remit the enquiry to the enquiry officer for further enquiry. The enquiry report which is being remitted to the enquiry officer was conducted by Shri C.N. Raman, C.D.I. The said enquiry officer has, however, since retired on 31.12.1990 and he is, therefore, not available for holding further enquiry. Accordingly, Shri S.K. Roy, C.D.I. has been appointed as the enquiry officer for further enquiry by the disciplinary authority in exercise of the powers conferred by sub-Rule 2 read with sub-Rule 22 of Rule 14 of CCS (CCA) Rules, 1965.

4. The learned counsel for the applicant submitted that although the enquiry was completed by the enquiry authority and its findings submitted to the disciplinary authority on 12.7.1990 holding that the charge against the applicant was not proved, the order to remit the enquiry for further enquiry to the enquiry officer was issued on 17.9.1990. The original enquiry officer who retired only on 31.12.1990 was not asked to complete the enquiry. Had this been done, there was no reason to believe that the limited mandate of further enquiry could not have been completed by him during the three months available before his retirement. This was, however, not done. It cannot, therefore, be concluded that the disciplinary authority initially intentionally delayed the matter of remission of the enquiry and later did not explore the possibility of having the further enquiry completed by the original enquiry officer before his

retirement on 31.12.90. The learned counsel further submitted that it was not obligatory to give an other opportunity to the investigating officer to appear before the enquiry officer for the purpose of confirming if the statements of the prosecution witnesses recorded by him were correct. The disciplinary authority, however, decided to test the statement of the two prosecution witnesses against the statement of the CBI Inspector with a view to determine the truth of the matter. The learned counsel submitted that the investigating officer himself is under a cloud and his deposition may not be reliable. Again the assessment of the valuation of the applicant's house was done by the CPWD and reflected by the applicant in his income tax statement. No useful purpose would be served by reexamining the CPWD Executive Engineer who did the value of the house at the instance of the CBI in 1982. The investigation regarding possession of assets, disproportionate to income was started in 1980 and the applicant has been harassed since then. It will not, therefore, be in the interest of justice to permit any further delay in settling this matter. The remitting of the enquiry will only further delay the finalisation of the case. The learned counsel also contended that the applicant should be provided a copy of the enquiry report already submitted to the disciplinary authority on the basis of which he has come to the conclusion to remit the case back to the enquiry officer for further enquiry so that he can make a suitable representation. To fortify his argument the learned counsel for the applicant referred to the following cases which are examined below:-

1. **JT 1990 (4) SC 456 UOI v. Mohd. Ramzan Khan**

The decision in the case of **Mohd. Ramzan Khan** (supra) relates to supplying a copy of the enquiry report to the delinquent to enable him to make a representation

before the disciplinary authority makes up its mind before accepting the conclusion of the Enquiry Officer holding that some of the charges have been established and holding the delinquent official guilty of such charges. The supply of a copy of the enquiry report along with its recommendations, if any, in the matter of proposed punishment to be inflicted falls within the purview of rules of natural justice and, therefore, the delinquent would be entitled to the supply of a copy thereof. The matter does not deal with a matter where the disciplinary authority has decided to remit the case for further enquiry. The judgement in the **Mohd. Ramzan Khan** (supra) is in the context of the Full Bench judgement of the Tribunal in the case of **Prem Nath K. Sharma v. UOI & Ors.**

ii. **ATR 1987 (1) CAT 215 Sh. S.P. Bansal v. UOI & Ors.**

This case relates to holding of a de novo enquiry and, therefore, is not germane to the issues before us as when the case is remitted for de novo enquiry the original proceedings are to be deemed as quashed unless the stage from which the retrial should be conducted is specified in the order. The de novo enquiry is, therefore, distinguishable from 'further' enquiry.

iii. **1982 (1) SLR 443 A.K. Roy Choudhry v. UOI & Ors.**

(Guj.)

In this case the disciplinary authority had come to a final decision after considering the opinion of the Central Vigilance Commission against the delinquent official. The opinion of the Central Vigilance Commission, however, was treated as confidential and not brought to the notice of the delinquent concerned. The

High Court observed that in judicial or quasi-judicial enquiries, "there is nothing that can be said to be confidential. Any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in this regard."

All these cases are, therefore, not germane to the issues before us at this point of time.

5. The learned Senior Counsel for the respondents Shri P.H. Ramchandani contested the submissions of the learned counsel for the applicant and submitted that disciplinary authority has acted within its jurisdiction in terms of Rule 15 (1) of CCS (CCA) Rules, 1965, as on going through the record of the enquiry it came to the conclusion that it was necessary to determine from the investigating officer whether the statements made by two witnesses who retracted from the statements made before him were recorded correctly. This would also necessitate the cross-examination of the investigating officer. As the enquiry officer had failed to examine the material witnesses viz. the investigating officer, etc. the disciplinary authority came to the conclusion to have 'further' enquiry contended with a view to complete the enquiry. The question, therefore, of furnishing a copy of the enquiry report at this stage to the applicant does not arise as the disciplinary authority has not come to a tentative conclusion to hold the applicant innocent or guilty. The learned Senior Counsel further submitted that there is no provision in the statutory rules for furnishing a copy of the enquiry report when the enquiry itself is remitted to the enquiry authority for the purpose of completion nor is there any provision for making a representation by the applicant when the enquiry report is not complete. The remission of the enquiry for

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'further' enquiry is a procedural stage and does not imply that the enquiry has been completed.

Another point raised by the learned Sr. counsel for the applicant was that a different officer has been appointed for 'further' enquiry. The learned counsel submitted that the CDI who earlier conducted the enquiry has retired from the service on 31.12.1990 and he was not, therefore, available for 'further' enquiry. In such a circumstance there is no alternative but to appoint another enquiry officer.

The learned Sr. Counsel for the respondents cited the following case relying on it only to the extent that the case has been remitted for further enquiry and not for re-enquiry. 1989 (2) CAT SLJ Romeo Charley v. DG, CSIR & Ors.

6. We have heard the learned counsel of both the parties and considered the record carefully. It has also been agreed by both the counsel that instead of passing an order on the interim relief, the OA can be disposed of finally at this stage itself.

7.. We are of the view that the disciplinary authority has carefully considered the findings of the Enquiry Officer as contained in the enquiry report submitted to him and after due application of mind has come to the conclusion that the investigating officer who had recorded the statements of the two witnesses mentioned in the order and who have retracted for their statements, need to be examined with a view to arrive at the veracity of the statements recorded by the investigating officer. The disciplinary authority has exercised the powers to remit the enquiry for further enquiry in terms of Rule 15 (1) of CCS (CCA) Rules, 1985. The competency and the

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judgement of the disciplinary authority cannot be questioned unless this is proven to be perverse and malafide. Although the investigation of the case may have started in 1980, the enquiry in the matter started in March, 1989. In the circumstances the applicant should have no grouse against the decision of the disciplinary authority to remit the enquiry for 'further' enquiry Ordinarily, 'further' enquiry should be remitted to the same enquiry officer who has conducted the original enquiry. Rule 15 (1) of the CCS (CCA) Rules provides that

"(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."

It is clear from the wording of the rules there are two significant ingredients in the provisions of Rule 15 (1). First is to remit the case and second is to the inquiry authority for further inquiry (emphasis supplied). The use of the phrase the inquiry authority, implies that inquiry authority for further enquiry ordinarily should be the same as concluded the original enquiry. In the case of **Syed Syfulla v. SP, Shivoga 1982 (3) SLR 145** Karnataka High Court has held that "if the very same enquiry officer is available it would be proper to direct that very enquiry officer to hold the "further" enquiry but if for unavoidable circumstances like death of the enquiry officer then the necessity of appointing a new enquiry officer will have to be examined and decided but even there the direction should be to hold a

"further" enquiry and not a de novo enquiry."

In the present case the original enquiry officer has retired from service and, therefore, the appointment of another enquiry officer cannot be avoided. We do not therefore find any reason to interfere with the appointment so made in these circumstances by the disciplinary authority.

The learned counsel also submitted that the enquiry officer who has now been appointed is six years junior to the applicant and that this was not permissible in accordance with the OM No.7/12/70 Ests. (A) dated 6.1.1971. On the other hand, the learned counsel for the respondents brought to our notice that the enquiry officer now appointed belongs to a different service and not to the service to which the applicant belongs. Further the enquiry officer is working as Commissioner of Departmental Inquiries in a quasi-judicial capacity. The question of therefore his being junior to the officer is not very relevant.

We reproduce below the relevant portion of the letter relied upon by the learned counsel for the applicant in this regard:-

"(10) Inquiry Officers to be senior in rank to the officers enquired against. The Committee on Subordinate Legislation (Fourth Lok Sabha) have recently examined the question of appointment of Inquiry officers to conduct oral inquiry into the charges levelled against delinquent officers under C.C.S. (C.C.A.) Rules, 1965. The Committee has observed that though they agree that it may not be possible to entrust always inquiries against delinquent officers to gazetted officers, the enquiries should be conducted by an officer who is sufficiently senior to

the office whose conduct is being inquired into, as inquiry by a junior officer cannot command confidence which it deserves."

(Swamy's Compilation of CCS (CCA) Rules 18th Edition.)

It will be observed from the above letter that the context in which the above instructions were issued is totally different from the facts and circumstances of this case. Nevertheless this is a matter which the respondents may consider. We are of the view that it may not always be possible to ensure that CDI should be invariably senior as to transcend the inter service seniority/juniority.

In conclusion, we are of the view that since the enquiry has not been completed nor any final order been passed by the disciplinary authority, it will not be in the interest of justice to interfere with the process of disciplinary proceedings at this point of time. We, however, observe that since the applicant has been under a cloud on account of the investigation which started in 1980 and followed by the enquiry which commenced in early 1989 and the officer's promotion has been held up, the respondents should complete the disciplinary proceedings and the action thereon expeditiously within a reasonable period, particularly when further enquiry is limited to the aspects specified in the order dated 17.9.1990. The Department of Personnel vide its OM No.39/44/70 Ests. (A) dated 8.1.1971 stipulates that "the disciplinary authority should take a final decision on the enquiry report within a period of three months at the most, in cases where consultation with the UPSC and CVC is not required. In cases requiring consultation

with the UPSC and CVC also every effort should be made to ensure that such cases are disposed of as quickly as possible." We trust that respondents shall act accordingly.

The OA is disposed of as above with no order as to costs.

J. Sharma

(J.P. SHARMA) 13/2
MEMBER(J)

I.K. Rasgotra

(I.K. RASGOTRA)
MEMEBR(A)

*Protonised by me on 13/2/1991
in Open Court.*

I.K. Rasgotra

13/2/91