

**Central Administrative Tribunal
Principal Bench**

OA No. 2381/2018

This the 10th day of January, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

Pravin Kumar, Age 56 years, Group 'A',
Son of Shri Ram Yatan Prasad,
Executive Engineer (SG),
Jt. Director (Design),
O/o of the CE (R/D), Delhi
Probyn Road, Delhi-110054.

... Applicant

(By Advocate: Sh. Susheel Sharma)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
Government of India,
Sena Bhawan,
New Delhi-110011.
2. Engineer-in-Chief Branch,
Integrated HQ of MoD (Army),
Kashmir House, Rajaji Marg,
New Delhi-110011.
3. Director (Vigilance),
Room No.341-A, 'B' Wing,
Government of India,
Ministry of Defence,
Sena Bhawan,
New Delhi-11.

... Respondents

(By Advocate: Sh. Rajeev Kumar)

ORDER (ORAL)**By Justice L.Narasimha Reddy, Chairman**

The applicant is working as Executive Engineer in the Ministry of Defence. Disciplinary proceedings were initiated against him by issuing a charge memo dated 18.11.2004. The allegation was that the applicant demanded and accepted gratification of Rs.5,000/- from one Umesh Salgaonkar, Partner of M/s S.K.Salgaonkar & Bros., Vasco, Goa; for recommending the extension period of completion of work of construction of 24 deficient married accommodation for Navy at NOFRA, Goa. Criminal proceedings were also initiated against the applicant. It appears that the applicant was acquitted by the Criminal Court.

2. It is stated that the Enquiry Officer submitted a report on 10.07.2017. A copy of the same was not made available to the applicant. The Disciplinary Authority, however, passed an order dated 19.04.2018 observing that the Enquiry Officer was guided by the findings in the criminal case and that he was expected to summon the witnesses to verify and appraise their version, but he did not do that. The Disciplinary Authority has decided to remit the matter to further enquiry, to be done in accordance with the CCS (CCA) Rules, 1965 by obtaining deposition of witnesses.

3. The applicant feels aggrieved by the same and has incidentally challenged the very charge sheet. The applicant contends that though the Disciplinary Authority has every right to order further enquiry, the impugned order dated 20.04.2018 does not accord with the principles of law that apply in this behalf. He contends that the very assumption that the Enquiry Officer was not supposed to be guided by the findings in the judgment of the criminal case, or that he was supposed to summon witnesses, is contrary to law. He further submits that despite the specific requirement under law that a copy of the report of the Enquiry Officer must be furnished to the charged employee, it was denied to him.

4. Respondents filed a counter affidavit opposing the OA. It is stated that the Enquiry Officer is required to follow certain steps as required under law and with a view to give an opportunity to both the parties on certain limited aspects, the matter was remanded. It is stated that no prejudice can be said to have been caused to the applicant.

5. We heard Sh. Susheel Sharma, learned counsel for applicant and Sh. Rajeev Kumar, learned counsel for respondents.

6. The applicant faced the criminal proceedings on the one hand and departmental proceedings, on the other. In the criminal case, he was acquitted. In the departmental

proceedings the Enquiry Officer submitted a report on 10.07.2017. However, a copy of the same was not made available to the applicant.

7. It is no doubt true that under Rule 15 of the CCS (CCA) Rules, it is competent for the Disciplinary Authority even to disagree with the findings of the Enquiry Officer or to direct further enquiry. However, before doing that, he has to satisfy himself on certain aspects, and to follow certain procedural norms. If he intends to disagree with the report, he is required to issue a notice to the delinquent employee requiring him to explain as to why the findings recorded by the Enquiry Officer be not disagreed, duly indicating the reasons therefor. Along with such notice, he has to furnish a copy of the report of the Enquiry Officer to the employee. The Disciplinary Authority in this case did not choose to adopt this course.

8. Rule 15(1) permits the Disciplinary Authority to order further enquiry. Here again, a copy of the report of the Enquiry Officer must be furnished to employee and then, an order duly containing the reasons for ordering further enquiry must be passed and made available to the employee. Ordering further enquiry is not a matter of course and it should be supported by valid reasons.

9. In the instant case, the reasons assigned by the Disciplinary Authority are evident from the impugned order dated 19.04.2018 which reads as under:-

“I am directed to refer to the Inquiry Report dated 10.07.2017, forwarded therewith vide letter dated 29.07.2017 in the disciplinary proceedings against Shri Pravin Kumar, EE.

2. On examination of Inquiry Report it has been observed that-

(i) The IO has arrived at the decision completely on the basis of judgement of Special Court of CBI in Goa at Mapusa, in Special Case No. 12/2013/T dated 10.09.2014, without following, Sub Rule 23 of Rule 14 of CCS (CCA) Rules, 1965 (Govt. of India Decision). As per the said rule the IO was expected to summon the witnesses, read out the statement of witnesses already recorded in CBI Court proceedings during oral inquiry and if it is admitted by them, the cross-examination of the witness could have commenced.

(ii) Further, General Examination as per the provisions made in the Sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965 has not been done.

3. In view of above, Disciplinary Authority has decided to remit the Inquiry to Inquiry Officer for completing the Inquiry as stipulated under CCS (CCA) Rules, 1965 and by obtaining deposition of the Witnesses.

4. Accordingly, Inquiry Report along with connected documents is returned herewith.

5. This has the approval of Competent Authority.”

10. The Disciplinary Authority was of the view that the Inquiry Officer; a) cannot look into the judgement of the Criminal Court at all and b) was under obligation to summon witnesses. On both counts, the view taken by the Disciplinary Authority is incorrect. He did not furnish the copy of the report of the Inquiry Officer to the applicant. An employee has

every right to rely upon the findings recorded by the Criminal Court and the Inquiry Officer is under obligation to take this into account. Secondly, it is no part of the duty of the Inquiry Officer to summon witnesses. It is the Presenting Officer, or Department in general to name the witnesses and examine them in accordance with law.

11. For the foregoing reasons, we allow the OA setting aside the Order dated 19.04.2018. However, we do not interfere with the charge memo. The Disciplinary Authority is directed to take next step in the matter, in accordance with law, within two months from the date of receipt of a copy of this Order.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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