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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A. No. 185/87

Date of order: 26-10-89.

G.Lenin : Applicant

Versus

C.S.I.R. : Respondents

Appearance:

For the applicant : Mr. M.Rama Rao, Advocate

For the Respondents : Mr. Chennabasappa Desai, SC for CSIR

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The Hon'ble Mr. D. Surya Rao, Member (Judicial)

and

The Hon'ble Ms. Usha Savara, Member (Admn.)

(The judgment of the Bench delivered by the Hon'ble  
Mr. D. Surya Rao, Member (Judl).)

The applicant herein is an employee of the C.S.I.R.  
By a Memo. dated 21-1-1985, the second respondent initiated  
disciplinary proceedings against him and an enquiry officer  
was appointed. The applicant states that the enquiry  
officer had submitted his report in the matter. Thereupon  
the 2nd respondent issued the impugned proceedings  
No. 42/7/85-Vig. dated 7-11-86 stating that the oral  
enquiry was not held as per the procedure laid down in

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the C.C.S. (C.C. & A.) Rules 1965 and directed a de-novo enquiry. It is contended that the order dated 7-11-86 is illegal and bad as no reasons were given for ordering a de-novo enquiry, that the applicant is being harassed and as such the order is malafide and <sup>that</sup> the rules do not permit directing de-novo enquiry. It is, therefore, prayed that the impugned order may be set aside.

2. On behalf of the respondents, C.S.I.R., a counter has been filed stating that the de-novo enquiry was ordered as the enquiry officer had examined the presenting officer <sup>as a witness</sup> and subjected him to cross examination by the charged officer <sup>Smith</sup> and there is no provision in the rules for such examination. It was <sup>held</sup> stated that the oral enquiry conducted was not in accordance with the rules <sup>and hence a de-novo enquiry ordered</sup>. It is contended that the order of de-novo enquiry is in no way prejudicial to the charged officer. The allegations of malafide and harassment are denied.

3. Heard the learned counsel for the applicant Mr. M. Rama Rao and Mr. Chennabasappa Desai, S.C. <sup>for CSIR</sup> on behalf of the Respondents.

4. The question that arises is whether it is open to the disciplinary authority to direct <sup>a</sup> de-novo enquiry, on the facts and circumstances of the present case. It is no doubt open to the disciplinary authority to remand the matter to the enquiry officer for curing the defects if there have been any in conducting the enquiry. The record produced discloses that the enquiry officer had put certain questions to the presenting officer <sup>by way</sup> in the ~~sort~~ of clarification. The defence was also allowed to put certain questions though it is described as cross examination. The record does not disclose that the
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presenting officer was sworn<sup>in</sup> and examined as a witness.  
as such. The applicant has not made any grievance <sup>before the enquiry officer</sup> ~~of~~  
<sup>or before this Tribunal</sup>  
in regard to the putting of these questions to the presenting  
officer and eliciting clarifications by the enquiry officer.  
In the circumstances, it is not open to the disciplinary  
authority to remand the matter back for de-novo enquiry  
merely on this ground. In AIR 1971 SC 1447, K.R. Deb Vs.  
Collector, Central Excise, Shillong, it has been held  
as follows:

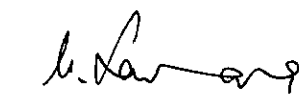
"It seems to us that Rule 15 on the face of it,  
really provides for one enquiry but it may be  
possible if in a particular case there has been  
no proper enquiry because some serious defect  
has crept into the inquiry or some important  
witnesses were not available at the time of  
the inquiry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

As <sup>Apply my</sup> ~~held by~~ the Supreme Court, <sup>division to</sup> ~~in~~ the instant case, <sup>we find that</sup> it was  
open to the disciplinary authority, on the basis of the  
enquiry officer's report and the material on record, to  
come to a conclusion, eschewing the statement made by  
the ~~presenting officer~~ if he felt that such statement is  
prejudicial to the applicant. But there is no ground  
whatsoever for directing a de-novo enquiry. If such a  
procedure is to be resorted to, the applicant who has  
already disclosed his defence would be prejudiced as

it would be possible for the department to fill up the gaps in regard to any lacune or defects in the prosecution's case.


5. In the circumstances, we set aside the impugned order dated 7-11-86 leaving it open to the disciplinary authority to proceed on the basis of the enquiry Officer's report, eschewing the answers given by the presenting officer, if in the opinion of the disciplinary authority, such material is irrelevant <sup>or prejudicial to the appellant's</sup> and should not be looked into. With this <sup>observation</sup> the O.A. is allowed and in the circumstances there will be no order as to costs.

  
(D. SURYA RAO)  
MEMBER (J)

  
(USHA SAVARA)  
MEMBER (A)

Dated: 26th October, 1989.

mhb/

  
Deputy Registrar (Adm) 27/10/89

  
27/10/89