

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4526 of 2014

Orders reserved on : 15.10.2019

Orders pronounced on : 23.10.2019

**Hon'ble Mr. Pradeep Kumar, Member (A)**  
**Hon'ble Mr. Ashish Kalia, Member (J)**

Raghvendra Singh  
Food Hygiene Belder, age 36 yrs.  
S/o Sh. Govind Singh,  
R/o A-17, MCD Flats,  
Medical Complex,  
Gulabi Bagh, Delhi-110007.

....Applicant

(By Advocate : Shri Jitender Singh and Shri S.D. Singh)

VERSUS

1. South Delhi Municipal Corporation,  
Through its Commissioner,  
Civil Centre, JLN Marg,  
Minto Road, New Delhi-110002.
2. Dy. Commissioner, West Zone,  
South Delhi Municipal Corporation,  
Civil Centre, JLN Marg,  
Minto Road, New Delhi-110002.
3. Dy. Law Officer (Vig.)  
South Delhi Municipal Corporation,  
Civil Centre, JLN Marg,  
Minto Road, New Delhi-110002.

.....Respondents

(By Advocate : Shri R.K. Jain)

**ORDER**

**Hon'ble Mr. Ashish Kalia, Member (J) :**

The reliefs claimed by the applicant are as under:-

- “(a) quash and set aside the office order dated 2.7.2014, issued to the Applicant by Respondent No.3 on the basis of the order dated 9.5.2014 allegedly passed by

the Respondent No.2 as mentioned in the impugned office order dated 2.7.2014 and quash any other consequential action, orders passed by Respondent No.2 to 4 in pursuance to the above mentioned orders.

- (b) quash the chargesheet dated 5.8.2014 and office order dated 14.10.2014 issued by the Respondent No.3 and the authority of Respondent No.4 be quashed for holding any inquiry against the Applicant in pursuance to the basic impugned order dated 2.7.2014;

2. The applicant was confirmed on post of Food Hygiene Beldar on 1.2.2005. Applicant who was a member of a party for ensuring Food hygiene. During the course of duty, a raid was conducted by the Respondents. But due to non adherence of the orders of superior, which caused hurdle in the raid of the Department, the Applicant was put under suspension and draft chargesheet was issued to him and regular departmental action was initiated against him. Further the Applicant has inspected the documents of the R.D.A., Bio Data, statement of allegation, draft chargesheet, list of documents & list of witnesses etc.

2.1 Later on the applicant was re-instated back in service on 18.4.2012 during pendency of enquiry. Further on division of MCD in three zones, Applicant was transferred to South Zone, SDMC. His departmental head in his earlier zone, the Dy. Commissioner/City Zone, after considering entire facts of the case, had dropped the departmental proceedings on 24.8.2012 pending against Applicant.

2.2 Thereafter, Applicant has received communication dated 9.5.2014 in regards to the reopening of the said departmental proceedings against him by Competent Authority, Commissioner West Zone where he has been posted after being transferred to SDMC. While reopening the regular departmental action, it was observed that Dy. Comm. (City Zone) NDMC who had earlier passed the order dropping RDA, was not the Competent Authority to take the said decision in this regard as the Applicant was already transferred to a new jurisdiction. It is further submitted that the Applicant has been served same chargesheet, statement of misconduct, list of witnesses and no new evidence was found by the said Authority on 5.8.2014, when RDA was reopened.

2.3 The Applicant raised the objection that present departmental proceedings are initiated illegally without any backing of law because earlier departmental proceeding attained finality and it cannot be reopened. By this action of respondent, Applicant is being vexed twice for the same offence which is violative of Article 20 of the Constitution.

3. The respondents filed reply and submitted that the applicant has been working as Food Hygienic Beldar in the erstwhile unified MCD and the Applicant was placed under suspension vide order dated 17.1.2012 with pending enquiry, while the Applicant was working in City Zone. A draft charge sheet was also prepared in the case of the applicant and

thereafter, a case RDA no. 3/23/12 was registered against the Applicant. The Applicant was reinstated in service vide order dated 19.4.2012 pending enquiry against the Applicant. Meanwhile the erstwhile unified MCD was trifurcated into three separate legal entities viz. North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation. The Applicant was transferred to South Delhi Municipal Corporation and was posted in West Zone under SDMC.

3.1 It is worth mentioning here that City Zone area falls under North Delhi Municipal Corporation. Hence now the applicant had become the employee of South Delhi Municipal Corporation as per Section 90-A of the amended DMC Act. The Deputy Commissioner, City Zone vide Order dated 19.12.2012 had dropped the proceedings against the applicant.

3.2 It was submitted that Deputy Commissioner, City Zone had no authority to pass any order with respect to the Applicant, as the Applicant was no more employee of City Zone [which comes under NDMC], but had become the employee of SDMC. Hence, there was no relationship of employer and employee between the applicant and the NDMC.

3.3 When the above facts came to the knowledge of the respondent no.2, the respondent no.2 examined the case of the Applicant and it was decided to re-open the RDA no.3/23/2012 against the applicant and the order for dropping dated

24.8.2012 which was passed by the Deputy Commissioner, City Zone and which was notified vide office order dated 19.12.2012, it was withdrawn and was further directed that necessary proceedings shall follow as prescribed under Regulation 8 of DMC (Control and Appeal) Regulations, 1959. In pursuance of the same, a charge sheet has been issued to the applicant on 5.8.2014. Hence, the orders passed by the respondents are legal and valid and hence the present OA is liable to be dismissed.

4. Heard learned counsel for the parties at length and perused the record and appreciated the legal position.

5. The applicant has raised the issue whether further enquiry can be re-initiated once it was dropped by the respondents (Dy. Commissioner, City Zone). In this regard, we find that in ***State of Haryana and Ors. v. Roshan Lal Sharma***, 1970 SLR 739 (DB), the Hon'ble Punjab and Haryana High Court observed that if a superior officer holds a departmental inquiry in a slip shod manner or even dishonestly, the State can take action against the superior officer as well as it is also open to it to prosecute in a Court of law a person who was once exonerated in a departmental inquiry. On the other hand, if a second departmental inquiry could be ordered without the authority of the Statute or the relevant service rules, the danger of harassment to the Government officer would be immense and in the present climate of rapid political change such a course would be very demoralizing to the public

servant. It was further held that dropping of certain charges against the public servant means the exoneration there from. The same is a quasi-judicial order and is not liable to be varied at the will of the authority unless the relevant Statute or the rules give the authority the power to review.

6. In ***Parkash Nath Saidha, Naib Tehsildar v. The Financial Commissioner (Revenue) Punjab and Ors.*** 1972 SLR 601 (DB), the Hon'ble Punjab and Haryana High Court held that there is authority for the proposition that the fundamental principle viz. that no one shall be punished or put in peril twice for the same matter, is applicable even to orders passed on departmental inquiries.

7. In ***K.R. Deb v. The Collector of Central Excise, Shillong***, 1971 (1) SLR 29, it was held by the Hon'ble Supreme Court that "Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 on the face of it 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 the enquiry or were not examined for some reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 of Central Civil Services Rules, 1957 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 of Central Civil Services (Classification, Control and Appeal) Rules, 1957. It seemed that Punishing Authority 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.”

8. In ***Pawan Kumar Garg v. The Punjab Co-operative Cotton Marketing and Spinning Mills Federation Ltd. and Ors.*** 2001 (2) RSJ 484, the Inquiry Officer had exonerated the petitioner therein. The Punishing Authority disagreeing with the Inquiry Officer appointed a new Inquiry Officer with a direction to hold & de novo inquiry. It was held that a de novo inquiry cannot be ordered and only further inquiry can be ordered by the Disciplinary Authority. The impugned order in the said case was quashed with liberty to start the inquiry from the stage when the inquiry findings were submitted by the Inquiring Officer.”

9. The relied upon judgments are of no help to applicant as the proceedings in the enquiry against the applicant was never started after supplying the chargesheet, documents and list of witnesses etc. and later on closed by an Authority who was not competent to do so, because due to trifurcation of MCD into three divisions, Applicant was already transferred to South Delhi Municipal Corporation and his erstwhile Authorities ceased to be the Authority as his services were part of new

Municipal Zone due to statutory division done by the Government.

10. As held by the Apex Court in **K.R. Deb** (supra), Rule 15 of CCS (CCA) provides for one enquiry but if proper enquiry has not been held due to some serious defects, or some witnesses were not available or for any other reason, the Disciplinary Authority can ask to hold further enquiry by recording further evidence.

11. The legal position in this regard is that if departmental proceeding once completed and culminated, *de novo* enquiry is not permissible. But if it is not completed due to some technical reason, it can be continued from the stage where it was stopped. But in the present case, enquiry was never completed. In fact it was dropped at the initial stage itself. Therefore, it can be continued from the stage it was stopped. It does not amount to *de novo* enquiry as enquiry was at initial stage and was dropped by the Authority who was not competent to do so after divisions of Municipal Corporation. The jurisdiction for the dropping or initiation of enquiry lied with new Authority under whom Applicant was posted. The dropping of enquiring by an Authority who is not competent, is void-ab-initio.

9. Any action taken by Deputy Commissioner, City Zone, where Applicant was posted earlier, is without jurisdiction and can even be termed as non-est. Thus there is nothing found wrong in the initiation of Regulation Department Action (RDA)



by the Competent Authority against the Applicant pursuant to the legal advice rendered by the Legal Officer of the Corporation. Thus, the plea taken that Applicant is vexed twice for the same cause of action is unfounded and untenable. The same is brushed aside.

10. In view of the facts and circumstances of the case, legal position discussed, this Tribunal holds that the enquiry can be held in the present case from the stage it was dropped. The present OA is having no merit whatsoever and same is liable to be rejected. We accordingly do so. There shall be no order as to costs.

**(Ashish Kalia)**  
**Member (J)**

**(Pradeep Kumar)**  
**Member (A)**

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