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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:

AT HYDERABAD.

D.A.No. 282 of 1987.

Date of Order: 30.1.90.

Ch.V.S.S.N.Sarma

...Applicant.

Versus.

The Secretary,
Department of Atomic Energy,
Bombay and 2 others.

...Respondents.

Counsel for Applicant: J.V.Lakshmana Rao,

Counsel for Respondents: E.Madan Mohan Rao, Add. CGSC

C O R A M:

THE HON'BLE SHRI D.SURYA RAO: MEMBER (J).

THE HON'BLE Ms.USHA SAVARA: MEMBER (A).

(Judgment of the bench delivered by Hon'ble
Shri D.Surya Rao, HM(J).

The applicant herein, a Stenographer in the
office of the Nuclear Fuel Complex, Hyderabad, seeks
question the following orders:-

1. Order No.6/15(31)/85-I&M(NFC) dated December 1986
passed by the 1st respondent confirming the penalty
of removal from service imposed by the disciplinary
authority.

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Consequent thereto, on 13.10.1981, a fresh charge sheet was issued under Rule 14 of the CCS (CCA) Rules read with Para 44 of the NFC Standing Orders. On 30.10.1981, the applicant submitted a written statement of defence. Thereafter, enquiry was held and on 28.2.1984, a punishment of removal from service was imposed upon the applicant. He preferred an appeal on 6.4.1984 to the Chief Executive, NFC. The said appeal was dismissed on 28/29.6.1984. Thereafter on 30.7.1984, the applicant submitted a revision petition to the Secretary, Department of Atomic Energy. The revision petition was rejected on 24.12.1986. ^{Here} ~~Thereupon~~, the applicant has filed the present application on 15.4.1987 for quashing of punishment order of removal and for reinstating him to service.

3. On behalf of the respondents a counter has been filed ^{various claims} denying ~~all the~~ ^{the} contentions raised by the applicant. It discloses that the applicant had been originally charged by an order dated April 30/May 3, 1976. This enquiry resulted in a finding of guilty on the ground that the charge was proved. The applicant was removed from service by an order ^{After rejection of his appeal} dated 17-11-1978. ~~Thereupon~~ ^a review petition was submitted by the applicant and that the reviewing authority set aside the appellate order dated 26-4-1979 and remanded the matter to the disciplinary authority to initiate a de-novo enquiry. It is contended in the counter that this order of the reviewing authority was not defective. Thereafter a fresh charge-sheet was issued and a regular enquiry was held. The applicant was found guilty by the Enquiry Officer based upon oral and documentary evidence. The Disciplinary Authority by an order dated 28-2-1984 removed the applicant from service.

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2. Order No.NFC/PA.V/2606/305 dated 28.2.1984 passed by the 3rd respondent - Manager, Personnel & Admn., NFC, removing the applicant from service, and
3. Order No.NFC/PA.V/2606/S-6/889 dated 28/29.6.1984 passed by the 2nd respondent, Chief Executive, NFC, confirming the penalty of removal from service of the applicant imposed by the disciplinary authority.

2. The applicant was initially placed under suspension on 20.4.1976 under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules. On 4.5.1976 this order was cancelled and on the same date a fresh order of suspension retrospectively placing the applicant under suspension from 20.4.1976 was issued under Para 41.3(i) of NFC Standing Orders. On 30.4.1976/3.5.1976, a charge sheet was issued under Para 41.2(ii) of the Standing Orders. After enquiry, a final order dated 17.11.1978 was passed imposing upon him a punishment of removal from service. The applicant preferred an^{appeal} against the order of punishment dated 17.11.1978 to the Chief Executive, NFC. The appeal was rejected by an order dated 26.4.1979. He submitted a review petition to the Secretary, Department of Atomic Energy on 28.9.1979. By an order dated 7.5.1981, the review/revision petition was disposed of. Two findings were given therein, first that the findings of the disciplinary authority and the appellate authority are not warranted by evidence on record and secondly that all^{the} available evidence to substantiate the charge was not produced. Consequently, the appellate order was set aside^{and the case was remitted back} with a direction to the disciplinary authority to hold a Denovo enquiry.

This was confirmed by the appellate authority as well as by the Reviewing Authority, on a revision petition filed by the applicant. It is submitted in the counter that there is no infirmity in the procedure followed, that the charges are duly proved and that it was established that the applicant was handling temporary advances and that he was misappropriating the money and was not properly maintaining the records.

4. We have heard the learned counsel for the applicant Shri J.V.Lakshamana Rao, Advocate and Shri E.Madan Mohan Rao, the learned Additional Standing Counsel for the Central Government, on behalf of the Respondents.

5. Shri Lakshamana Rao, the learned counsel for the applicant has limited his arguments to one contention, namely, that it was not open to the revisional authority to order ^{allowable power of the} a de-novo enquiry, by his order dated 7-5-1981. The order of the reviewing authority, namely the Principal Secretary to the Government of India, Dept. of Atomic Energy, Bombay, reads as follows:

"And Whereas Shri Ch.Sarma filed the Review Petition dated September 29, 1979 with the Secretary, Department of Atomic Energy;

And whereason consideration of the said Review Petition the undersigned is of the view that the findings of the Disciplinary Authority and those of the Appellate Authority are not warranted by the evidence on records and that all the available evidence to substantiate the charge was not produced;

Now, therefore, the undersigned in exercise of the powers under Rule 29(1) of CCS (CCA) Rules 1965, hereby:

- (i) sets aside the Appellate order No.NFC/PA.V/20/ S-6/832 dated April 26, 1979; and
- (ii) remits the case to the Disciplinary Authority with the direction to initiate de novo enquiry on the charge against Shri Ch.Sarma under Rule 14 of the CCS (CCA) Rules 1965 and dispose of the case accordingly."

(R)

6. The question is whether it was open to the reviewing authority to have remanded the matter for de-novo enquiry on the charge already framed. The Supreme Court has, in various decisions, held that if an earlier enquiry is quashed on technical ground, the second enquiry can be held on merits, vide AIR 1962 SC 1334 (D.P.N.Rai Sharma Vs. State of U.P.); AIR 1979 SC 1923 (A.N.Shukla Vs. State of M.P.); AIR 1981 SC 858 (Union of India Vs. M.B.Patnaik). But all these cases were cases wherein the findings of the disciplinary authority were set aside or quashed on the ground of non-compliance of certain technical requirements in the conduct of the enquiries. Where, however, the charges are held not proved, it is clearly established that a fresh or de-novo enquiry cannot be ordered.

In 1972 SLR 601 (Punjab) (Prakash Nath Saidhu Vs. The Fin. Commissioner, Punjab) it was held that fresh enquiry into the charges of which a government servant was exonerated earlier, could not be ordered. Again in 1975(1)SLR 232 (Patna) (Hridaya Narayan Prasad Vs. State of Bihar) it was held that the second departmental enquiry on the same facts on which the petitioner was exonerated earlier cannot be held, since there is no rule which orders holding of such an enquiry. In AIR 1971 SC 1447 (K.R.Deb Vs. Collector, Central Excise) it was held that the Rule 15 of the C.C.S. (C.C. & A.) Rules contemplates only one enquiry, that a disciplinary authority can ask the enquiry officer to record further evidence if some serious important defect has crept in the enquiry or some witnesses available were not examined. It was, however, held that successive enquiries cannot be ordered on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. Applying these decisions, the question is whether fresh enquiry could have been ordered by the disciplinary authority, namely, the Secretary, Govt. of India, Dept. of Atomic Energy, Bombay. The said Reviewing

Authority had held that the evidence on record does not warrant the findings recorded by the disciplinary authority and the appellate authority. These authorities had recorded findings of guilt against the applicant. Hence if the evidence on record does not warrant a finding that the employee is guilty then the only course either to a disciplinary authority, an appellate authority or to a reviewing authority was to exonerate the employee and direct his reinstatement into service. The reviewing authority has no doubt stated that all available evidence to substantiate the charge was not produced. If that be the case, it was necessary for him to what is the available evidence which was not produced or what is the additional evidence that is available and yet not considered by the disciplinary authority or the enquiry officer. After giving such a finding as to what is the additional evidence which ought to have been recorded, in terms of the decision in AIR 1971 SC 1447, he could have remitted that enquiry back for recording the evidence of such witnesses and for a finding thereupon. Instead of that what was done was a vague suggestion that all available evidence to substantiate the charge was not produced and a direction to hold a De-novo enquiry. It is clear that he has done so only because the report of the enquiry officer did not appeal to him. The matter is directly covered by the decision of the Supreme Court in K.R. Deb's case referred to above. We would accordingly hold that the direction given by the Reviewing Authority in his order No.2/4/79-Vig. dated 7-5-1981 directing for a de-novo enquiry is illegal and contrary to the law. When there was no evidence on record to substantiate the

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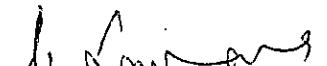
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charges, the applicant was entitled to an order setting aside the earlier reports finding him guilty of the charges and for his reinstatement. The subsequent charges framed afresh for the same offences and the consequential orders of the disciplinary authority and the appellate authority and culminating in the orders of the revisional authority in letter No.6/15(31)/85-I&M(NFC) dated 24-12-1986 are accordingly quashed and set aside. The applicant is directed to be reinstated into service. The applicant would be entitled to all consequential benefits consequent on such reinstatement.

6. The application is allowed accordingly but in the circumstances of the case there will be no order as to costs.



(D. SURYA RAO)
MEMBER (J)



(USHA SAVARA)
MEMBER (A)

Dated: 31st January 1990


S. Venkateswaran
DEPUTY REGISTRAR (J).
31.1.90

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TO:

1. The Secretary, Department of Atomic Energy,
C.S.M. Marg, Bombay-400 039.
2. The Chief Executive, Nuclear Fuel Complex, & ECIL (PO)
Hyderabad-500 762.
3. The Manager (Personnel & Admn.) Nuclear Fuel Complex,
ECIL (PO) Hyderabad-500 762.
4. One copy to Mr. J.V. Lakshmana Rao, Advocate, G-18, P&T
Quarters, Hyderabad-500 020.
5. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC, CAT, Hyderabad.
6. One spare copy.
7. one copy to D.R. (J): C.A.T. HYDERABAD
kj.


T. S. Lakshman Rao
C.A.T. HYDERABAD