

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 558 of 2008

Monday, this the 30th day of March, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

John Samuel,
Producer Grade II,
Doordarshan Kendra,
Kudapanakunnu,
Thiruvananthapuram – 43

... **Applicant.**

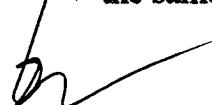
(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Director,
Doordarshan Kendra,
Kudapanakunnu,
Thiruvananthapuram – 43
2. The Chief Executive Officer
And Disciplinary Authority,
Directorate General, Doordarshan,
Prasar Bharati (BCI),
Doordarshan Bhavan, Copernicus Marg,
New Delhi – 1
3. The Executive Producer
And Inquiring Authority,
Doordarshan Kendra,
J C Nagar, Bangalore – 6
4. Union of India, represented by its
Secretary, Ministry of Information &
Broadcasting, New Delhi. ... **Respondents.**

(By Advocate Mr. S. Sujin (R1-3)

The Original Application having been heard on 30.03.09, this Tribunal on the same day delivered the following :



ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The grievance of the applicant in this O.A. is that the respondents have resorted to conduct a de-novo inquiry after the receipt of the Inquiry Report under Rule 15 of the CCS (CC&A) Rules, 1965, which is not contemplated in the Rules, though, further inquiry is permitted.

2. Briefly stated, the applicant was issued with a Rule 14 Charge Memorandum on 17th March 2000 by the Fourth Respondent vide Annexure A-1 and the applicant had submitted Annexure A-2 representation against the charge sheet. An inquiry officer was appointed, vide Annexure A-3 and the inquiry was conducted and Inquiry Report furnished his inquiry report in 2006 but no orders were passed by the Disciplinary authority, as according to the respondents, the Disciplinary Authority was 'not satisfied' with the way the inquiry was conducted and ordered 'de novo inquiry' into the case, vide Annexure A-5. For this purpose, another Presenting Officer had been appointed vide Annexure A-6, who is functioning at Chennai, while the applicant is at Thiruvananthapuram and is due to superannuate in May 2010. It is this act of the disciplinary authority that has been under challenge. Since the matter revolves round a legal question, and the decision shall relate only to that legal question, the facts of the case relating to the inquiry have not been adverted to here.

3. Respondents have contested the O.A. and submitted in the reply that the conduct of the inquiry officer during the inquiry was questionable and he did not make reasonable efforts to find out the truth though there were many loopholes in



the statement of witnesses. The then disciplinary authority had therefore, disagreed with the findings of the Inquiry report and ordered for a fresh inquiry into the case. The counter consisted of a number of averments/statements relating to the merits of the matter and the applicant in his counter rebutted the same. Of course, as stated earlier, this order does not consider the charges in question.

4. Counsel for the applicant argued that there is no provision to order fresh inquiry on receipt of an inquiry report. The option available to the disciplinary authority is either to order 'further inquiry' or to accept the inquiry report or to disagree with the inquiry report and record the points of disagreement. The counsel, in support of his contention referred to the decision of the Apex Court in the case of *Kanailal Bera v. Union of India, (2007) 11 SCC 517*, wherein the Apex Court has held as under:-

"Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry."

5. Counsel for the respondents submitted that the disciplinary authority having found that the inquiry authority did not conduct himself properly had decided to hold a fresh enquiry.

[Signature]

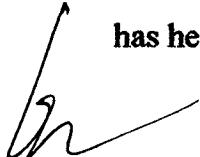
6. Arguments were heard and documents perused. Once the inquiry report has been filed, the option given available to the disciplinary authority has been clearly mentioned in Rule 15(1) of the CCS (CC&A) Rules, 1965, which reads as under:-

"15. Action on the inquiry report:

- (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. (emphasis supplied)*
- (2) *The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any articles of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government Servant ”*

7. It has been held by the Madras Bench in the case of *L. David vs Union of India* (1990) 14 ATC 590 (Mad) that De novo enquiry by a new Inquiry Officer subsequent to submission of enquiry report is held illegal. (This is a case of a Railway Servant and the rule referred to is 10 (1) and 10(2) of the Railway Servants (Disciplinary and Appeal) Rules, which is pari materia with Rule 15(1) and 15(2) of the CCS (CC&A) Rules, 1965.)

8. The reason why such a de novo inquiry at the stage when the inquiry report is furnished is not permitted is given in the decision of the Apex Court in the case of *Union of India v. K.D. Pandey*, (2002) 10 SCC 471 wherein, the Apex Court has held as under:-



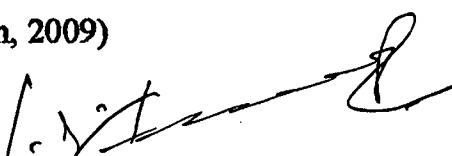
"5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly."

9. In view of the above, undoubtedly, Annexure A-5 and A-6 cannot stand judicial scrutiny and hence, the same are quashed. However, the question is whether the authority has any power to make 'further inquiry'. The answer is in affirmative, but in the instant case, since the matter related to 2000 and there had been inordinate delay in conducting the inquiry and furnishing the inquiry report (2006), whereafter also, the case was hibernating at the level of Disciplinary authority, if at all further inquiry is found necessary, the same should be conducted and decision arrived at before the date of superannuation of the applicant.

10. With the above directions, the O.A. is disposed of. No costs.

(Dated, the 30th March, 2009)


 (K. NOORJEHAN)
 ADMINISTRATIVE MEMBER


 (Dr. K B S RAJAN)
 JUDICIAL MEMBER