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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2695/2004

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.M.K. Misra, Member(A)

New Delhi, this the 2nd day of June, 2005

V.P. Yadav,
R/o 252, Hastal Village,
New Delhi-59

....Applicant

(By Advocate: Shri Jitender Chaudhary, proxy for Shri Naresh Kaushik)

versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Admn. Secretariat,
Players Building, I.P. Estate,
Delhi-1
2. The Director (Vigilance),
Office of Directorate of Vigilance,
Delhi Admn. Secretariat,
Players Building, I.P. Estate,
Delhi-1
3. The Deputy Commissioner, Delhi
Govt. of NCT, Delhi,
5, Sham Nath Marg,
Delhi-54

....Respondents

(By Advocate: Shri Harvir Singh)

Order

Justice V.S. Aggarwal, Chairman

By virtue of the present application, V.P. Yadav/ applicant seeks quashing of the order of 31.8.2004 passed by the Directorate of Vigilance, Govt. of NCT of Delhi and to grant all consequential benefits to him. The impugned order reads:

"WHEREAS Sh. S.K. Saxena, DANICS Officer, was appointed as Inquiring Authority under sub-rule 2 of Rule 14 of the CCS (CCA) Rules, 1965 to inquire into the charges against Sh. V.P. Yadav, Gr.1 of DASS vide order No.F.7(40)/95/DOV/5908-5914 dated 23.8.99.

AND WHEREAS the Inquiring Authority furnished his report of inquiry holding the charges not proved against the said Sh.V.P. Yadav, Gr.1 of DASS.

AND WHEREAS the undersigned has considered the inquiry report and observes that the Inquiring Authority has recorded his findings without evaluating the evidence on record. The Inquiring Authority has not discussed the arguments put forth by the Presenting Officer in his written briefs in the inquiry report and adopted a simplistic way for finalizing the inquiry under the subterfuge of Delhi High Court order striking off the strictures against the CO. The Charged Officer in his written briefs had claimed that the report dated 28.5.92 was not exhibited during the inquiry proceedings and at the same time he had also challenged the very existence of this report, but the Inquiring Authority instead of clarifying the ambiguity created by the CO in his written briefs had referred to a report dated 20.8.91 and also claimed that the order dated 5.5.92 passed by him was with reference to the previous report of the Patwari dated 20.8.91, but no such report had come on record during inquiry proceedings. However, the Inquiring Authority relied upon the contention of the Charged Officer without insisting for the production of this very document.

The aforementioned inadequacies/ shortcomings unequivocally indicate that the Inquiring Authority has not scrupulously followed the procedure as laid down u/r 14 of the CCS (CCA) Rules, 1965 while conducting inquiry in this case and as such



his findings suffer from legal as well as technical infirmities and therefore can not be relied upon.

NOW THEREFORE, the undersigned has decided to remit the inquiry to Sh. S.K. Saxena, Inquiring Authority under sub-rule (1) of Rule 15 of the CCS (CCA) Rules, 1965 for holding further inquiry from the stage of taking complete documents on record, analyzing/assessing the evidence brought on record by the Present Officer and Charged Officer respectively for drawing his conclusion after discussing the same in the inquiry report."

2. Some of the relevant facts can conveniently be mentioned to precipitate the question in controversy. Applicant states that he was working as Consolidation Officer (Tahsildar) in February, 1990. He was posted in the office of Deputy Commissioner, Delhi. One O.P. Taneja had submitted an application for correction in the value of Khasra Nos. 80/15, 16 and 81/10. According to the applicant, he had concealed certain facts. The said application had already been decided by the previous Consolidation Officer. The applicant rejected the application of Shri Taneja taking into consideration the dismissal order of the previous Consolidation Officer. Shri Taneja preferred an appeal before the Financial Commissioner who passed strictures against the applicant. The same are stated to have been quashed by the Delhi High Court.

3. It is stated that an enquiry order was passed by the Directorate of Vigilance contending that the applicant dismissed the application of O.P. Taneja on flimsy grounds and wrongly referred the report dated 28.5.92 of Patwari whereas the applicant's order was passed on 5.5.92 and he referred the Patwari's report of 6.2.90. The enquiry proceeded and the enquiry officer made the findings that the charge had not been proved. The disciplinary authority is

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stated to have passed the impugned order which we have reproduced above already. It is in this backdrop that it had been pleaded that the impugned order remitting the matter back for further enquiry is invalid.

4. In the reply filed, the application has been contested. Respondents plead that the disciplinary authority has inherent powers under rule 15 of CCS (CCA) Rules, 1965 to remit the enquiry to the enquiry officer if he feels that the enquiry officer has not scrupulously followed the procedure. It is stated that the order so passed is valid and there is no ambiguity or illegality therein.

5. We have heard the parties' counsel and have seen the relevant record.

6. The question that comes up for consideration is as to whether the disciplinary authority was justified in passing the order invoking rule 15 of CCS (CCA) Rules.

7. Sub-rule 1 to rule 15 of the Rules referred to above unfolds itself in the following words:

"(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."

8. In the present case, the reasons given are that –

- (a) the enquiry officer had not discussed the arguments put forward by the Presenting Officer;
- (b) the enquiry officer adopted a simplistic way of finalizing the enquiry under the subterfuge of the High Court's order; and

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- (c) the charged officer in his written briefs had referred to a report dated 20.8.91 and also claimed that the order dated 5.5.92 passed by him was with reference to the previous report of the Patwari but it was not on record.

Taking note of these shortcomings, the said order had been passed.

9. We know from the decision of the Supreme Court in the case of K.R. Deb v. Collector of Central Excise, Shillong, 1971 (2) SCC 102 that the law only contemplates one enquiry. We do not dispute the right that if there has been no proper enquiry because of some serious defect having crept into the enquiry, important witnesses not examined, the disciplinary authority may ask the enquiry officer to record fresh evidence. But this provision will not empower the disciplinary authority to set aside the previous enquiry on the ground that report of the enquiry officer does not appeal to him. The Supreme Court held:

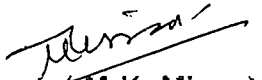
"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were 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."


10. In the present case, as would be noticed from the reasons that we have recorded, the disciplinary authority may not have been satisfied with the reasoning but it will not permit him to remit the case back to the enquiry officer.



11. At this stage, we would hasten to add that the disciplinary authority has a right to record the note of disagreement and proceed in accordance with law but taking stock of the totality of facts, further enquiry for the reasons recorded is clearly against the ratio deci dendi of the decision in the case of K.R. Deb (supra). Resultantly, the impugned order cannot be sustained.

12. For these reasons, we allow the present application and quash the impugned order. The disciplinary authority may proceed further in accordance with law from the stage the report of the enquiry officer was received.


(M.K. Misra)
Member(A)


(V.S. Aggarwal)
Chairman

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