

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(2)

O.A.Nos. (1) 1333/1991
~~XXXXXX~~. (2) 1587/1991
(3) 2959/1991

DATE OF DECISION: 25.05.1993

(1) Shri Budh Singh

(2) Shri Roshan Lal _____ Applicant(s)

(3) Shri R.D. Kataria

Versus

It. Governor, Delhi & 3 Others in _____ Respondent(s)
~~(1) and It. Governor, Delhi & 2 Ors.~~

(For Instructions)

1. Whether it be referred to the Reporter or not? yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K. DHAON
(S.K. DHAON)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Date of decision: 25.5.1993

(1)

OA No.1333/91

Shri Budh Singh ... Petitioner

vs.

Lt.Governor/Administrator
of Union Territory of Delhi
Delhi & 3 ors. ... Respondents

(2)

OA No.1587/91

Shri Roshan Lal ... Petitioner

vs.

Lt.Governor
Delhi & 2 ors. ... Respondents

(3)

OA 2959/91

Shri R.D.Kataria .. Petitioner

vs.

Lt.Governor,
Delhi & 2 ors. ... Respondents

For the Petitioners ... Shri G.D.Gupta, counsel &
Shri A.K.Behera, Counsel.

For the Respondents ... Sh. M. C. Gang

CORAM:-

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN
THE HON'BLE MR.S.R.ADIGE, MEMBER(A)

JUDGEMENT(ORAL)

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

For taking a disciplinary action, common proceedings were taken against Shri Budh Singh, the then Sales Tax Officer(petitioner in OA No.1333/91), Shri Roshan Lal, the then Head Clerk(petitioner in OA No. 1587/91), & Shri R.D.Kataria, the then Sales Tax Officer(petitioner in OA No.2959/91) under the orders of the Lt.Governor, Delhi. On 26.5.1991 & 27.5.1991, the Lt.Governor by different orders awarded the "penalty of compulsory retirement" to all the three petitioners before us. Three orders are being impugned in the present OAs.

2. These OAs have been heard together and they are

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being decided by a common judgement.

3. On 14.7.1988, the Chief Secretary, Delhi Admn., Delhi issued

separate memoranda to the petitioners stating therein that he(the Chief Secretary) proposed to hold an enquiry against them under Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965(hereinafter referred to as the Rules). These memoranda were accompanied by the statements of imputation of misconduct or misbehaviour. On 30.1.1989, the Lt.Governor in exercise of the powers conferred by sub-rules (1) &(2) of Rule 18 of the Rules directed:

(1) that disciplinary action against all the said Government servants shall be taken in a common proceeding.

(2) Lt.Governor shall function as the disciplinary authority for the purpose of the common proceedings and shall be competent to impose the following penalties, namely:

"Initiation of major penalties proceedings."

4. On 15.2.1989, the Chief Secretary, Delhi Administration passed an order stating therein that enquiry under Rule 14 of the Rules was being held against the petitioners, that common proceedings had been ordered against them and he considered that an Inquiring Authority should be appointed to inquire into the charges framed against the petitioners. The crucial words are contained in paragraph 4 of the order and are being extracted:

" Now, therefore, the undersigned in exercise of the power conferred by sub-rule(2) of the said rules, hereby appoints Shri G.K.Marwah, Joint Director(Transport), Delhi Admn. Delhi as the Inquiring Authority to inquire into the charges framed against the said officer/officials."

5. On 15.2.1989, the Chief Secretary passed an order under sub-rule(5)(c) of Rule 14 of the Rules appointing Shri P.R.Meena, Sales Tax Officer Ward-23, Sales Tax Department, New Delhi as presenting officer to present the case in support of the articles of charges against the petitioners before the inquiring authority.

5. The submission advanced on behalf of the petitioners in the fore-front is that the Chief Secretary had no jurisdiction to appoint Shri G.K. Marwah as the inquiring authority. Likewise, he had no jurisdiction to appoint the presenting officer. Admittedly, Shri Marwah conducted the enquiry and upon his recommendations, the impugned orders were passed. The submission is that since the enquiry was ab initio void, the impugned orders must fall and cannot stand by themselves. We find force in this submission.

6. Sub-rule(1) of Rule 18 of the Rules provides that where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. Sub-rule(2), as material, inter-alia, states that any order passed under sub-rule(1) shall specify;

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- (ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;
- (iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding.

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7. Turning back to the orders dated 30.1.1989 passed by the Lt.Governor, we find that in compliance with ^{Rule} / 18, he specified that he(Lt.Governor,Delhi) shall function as the disciplinary authority for the purpose of common proceedings. He also specified that he shall be competent to impose such penalties as are permissible on persons in a case wherein major penalty proceedings have been initiated. He further specified that the procedure in Rule 14 of the Rules shall be followed.

8. Rule 14 is contained in Part VI of the Rules and falls under the head " Procedure for imposing penalties". It has a head note " Procedure for imposing major penalties". Sub-rule(1) of Rule 14, inter-alia, provides that no order imposing any of the penalties specified in clauses(v) to (ix) of Rule 11 (which includes penalty of compulsory retirement) shall be made except after an inquiry held, as the case may be, in the manner provided in it. Sub-rule(2) is material. It,inter-alia, states that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule an authority to inquire into the truth thereof. Under this sub-rule, an option has been given to the disciplinary authority to either itself hold an inquiry or appoint an authority to hold such an inquiry. The power of appointment has, therefore, to be exercised by the disciplinary authority alone and no one else. Sub-rule (5)(a) of Rule 14 makes the position clear. It states that on receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are admitted or, if it considers

of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule(2), an inquiring authority for the purpose. In this sub-rule, a primary duty is cast upon the disciplinary authority to inquire into the charges not admitted in the written statement. However, the provision enables it to appoint an inquiring authority. Before appointing an inquiring authority, it has to apply its mind and come to the conclusion that it considers it necessary to make such an appointment. The word "considers" imports the idea of an objective consideration. The power of appointment cannot be exercised even by the disciplinary authority merely because it wants to appoint an inquiring authority. It has to form an opinion that it is necessary to do so. The scheme of Rule 14 indicates that the power to appoint an inquiring authority vests exclusively in the disciplinary authority. This power cannot either be delegated or transferred to any other officer unless provided by the statute. Neither such a provision is discernible nor has it been brought to our notice by the learned counsel for the respondents. Sub-rule(3) of Rule 14 makes the intention of the rule making authority clear that so far as the appointment of the inquiring authority is concerned, that ^{power} has to be exercised by the disciplinary authority alone. It states that where it is proposed to hold an inquiry against

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a Government servant under Rule 14, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour etc. Here, the rule itself permits the disciplinary authority not to draw up the substance of imputations etc., instead, it has been allowed to get the same drawn up by some other officer or authority. Such a relaxation has not been given in the matter of appointment of an inquiring authority. Therefore, there can be no escape from the conclusion that the appointment of Shri G.K.Marwah as inquiring authority by the Chief Secretary by his order dated 15.2.1989 was without jurisdiction.

9. In para 5 of the order dated 27.5.1991 passed by the Lt.Governor it is recited: "the Competent Authority fully agrees with the enquiry report which is based on facts on record proving fully the charge against the C.O." It will be seen that the Lt.Governor adopted the reasoning contained in the inquiry report. Once it is held that the inquiry report was submitted by an authority which had no jurisdiction to do so, it has ^{to} be necessarily held that the inquiry report itself is void and non est. The same, therefore, could not be even looked into by the Lt.Governor. Afortiori, the basis of the order of the Lt.Governor disappears and the order must fall through.

10. Sub-rule (5)(c) of Rule 14 states that where the disciplinary ^{authority} / itself inquires into any

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article of charge or appoints an inquiring authority for holding any inquiry into such, it may, by an order, appoint a "Presenting Officer" to present on its behalf the case in support of the articles. It will be seen that power has been given to the disciplinary authority alone to appoint a presenting officer. This is so as the presenting officer is to present the case in support of the articles of charge on behalf of the disciplinary authority. It follows that the appointment of Shri P.R.Meena as the presenting officer by the Chief Secretary was without jurisdiction and, therefore, void. Admittedly, Shri P.R.Meena acted as the presenting officer in the proceedings before the inquiring authority. He did so throughout the proceedings. His participation in the proceedings vitiated the same. The report of the inquiring authority, therefore, also stood vitiated. In the eye of law, no inquiry report came into existence and the Lt. Governor acted without jurisdiction in relying upon the same.

11. It is urged on behalf of the respondents that the petitioners having not raised the objection that the appointments of inquiring authority and the presenting officer were without jurisdiction and void, ^{and} they having participated in the proceedings without raising such an objections they are estopped from raising the said objection for the first time in these OAs. The objection raised by the petitioners goes to the root of the matter and, therefore,

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doctrine of estoppel and acquiescence will have no application.

12. The question still remains is as to what should be the proper order passed in these cases. The petitioners are not altogether free from blame. They should have objected to the appointments of the inquiring authority and the presenting officer during the course of the inquiry proceedings. We, therefore, make it clear that it will be open to the Lt.Governor, if so advised, to either conduct the inquiry proceedings himself or appoint an inquiring authority in accordance with law so that the proceedings may commence. Likewise, if the situation arises, it will be open to the Lt.Governor to appoint a presenting officer. However, we are not making any suggestion that a fresh inquiry should take place. Whether an inquiry should or should not take place is a matter to be decided by the Lt.Governor.

13. We find that in the three OAs, interim orders were passed on different dates and on account of those orders, the petitioners ~~are~~ continued to perform their respective duties. Therefore, there is no occasion for issuing a direction that the petitioners should be reinstated in service. However, we direct that the petitioners shall be entitled to be paid the usual emoluments from 30.1.1989 onwards. The emoluments shall be computed on the footing that the petitioners were in service all

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along.

14. These OAs succeed and are allowed. The impugned orders dated 26.5.1991 and 27.5.1991 passed by the Lt.Governor, Delhi are quashed.

There shall be no order as to costs.

S.R. Adige
(S.R.ADIGE)

MEMBER(A)

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S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)