

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

** **

O.A. No. 298/1993

Date of decision 16.5.95

(27)

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Shri Ashok Kumar
r/o 592, Sector-IV,
Multistoreyed, Timarpur,
Delhi-110054
2. Sh. A.N. Chaudhary
r/o 5/98, Shivaji Nagar,
Gurgaon.
3. Shri M.R. Sharma,
r/o H.No.23, Saawan Park,
Mundka, Delhi-110041.

... Applicants

(By Advocate Shri V.K. Rao)

Vs.

1. Union of India through its-
Secretary, Ministry of Defence,
New Delhi
2. The Commanding Officer,
INS (India) Dalhousie Road,
New Delhi-110011
3. Shri R.K. Meena,
C.G.O.
Navy Headquarters (DLS),
ING (India), Dalhousie Road,
New Delhi.

... Respondents

(By Advocate Shri P.H. Ramchandani)

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J) 7

The present application has been filed by three

applicants against the order dated 13.10.1992

(Annexure A-1) whereby the disciplinary authority
appointed another Enquiry Officer to enquire into
the charges against them. In this order, the
disciplinary authority has referred to Rule 14

10/

sub-rule (2) read with sub-rule 22 of the CCS (CCA) Rules, 1965 hereinafter referred to as the 1965 Rules for appointing another enquiry officer.

2. The brief facts of the case are that the applicants are civilian employees in the defence services working with M.T. Organisation of INS India. An enquiry had been instituted against them originally by the memorandum dated 26th October, 1990 (Annexure A-2) in which a mention has been made that the enquiry is to be held under Rule 14 of the 1965 Rules. Shri N. Ramachandaran was appointed as enquiry officer who held the enquiry and submitted the enquiry report. The disciplinary authority has recorded the fact that after perusal of the evidence recorded by Shri N. Ramachandaran as Enquiry Officer, he finds it necessary to appoint another enquiry officer to enquire into the charges against the applicants. He has also mentioned that he is doing so in exercise of the powers under Rule 14 of the 1965 Rules. The applicants have objected to this de-novo enquiry as being ultra-vires the provisions of Rule 14 of the CCS (CCA) Rules.

3. Shri V.K. Rao, learned counsel for the applicants, submits that once the enquiry report has been submitted, there is no ground or cause for appointing another enquiry officer or to conduct a de-novo enquiry as there is no such power under Rules 14 and 15 of the

P.S.

1965 Rules. He relies on the judgment of the Supreme Court in K.R. Deb v. Collector of Central Excise (1971 (1) SLR 29). He submits that in this judgment it has been held that Rule 15 provides for only one enquiry but in certain circumstances, the disciplinary authority may ask the enquiry officer to record further findings in the matter, but this cannot be taken to empower the disciplinary authority to appoint another enquiry officer to conduct a de-novo enquiry. He has referred to the reply of the respondents wherein they have stated that there were certain flaws and infirmities in the enquiry report and the enquiry was not conducted in accordance with the 1965 Rules, on which a decision was taken by the competent authority to hold a de-novo enquiry.

4. The Tribunal, by order dated 5.2.1993 has stayed the de-novo enquiry started against the applicants in pursuance of the impugned order dated 13.10.1992 which has been continued from time to time.

5. We have heard Shri V.K. Rao, learned counsel for the applicants and Shri P.H. Ramchandani, learned counsel for the respondents and perused the records.

6. Before dealing with the question raised by the learned counsel for the applicants whether under Rules 14 and 15 of the CCS (CCA) Rules, a de-novo enquiry can be ordered by the disciplinary authority or not, at the hearing, Shri Ramchandani, learned counsel for the respondents referred to a recent decision of the Hon'ble Supreme Court in Director General of Ordnance

18/

18

Services & Ors. v. P.N. Malhotra (JT 1995 (2) SC 98).

He submits that the applicants being civilian employees, whose salaries are paid out of the estimates of the Ministry of Defence, are not entitled to the protection of Article 311(2) of the Constitution or the 1965 Rules, which have been made under the proviso to Article 309 of the Constitution. The respondents have also relied on the earlier decisions of the Supreme Court in UOI & Anr. v. K.S. Subramanian (1989 Supp. (1) SCC 331) and UOI & Anr. v. K.S. Subramanian (1977 (1) SCR 87).

7. In UOI v. K.S. Subramanian (1989 case Supra), the respondent (original applicant) was appointed as an industrial labourer in the Naval Base Cochin and later promoted as a Welder. His services were terminated under Article 310 of the Constitution. No reason was assigned. The Supreme Court considered that the only question in the case is whether the 1965 Rules framed under the proviso to Article 309 of the Constitution proprio vigore applied to the respondent or becomes inoperative ^{in m} view of Article 310 of the Constitution? Article 310(1) deals with the tenure of office of persons serving the Union or the State and provides :-

" Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor *** of the State."

18

The doctrine of pleasure of the President is thus embodied under Article 310(1).

The Court quoted the following observations of the earlier decision in Ramanatha Pillai v. State of Kerala (1973 (2) SCC 650), wherein it was held that the rules made under the proviso to Article 309 are subject to Article 310. It was held that "the result is that Article 309 cannot impair or effect the pleasure of the President or the Governor specified." Article 309 is, therefore, to be read subject to Article 310.

8. In another case UOI v. Tulsiram Patel (1985 (3) SCC 398), the Supreme Court held that Article 311 is an express provision of the Constitution. Therefore, rules made under the proviso to Article 309 or under Acts referable to Article 309 would be subject both to Article 310(1) and Article 311. In other words, this would mean that the rules made under Article 309 are subject to the pleasure doctrine and the pleasure doctrine is itself subject to limitation impugned thereon by Article 311. In K.S. Subramanian's (1989) case, the Supreme Court held as follows:-

"The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Article 311(2). When Article 311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the Respondent.

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The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the level and logical conclusion.

In this case also it will be relevant to observe that the parties appeared to have proceeded before the High Court, on the assumption that the 1965 Rules would be attracted to the case of the original applicant. The Supreme Court observed that, that might be on a wrong assumption of law and the respondents are not bound by such wrong assumption of law nor it could be taken advantage of by the applicant. Following the decision in K.S. Subramanian's (1989) case (Supra), the Supreme Court in Director General of Ordnance Services & Ors. v.P.N. Malhotra (Supra) has held that the said decision, in fact, militates against the respondent, since according to it, the respondent does not enjoy the protection of Article 311(2) or the 1965 Rules.

2. In the present case, the applicants' contention is that the disciplinary authority has no power to order a de-novo enquiry after the first enquiry officer has already submitted his report which is based on the provisions of Rules 14 and 15 of the 1965 Rules. At the time of hearing the application, the Counsel for the respondents raised the submission on a point of

18

72

law, that the 1965 Rules are not applicable to the disciplinary enquiry being held against the applicants, who are civilian employees in defence services, relying upon the aforesaid judgments of the Hon'ble Supreme Court. It was also brought to our notice on 19.10.1994 that the previous Enquiry Officer Shri N.Ramachandran has also unfortunately passed away. According to Shri Ramchandani, since the 1965 Rules on which the applicants rely upon are not applicable in their case, there was no infirmity or illegality in the disciplinary authority appointing another enquiry officer to enquire into the charges de-novo as was done by the impugned order dated 13th October, 1992.

10, Shri V.K.Rao, on the other hand, has submitted that since the respondents have in their impugned order referred specifically to the provisions of Rule 14 of the 1965 Rules, they are bound to comply with the same both in letter and spirit. He further submits that the proceedings have been conducted admittedly under the 1965 Rules and the judgment of the Hon'ble Supreme Court in the case of Director General of Ordnance v.P.N.

Malhotra (Supra) does not state that an enquiry

18

conducted under the rules will be void. He submits
that the enquiry will, therefore, have to be
proceeded strictly in accordance with these rules.

He further contends that the Hon'ble Supreme Court
has not stated that an enquiry, if conducted under
the 1965 Rules in the case of persons like the
applicants will be illegal or void.

11. We have carefully considered the submissions
of the learned counsel of both the parties, perused
the records in the case and the case law.

12. No doubt, the enquiry proceedings have been
purported to be held under the 1965 Rules on a wrong
assumption of law. The applicants cannot claim the
protection of either Article 311 or the Rules made
under the proviso of Article 309 of the Constitution.

As held by the Supreme Court in UDI v.K.S. Subramanian
(1989) case (Supra), the applicants are not entitled
to the protection of Article 311(2) since they occupied
the posts drawing their salaries from the defence
estimates. In other words, there is no fetter
in the exercise of the pleasure of the President or
the Governor under the pleasure doctrine embodied
under Article 310 of the Constitution. Following the
observations of the Supreme Court in the aforesaid
cases, the applicants are not, therefore, entitled

to the protection of the 1965 Rules. No doubt, the respondents have acted on the assumption that they were holding the enquiry against the applicants under the 1965 Rules ; but that, as observed by the Supreme Court in Subramanian's case cannot estop the respondents from taking the correct legal stand at the time of hearing. In the circumstances, the applicant cannot contend that since the respondents have gone on a wrong assumption of law, they should continue to apply the rules which is advantageous to them, thereby contravening the provisions of the Constitution. We are, therefore, of the considered view that neither the wrong assumption of law by the respondents or taking this legal plea at the time of hearing will assist the applicants in seeking protection under the Rules. in this case. It is settled law that mere mention of the wrong rules or provisions of law does not vitiate the order, so long as the competent authority has the power to pass the order. In this case, the applicants, being civilian employees in defence services, held office subject to the pleasure doctrine embodied in Article 310(1) of the Constitution.

13. In this view of the matter, the contention of the applicants that the de-novo enquiry ordered by the

disciplinary authority is contrary to Rule 14 of the 1965 Rules is without any basis, as the applicants cannot claim protection under these rules. The fact that Shri N. Ramachandaran, the earlier enquiry officer, has expired is also relevant.

14. In the result, the application fails

and is dismissed. The Interim order dated

5-2-1993 staying the de-novo enquiry in pursuance

of the order dated 13-10-1992 is vacated. The

respondents are at liberty to proceed with the

enquiry proceedings in accordance with the

provisions of the Constitution and law. No

costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

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

Member (A)