

12
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1513/2004

New Delhi this the 3rd day of January, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Pooran Lal,
S/o Shri Dhakan Lal,
R/o H.No.3/5, Subhash Puri,
C/o Mr. Anil Mohan Shiv,
Kankar Khera,
Meerut Cantt.

-Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

Union of India & Ors through:

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Chief of Army Staff,
Army Headquarters,
New Delhi.
3. The Commander,
Meerut Sub Area,
Meerut Cantt.

-Respondents

(By Advocate: None)

1. To be referred to the Reporters or not? *Yes*
2. To be circulated to other Benches of the Tribunal or not? *Yes*

S. Raju
(Shanker Raju)
Member (J)

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1513/2004

New Delhi this the 3rd day of January, 2005.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

Pooran Lal,
S/o Shri Dhakan Lal,
R/o H.No.3/5, Subhash Puri,
C/o Mr. Anil Mohan Shiv,
Kankar Khera,
Meerut Cantt.

-Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

Union of India & Ors through:

1. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Chief of Army Staff,
Army Headquarters,
New Delhi.
3. The Commander,
Meerut Sub Area,
Meerut Cantt.

-Respondents

(By Advocate: None)

ORDER (ORAL)

By Hon'ble Shri Shanker Raju, M (J):

Applicant impugns respondents' order dated 19.5.2004 whereby the disciplinary authority has ordered the examination of witness no. 1 Smt. Saraswati Bisht.

2. By an order dated 15.6.2004, further proceedings were held in abeyance.
3. Applicant, who is working as Stenographer Grade I, on an investigation by the CBI, was proceeded against under Rule 14 of the

CCS (CCA) Rules, 1965 for a gross misconduct of demanding an accepting illegal gratification from one Smt. Sarawati Bisht to get her a job as Ward Helper.

4. Applicant approached this Tribunal earlier, assailing the charge-sheet in OA-2411/2003, which was dismissed on 2.4.2004 as pre-mature with a direction to complete the inquiry and to raise all grievances before the competent authority.
5. Smt. Bisht while examining as PW-1 has not supported the allegation and clearly denied to have been helped by any of the officers at Meerut. The inquiry officer had submitted a report presumably of not holding applicant of guilty of the charge.
6. The disciplinary authority on receipt of the inquiry report directed re-examination of witness No.1 with an opportunity to applicant to cross-examine.
7. Aforesaid has resulted in filing of the present application.
8. Learned counsel of applicant Shri M.K. Bhardwaj states that import of Rule 15 (1) empowers the disciplinary authority to remit the case back to the inquiring authority only for holding a further inquiry. Relying upon a decision of the Chandigarh Bench of this Tribunal in Surjit Kumar Dubey v. Union of India & others, 1997 (1) ATJ 209, it is contended that re-examination of witnesses who had not supported the prosecution is to fill up the gaps in the inquiry and is not a further inquiry, but rather a *de novo* inquiry, which is not sustainable in the eyes of law.
9. Shri Bhardwaj further relies upon the commentary of Swamy on Disciplinary Proceedings and *inter alia* clause 18 thereof to contend that new evidence cannot be included or permitted to be called to fill up the gaps in the evidence.
10. On the other hand, none appeared for the respondents even on the second call. Accordingly, Rule 16 of the C.A.T. (Procedure) Rules, 1987 is resorted to.

AS

11. In the reply filed by the respondents, it is contended that Smt. Bisht, PW-1 while being examined has not answered the questions on the pretext that she was not well, but the inquiry officer has not adjourned the proceedings for further examining her. Accordingly, it was necessary to re-examine her, which is within the ambit of Rules *ibid*.

12. It is also stated in the reply that interference at an interlocutory stage is not permissible in the light of the decisions of the Apex Court in Union of India v. Upendera Singh 1994 (3) SCC 357.

13. On a careful consideration of the submissions made by the learned counsel for the applicant and the reply filed by the respondents, it is necessary to reproduce Rule 15 of CCS (CCA) Rules, 1965:

"(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.

14. We find that the allegations against applicant is that he has taken illegal gratification but the prosecution witness while being examined without any force or coercion, on her own volition, made a statement without indicting anyone from Meerut Office and while being examined by the charged officer, she had not indicted him in any manner.

15. However, inquiry officer *closed*⁴ the deposition of PW-1 as completed and thereafter in his report, made a finding, which has been on receipt by the disciplinary authority, re-examination of witness No.1 was ordered.

16. The Apex Court while dealing with the identical issue in Union of India v. K.D. Pandey & another, (2002) 10 SCC 471 and observed as under:-

"4. On remit the inquiry officer made a report finding Respondent 1 guilty of four charges. Based on that report, the Railway Board dismissed Respondent 1, which was challenged in the dispute raised by him. The Tribunal as well as the High Court are of the view that on the same material a fresh opinion has been furnished

and it was not a case of further inquiry. Indeed, it was not noticed by the disciplinary authority that the inquiry held earlier was bad or that the management or the establishment did not have the proper opportunity to lead evidence or the findings were perverse. In the absence of the same, it was held that there was no justification on the part of the disciplinary authority to commence fresh inquiry on the same set of charges.

17. In Bhupinder Pal Singh v. Director General of Civil Aviation & others, (2003) 3 SCC 633, following observations have been made:-

"3. Looking to the assertion made by the appellant that no opportunity was given to him during the investigation or inquiry based on which the order was passed on 21.7.1999 adversely affecting his rights and status and in the absence of any counter-affidavit denying the same either before the High Court or before this Court, there is no impediment or difficulty in holding that the order dated 21.7.1999 was passed in violation of the principles of natural justice. Even a perusal of the impugned order indicates that no opportunity was given to the appellant. The High Court proceeded on wrong assumption that the second inquiry was not a *de novo* inquiry. It appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of principles of natural justice, it is unnecessary for us to go into the merits of the other contentions raised. In the normal course, we would have set aside the order giving liberty to the respondents to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry.

18. If one has regard to the above ratio, it is clear that what is permissible, if a finding favours the delinquent official, for the disciplinary authority to order a further inquiry. A further inquiry is an inquiry, which envisages examination of any other evidence but it does not permit the disciplinary authority to fill up the *lacunae* in the inquiry by recalling the witnesses for a fresh deposition. If a witness has favoured the charged officer and does not support the prosecution, the disciplinary authority cannot be allowed to fill up the gaps in the inquiry. If such a process is allowed, there would be no end to the proceedings.

19. Calling witnesses afresh for examination is a *de novo* proceeding, which is not true import of Rule 15 *ibid* and is not permissible.

20. A Coordinate Bench of this Tribunal at Chandigarh observed as under:-

"6. Learned counsel for the respondents argued that in order at Annexure A-4, the appellate authority has given the opinion that prescribed procedure for conducting a subsequent enquiry was not followed by the inquiry officer and, therefore, a *denovo* enquiry could be held. We put specific questions to the learned counsel to point out to us as to what prescribed procedure had not been followed by the inquiry officer, or what violation of the procedure had been noticed by the appellate authority in the conduct of enquiry by the inquiry officer. The learned counsel could not bring to our notice any such violation of prescribed procedure. The only defects mentioned by the appellate authority as given in Annexure A-4 are that before starting the disciplinary proceedings, preliminary enquiry had not been made for collection of facts and evidence and that real efforts to find out the addresses of the witnesses or firm, the bus owner, the State Transport authority were not made for verification of the facts and documents before starting disciplinary proceedings. In our opinion, this is not a lapse on the part of the enquiry officer in the conduct of the enquiry, but points towards some lapse by the disciplinary authority before charge sheeting the applicant by going ahead with the enquiry. It cannot be extended to the enquiry proceedings by saying that enquiry was not held according to the prescribed procedure. We have not been shown any prescribed procedure under which the enquiry officer is under an obligation or the disciplinary authority is under obligation to hold first a preliminary enquiry. Failure on the part of the competent authority to first collect sufficient evidence and then start the disciplinary proceedings only should not be allowed to be used against the charged officer. Jurisprudence does not allow a second trial on the same facts in the name of a *denovo* enquiry once the person has been found to be not guilty due to lack of evidence. Reading of the order at Annexure A-4 leaves no doubt in our mind that the appellate authority had come to the conclusion that it had not been proved in the enquiry that the family of the applicant had not traveled as claimed by the applicant in the LTC claim, nor it was proved that the documents adduced by him were false and as such the charge of submitting a false claim was not proved and there was miscarriage of justice by passing the order adverse to the applicant by the disciplinary authority. That a *denovo* enquiry is not permissible under the rules is the settled position under the law as held by a constitution Bench of the Hon'ble Supreme Court in the case of .R. Deb vs. Collector of Central Excise – 1971 (1) SLR 29, that Rule 15 of CCS (CCA) Rules, 1965 provides for one enquiry only. It may in some cases happen that there has been no proper enquiry because of some serious defect in the enquiry or some important witnesses or documentary evidence were not available or examined for some valid reasons, the disciplinary authority may ask the enquiry officer to record further evidence by way of further enquiry, but there is no provision in this Rule for completely setting aside the previous enquiry and then ordering a *denovo* enquiry. This case has been followed by various High Courts and in a judgment rendered by this Bench of this Tribunal in which one of us (Hon'ble Shri S.C.Vaish, AM) was a member in the case of Som Nath Sharma vs. Union of India (1994) 27 ATC 771.



21. In this view of the matter, the ground adduced that witness was being re-examined because she at the time of her examination on putting question by the inquiry officer had not responded as not being in the fitness of health cannot be a ground to order her re-examination as not only the witness had deposed in examination in chief but had answered the questions put by the defence and also responded to the questions of inquiry officer. Moreover, inquiry officer is not allowed to assume the role of a prosecutor to cross-examine the witnesses. Be that as it may, her fresh examination is certainly with a view to fill up the gaps in the inquiry and to establish a case against applicant, which is otherwise not an independent role expected of an inquiry officer or disciplinary authority in the conspectus of fairness in procedure and as *sine qua non* of principles of natural justice.

22. For the foregoing reasons, the impugned Memo violates Rule 15 (1) of the Rules *ibid* and as being against the rules, the earlier OA where the directions were to complete the inquiry connotes completion in accordance with law. As such, the aforesaid illegality, which is a substantive one, is an exception to the decisions of the Apex Court in Upendera Singh (supra) and as such at an interlocutory stage, we entertain the present grievance of the applicant.

23. In the result, OA is allowed. Impugned Memo is quashed and set aside. However, this shall not preclude disciplinary authority to pass an order in accordance with Rule 15 of the Rules *ibid* on the basis of evidence adduced in the inquiry or to adopt any means available to him. No costs.



(S. K. Malhotra)
Member (A)



(Shanker Raju)
Member (J)

/San/