

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.561 of 2014
Cuttack this the 19th day of January, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Biswanath Parida, aged about 51 years, S/o. Trinath Parida, At/PO-Kumbharmunda Kate, P.S-Bangiriposi, Dist-Mayurbhanj, presently working as Medical Assistant, ARC Hospital, Charbatia, Choudwar, Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Cabinet Secretary, East Block-V, R.K.Puram, New Delhi-110 066.
2. Director, Aviation Research Centre, East Block-V, R.K.Puram, New Delhi-110 066.
3. Deputy Director (A), Aviation Research Centre, Director General of Security, Cabinet Secretariat, East Block-V, R.K.Puram, New Delhi-110 066.
4. Joint Director(Admn.), Aviation Research Centre, Charbatia, Choudwar, Cuttack-754 028.

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Medical Assistant at the Aviation Research Centre(ARC) Hospital, Charbatia at the time of filing of the O.A. He had joined ARC Hospital, Charbatia as Medical Assistant on 1.2.2003. He was placed under suspension under Rule-10(1) of CCS(CCA) Rules, 1965 by the Joint Director, ARC, Charbatia (Respondent No.4) vide Memo No.VII/PF/2003-13088 dated 06.07.2012 on contemplation of departmental

proceedings. He was issued a charge sheet under Rule-14 of CCS(CCA) Rules, 1965 by the Deputy Director (A), ARC, Director General (Security), (Cabinet Secretariat) (Respondent No.3) dated 6.12.2012 on the allegation that during the course of duty as a medical Assistant at ARC Hospital, Charbatia he took two photographs and made a photo clip of a minor girl with his mobile phone. For the sake of clarity the Article of Charge is reproduced here:

“Shri Biswanath Parida while performing his duties as Medical Assistant at ARC Hospital, Charbatia took two photographs and made one video clip of a minor girl, Ms.Neha daughter of Sgt NK Sivach with his mobile phone on 23.05.12 despite her objection and kept on praising her beauty and dress. On her subsequent visit to the hospital on 04.07.12, Shri Biswanath Parida showed the hard copies of the photographs, developed out of the soft copies in his mobile phone to Ms.Neha and insisted to present her on her birthday for which he asked her birthday date. Taking photographs and video clips of a minor girl with personal mobile phone and storing it for a long period and subsequently developing hard copies of the photographs without the consent of either the girl or her parents do reflect the sign of turpitude and uncivilized conduct on the part of Shri parida.

2. Past record of Shri Biswanath parida shows that he had committed the misconduct of abusing a female patient on 03.01.06 at ARC hospital, Charbatia for which Charge Sheet under Rule 14 was issued and after the charges were proved and he was awarded the penalty of ‘reduction of pay by two stages for the period of 05 years w.e.f 01.08.06, with cumulative effect’.

3. By this aforesaid acts of commission and omission Shri Biswanath Parida has conducted himself in a manner unbecoming of a Government Servant & thus has contravened Rule 3(1)(iii) of CCS(Conduct) Rules, 1964”.

The applicant denied the charge against him. The disciplinary proceedings were conducted against him by appointing an Inquiry Officer. The Presenting Officer was appointed under sub-rule-5(c) of Rule-14 of CCS(CCA) Rules. The Inquiring Authority submitted his report to the Disciplinary Authority (Respondent No.3) on 5.9.2013. The applicant alleges that a copy of inquiry report was not given to him. The Respondent No.3 proposed to hold fresh inquiry by appointing another Inquiring Officer. A new Presenting Officer was also appointed and the Disciplinary Authority directed to conduct the inquiry de novo vide order dated 29.10.2013 on the ground that the inquiry report submitted by Shri Rajesh Parihar, the ex-Inquiring Authority suffers from a number of infirmities. The new Inquiring Authority Shri R.R.Nandy conducted a fresh departmental inquiry and submitted his report to the Disciplinary Authority on 9.5.2014. A copy of the same was given to the applicant vide order dated 23.6.2014 with a direction to submit the written representation, if any, within 15 days from the date of receipt of the report. At this stage, the applicant has challenged the order dated 23.6.2014 in the present O.A. praying for the following reliefs:

- “i) That the order dated 29.10.2013 under Annexure-A/8 & A/9 be quashed.
- ii) That the order dated 23.06.2014 along with inquiry report dated 09.05.2014 under Annexure-A/10 be quashed.

And further be pleased to pass any order/order(s) as deemed fit and proper to give complete relief to the applicant.

2. The applicant has based is prayer on the following grounds:

- i) The action of the Respondent No.3 in appointing a new Inquiring Authority and a new Presenting Officer after completion of the departmental inquiry without any reason is bad in law and cannot be sustained in the eyes of law.
- ii) The action of Respondent No.3 is violative of Articles 14 and 16 of the Constitution of India.
- iii) The Disciplinary Authority has not recorded the procedural infirmities which prompted him to conduct a fresh inquiry.
- iv) Rule-15(1) of CCS(CCA) Rules, 1965, provides that the Disciplinary Authority may record the reasons for remitting a case back to the Inquiring Authority for further inquiry and report and the Inquiring Authority should hold the further inquiry as per the provisions of Rule-14. There is no provision under law to hold a fresh inquiry by appointing a new I.O. and P.O.
- iv) As per the decision of the Hon'ble Supreme Court in K.R.Deb vs. Collector, Central excise (AIR 1971 SC 1447) if there is some defect in the inquiry conducted by the Inquiring Authority, the Disciplinary Authority can direct the Inquiry Officer to conduct further inquiry in respect of that matter but cannot direct a fresh inquiry to be conducted by some other officer.

3. The respondents in their counter-reply filed on 29.10.2014 have contested the claim of the applicant. It is their contention that the charge against the applicant in the present O.A. is of serious and highly sensitive nature since it involves

violation of the privacy and causing extreme discomfiture to a minor girl. The applicant had taken her photographs and made a video clip of her from his personal mobile even without her consent. The minor girl is the daughter of an employee of the same organization. The applicant had participated in the fresh inquiry without any protest or without raising any objection regarding its validity. Only when the results of the inquiry went against him he raised the objection in the present O.A. As a willing participant in the de novo inquiry, he is now estopped from questioning its validity.

The first Inquiring Authority Shri Rajesh Parihar had submitted the inquiry report dated 11.6.2013 and had reported that the single charge leveled against the applicant in the present O.A. was proved. However, the inquiry report submitted by him was full of serious flaws and contrary to the provisions of CCS(CCA) Rules, 1965. Therefore, the Disciplinary Authority did not accept the inquiry report and ordered conduct of de novo inquiry by appointing Shri R.R.Nandy as new Inquiring Authority and Shri D.Ravikumar as new Presenting Officer. The first inquiry report contained serious flaws such as no summons were issued by the Inquiry Officer to the charged official and the Presenting Officer for the hearings. Daily order sheet was not maintained by the Inquiry Officer. The I.O. did not mention the date of regular hearing in the proceedings drawn up by him. The inquiry had been

completed within a short span of three days and the charged officer was not given an opportunity to get himself examined as his own witness. Similarly, no opportunity was given to the C.O. to engage his Defence Assistant and moreover, copy of the written brief submitted by the Presenting Officer was not provided to the charged official and the Inquiry Officer had put many leading questions to the charged official. Hence the Disciplinary Authority came to the conclusion that the inquiry was not conducted in accordance with the prescribed procedures and principles of natural justice. Therefore, a new Inquiry Officer was appointed with a new Presenting Officer and the disciplinary proceedings were conducted as per procedure.

A serious view was taken on the lapse in conducting the departmental inquiry by the former I.O. and the higher authorities in the respondent-organization conveyed their displeasure to the concerned officer vide their Memo dated 22.10.2013. The charged official participated in the de novo inquiry without any objection. The new I.O. followed all the due procedure while conducting the departmental proceedings. The report of the new Inquiry Officer had also held the charges proved and accordingly, copy of the inquiry report was given to the applicant for his defence statement. The applicant instead of replying to the inquiry report has chosen to approach the

Tribunal. The Respondents have submitted that the O.A. deserves to be dismissed.

4. The Respondent had filed M.A.No.710 of 2014 on 28.8.2014 praying for recalling/vacating/modifying the interim order dated 17.7.2014 on the ground that there has been no violation of rules and the departmental proceedings should be allowed to continue. They also filed a Misc.Application No.1003 of 2014 on 11.12.2014 with a similar prayer to vacate/recall/modify the interim order dated 17.7.2014.

5. The matter was heard on 7.12.2017. During the course of arguments, the learned counsel for the applicant cited the judgment of the Hon'ble Supreme Court in K.R.Deb vs. Collector, Central Excise, Shilling (AIR 1971 SC 1447) to plead that under the law appointment of new IO and PO to conduct inquiry afresh is not permissible.

Similarly he also cited the decision of the Hon'ble Supreme Court in Vijay Shankar Pandey vs. Union of India (2015) 1 Supreme Court Cases (L&S) 129, in which it has been held that the fact that the report submitted by an Inquiring Authority was not acceptable to the Disciplinary Authority cannot be a ground for rejecting the inquiry report and ordering a second inquiry.

6. In the present O.A. de novo disciplinary proceedings has been challenged by the applicant from the stage where he has been given a copy of the Inquiry Officers' report for presenting

his defence. This Tribunal had granted a stay on the departmental proceedings on 17.7.2014 and the departmental inquiry has been stalled. The issue to be decided in the present O.A. is whether the action of the Disciplinary Authority in appointing a new Inquiring Authority and a new Presenting Officer and ordering a fresh inquiry stands the scrutiny of law.

7. In the present O.A., the respondents argue that the applicant has been charged with serious misconduct unbecoming of a Government servant. The charge memo shows that the applicant had also been punished earlier in January, 2006 with reduction of pay for abusing a female patient in ARC Hospital. Although the fresh inquiry offered by the Disciplinary Authority has been conducted as per procedure and the charged official has been examined, given sufficient opportunity to defend himself and the charge has been held proved, the applicant has challenged the order of the fresh inquiry on the ground that there is no such provision in law to appoint a new Inquiry Officer and ordering fresh inquiry. The order of the Disciplinary Authority dated 29.10.2015 reads as follows:

“WHEREAS an inquiry was ordered against Shri B.N.Parida, Medical Assistant, ARC, Hospital, Charbatia under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, by issue of Charge Sheet Memo No.ARC/Pers.VI/81/2012-5372 dtd. 06.12.2012.

WHEREAS reply dated 28.12.2012 from Shri B.N.Parida, denying the charges mentioned in the

charge sheet memorandum dtd. 06.12.12 was forwarded by AD(Pers.), ARC, Charbatia.

WHEREAS Wg.Cdr. Rajes Parihar, JDD (Logistics) was appointed as Inquiring Authority vide Order No.ARC/Pers-V/81/2012-1313 & 1314 dtd. 09.04.2012 and Ms.Manoj Bala Pattnaik, P.S. was appointed as Presenting Officer vide Order No.ARC/Pers.V/81/GSC/32/Lgs. 1741 dtd. 05.09.2013 suffers from number of infirmities.

NOW, THEREFORE, the undersigned proposes to hold the inquiry "De Novo" by appointing Shri R.R.Nandy, AD(Pers.), ARC Charbatia and Shri D.Ravikumar, SO(Pers.I), ARC Charbatia as Inquiring Authority and Presenting Officer respectively".

8. The charge against the applicant has been framed under Rule-14 of the CCS(CCA)Rules, which also prescribes the procedure for imposing major penalties. Under rule-15 of CCS(CCA) Rules, the Disciplinary Authority has the power to remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold further inquiry according to provisions of Rule-14. The Disciplinary Authority has to record the reasons for remitting the case back to the Inquiring Authority. In the present O.A., the Disciplinary Authority has recorded the reason that the inquiry report suffered from a number of infirmities and has stated that he proposes to hold the inquiry de novo by appointing a new Inquiring Authority and new Presenting Officer. The justification for doing so is the Inquiry Officer's report suffering from number of infirmities. Although Rule 15 does not speak of de novo inquiry, it does provide for further inquiry to be

conducted. The applicant's reliance on the two decisions of the Hon'ble Supreme Court is no doubt relevant. The Hon'ble Apex Court in K.R.Deb vs. Collector, Central Excise (supra) has observed as follows:

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry 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 inquiry or were not examined for some other reason, the Disciplinary Authority may as the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely 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".

14. In our view the rules do not contemplate an action such as was taken by the Collector on February, 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

15. Before the Judicial Commissioner the point was put slightly differently and it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant.

16. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Article 311(2) of the Constitution. The appeal is accordingly allowed and the order dated June, 4, 1962 quashed and it is declared that the appellant should be treated as still

continuing in service. He should be paid his pay and allowances for the period he has been out of office. The appellant will have his costs here and in the Court of Judicial Commissioner. Fees shall be payable by the appellant to his advocate and be allowed on taxation".

In *Vijay Shankar Pandey vs. Union of India & Ors. (supra)*, the Hon'ble Supreme Court has also reiterated the decision in *K.R.Deb(supra)* and has reaffirmed with the following observation:

"26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognized the possibility of a further enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry".

9. Rule- 15 of CCS(CCA) Rules reads as follows:

"15. Action on the inquiry report:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons in the 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.

(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 the own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article 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.

(2-A). The Disciplinary Authority shall consider the representation, if any, submitted by the government servant and record its findings before proceeding further in the matter as prescribed in sub-rule(3) and (4)..

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses(i) to (iv) of Rule 11 should be imposed on the government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clause(v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order

imposing any such penalty on the Government servant".

10. A reading of the above rule makes it amply clear that as per the procedure laid down in Rule-15 of the CCS(CCA) Rules, the Disciplinary Authority has the following two options : (i) he can keep record all the procedural lapses and infirmities in the inquiry report and remit the case back to the same Inquiry Officer for further inquiry or (ii) he may record the points of his disagreement with the Inquiry Officer's report and communicate it to the delinquent officer. On receipt of the submission of the delinquent officer he may examine the same and pass his reasoned and detailed order. Rule-15 of CCS(CCA) Rules does not offer the option of a fresh/de novo inquiry to the Disciplinary Authority. The judgments of the Hon'ble Supreme Court quoted in Para-8 above have firmly and conclusively laid down this position. In this O.A. the applicant has mainly challenged the action of the Disciplinary Authority in ordering a fresh inquiry. It is pertinent to note that the report submitted by the first Inquiring Authority had also held the charges as proved. So obviously, on merit there is no difference between the conclusions of the two Inquiring Authorities. But there was a serious difference in the procedures adopted during the two inquiries. However, inasmuch as there is no provision for a de novo inquiry under Rule-15(1), the proceedings conducted by Shri R.R.Nandy, the second Inquiring Authority are non-est.

The Disciplinary Authority has the option of only acting on the report of Shri Rajesh Parihar the first Inquiring Authority within the framework of Rule-15 of CCS(CCA) Rules.

11. Taking the facts and points of law into consideration in the present O.A., we are of the view that the disciplinary proceedings against the applicant have been vitiated by a procedural anomaly. However, taking the seriousness of the charge involved and considering that the applicant has already been punished earlier for abusing a female patient, we are not inclined to quash the disciplinary proceedings. We, therefore, remit the case back to the Disciplinary Authority to resume the proceedings from the stage where Rule-15 of CCS(CCA) Rules came into picture. He has to act strictly within the framework of Rule-15 and carry forward the disciplinary proceedings. The O.A. disposed of with the above orders. The Respondents are directed to complete the disciplinary proceedings within a period of sixty days from the date of receipt of this order. The stay granted on 17.07.2014 stands vacated. All the Misc. Applications are closed. No order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

BKS

