CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.568/2003
with
O.A.No.567/2003
O.A.No.571/2003

New Delhi, this the 4th day of ~~January~~ Feb, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

O.A.No.568/2003:

Jile Gir
Saees (Dismissed)
LBS National Academy
of Administration
Mussoorie
r/o Jile Gir
Village Faridpur Gosain
P.O. Datiana
Distt: Ghaziabad. ... Applicant

Versus

Union of India through

1. The Secretary
Ministry of Personnel, PG&P
Department of Personnel & Training
New Delhi.

2. The Director
LBS National Academy
of Administration
Mussoorie
Distt: Dehradun. ... Respondents

WITH

O.A.No.567/2003:

Chandkiran
Ex-Cook, Staff Canteen
LBS National Academy
of Administration
Mussoorie
r/o Jile Gir
Village Faridpur Gosain
P.O. Datiana
Distt: Ghaziabad. ... Applicant

Versus

Union of India through

1. The Secretary
Ministry of Personnel, PG&P
Department of Personnel & Training
New Delhi.

2. The Director
LBS National Academy
of Administration
Mussoorie. ... Respondents

O.A.No.571/2003:

Krishan Kumar
Ex-Saees
LBS National Academy
of Administration
Mussoorie
r/o Krishan Kumar
V.P.O. Azarara
(Near Kharkhoda) Distt, Meerut. .... Applicant

Versus

Union of India through

1. The Secretary
Ministry of Personnel, PG&P
Department of Personnel & Training
New Delhi.

2. The Director
LBS National Academy
of Administration
Mussoorie
Distt: Dehradun. ... Respondents

(By Advocates - for applicants: Shri G.D.Bhandari
- for respondents: Shri Neeraj Goyal)

O R D E R

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the aforesaid three OAs, since the facts are identical and controversy is also common. We take the facts from OA No.568/2003 (Jile Gir v. Union of India & Others).

2. The applicant was appointed as Saees in the Staff Canteen of the respondents. While he was working in the Canteen, an incident took place wherein a colleague of the applicant and others, namely, Shri Gian Singh died of burn injuries sustained during the night of 03/04.07.2000. This incident happened in the residential complex in the allotted quarter to Shri Gian Singh. The applicants were arrested by the police and were tried by the Court of the Additional Session Judge for the offences punishable under

Section 302 read with Section 34 of the Indian Penal Code. The learned Additional Session Judge, Dehradun has acquitted them and awarded them benefit of doubt.

3. Thereupon a major penalty chargesheet dated 10.9.2001 had been served on the applicant and separately on others. The said imputation/statement of articles of charge reads:

> "On 03/04.07.2000, in the night, S/Sh. Jile Gir, Krishan Kumar, Saees, and Chand Kiran, Cook Departmental Canteen, employees of the Academy and Mota Prem Prakash (Subziwala), in the company of Shri Gian Singh, indulged in drinking and gambling at his residence located in the River view. Shri Gian Singh sustained 80% burn injuries and got greviously injured on the same night. He was immediately shifted to the Hospital at Dehradun, where he expired.
>
> Km. Sangeeta, daughter of late Sh. Gian Singh, lodged the FIR on 04.07.2000 with the Police, resultant to which, the police took all the four under-arrest and they were sent to Jail. They were tried under Section 302 IPC. Although, they have been acquitted by the Court, it is not denying the fact that drinking and gambling in the premises of the Academy is an undesireable act, which does not behove a Govt. servant. The unfortunate death of Sh. Gian Singh, seems to be directly linked with the gambling incident.
>
> The Academy had already issued a warning that nobody would indulge in drinking or gambling in the Academy premises. Sh. Jile Gir, Saees, by indulging in gambling and drinking has committed a misconduct unbecoming of a Govt. servant, consequent to which, it led to the death of an employee. Such an undesireable act is not expected of a Govt. servant.
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> Thus, Sh. Jile Gir, Saees, has acted in violation of Rule 3(1)(iii) of the CCS (CCA) Rules, Rule 22 under which it is expected of every Govt. servant that he will not indulge in any act, which is unbecoming of a Govt. servant."

4. The inquiry officer had been appointed and thereafter when the report was submitted the disciplinary authority dismissed the applicants from service. They had preferred an appeal. The Director of the Institution dismissed the appeal, resultantly, the present applications have been filed seeking quashing of the orders passed by the disciplinary as well as the appellate authorities.

5. The applications have been contested. The respondents plead that decision of dismissal was taken by the disciplinary authority on the basis of the evidence and inquiry made by the inquiry officer and also the statements made by the applicants and witnesses examined in the presence of the applicants and of their defence assistants. In appeal, the applicants had been heard twice and thereupon only the orders were passed. It is denied that there was any procedural irregularity/illegality to cause prejudice to the applicants. Certain technical deficiencies were found in the report of the inquiry officer and therefore, witnesses were required to be examined afresh. The authority concerned recorded the reasons as to what it has agreed with the findings of the inquiry officer on different elements of charge. In this view of the matter, it is contended that there is no ground to accept the present applications.

6. During the course of the submissions, learned counsel for the applicants contended that when the report of the inquiry officer was received, it was conveyed to the applicants and representation had been made by the applicants. Thereafter, the disciplinary authority

started recording the evidence himself. He further contended that this was a fresh inquiry which was not permitted. He further contended that even when the matter was in appeal, the appellate authority at the back of the applicants called certain persons to orally examine them, which is not permissible in law.

7. We have carefully considered the said submission that has been made at the Bar.

8. Under Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 'the Rules'), the procedure is prescribed when the report of the inquiry officer is received. Sub-rule (1) to Rule 15 reads as under:

> "(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be 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."

This is clearly prescribed that if the disciplinary authority is not the inquiry officer, it may remit the case to the inquiry officer for further inquiry and thereupon the inquiry officer shall proceed to hold further inquiry.

9. Sub-rules (2) and (2A) of Rule 15 also prescribe that disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry officer, and the representations, if made, shall be

considered and he shall record its findings before proceeding further in accordance with sub-rules (3) and (4) of Rule 15.

10. Rule 15(3) clearly speaks that 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 under Rule 11(i) to (iv) should be imposed, he shall make an order imposing such penalty.

11. These provisions clearly show that the de novo inquiry in this regard is not permitted.

12. The Supreme Court has considered this question in the case of **K.R.Deb** v. **Collector of Central Excise, Shillong**, (1971) Supp. S.C.R. 375. In the cited case, K.R.Deb was a sub-Inspector of Central Excise. A departmental inquiry was held against him. The inquiry officer exonerated him. The Collector ordered another Inquiry Officer to make a report after taking further evidence. Some more evidence was recorded and it was still reported that the charge is not proved. Dissatisfied with the report, the Collector ordered further inquiry. This time report was received and he was held guilty. It is, in this backdrop, a question arose that whether de novo inquiry was permitted or not? The Supreme Court deprecated the practice of de novo inquiry and held:

> "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 inquiry 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 r.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 r.9. [379 H].

The rules do not contemplate an action such as taken by the Collector in appointing a third Inquiry Officer. It seems 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 against the rules but also harassing to the appellant. [380 B].

In the result it must be held that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Art. 311(2) of the Constitution. [380 E]"

13. Same view was again reiterated by the Supreme Court in the case of **Union of India & Others** v. **P. Thayagarajan**, (1999) 1 SCC 733. The Supreme Court reiterated the same and held:

"8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the

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other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature.

9. The reasoning adopted by the Division Bench of the High Court was plainly incorrect. Whatever may be powers of the appellate authority, the disciplinary authority will have to be satisfied with the procedure adopted by the enquiry officer before passing an order. It does not stand to logic that in a given case, the appellate authority could order a fresh enquiry and not the disciplinary authority at whose instance the enquiry began and which is not satisfied with the enquiry held for some vital defects in the procedure adopted. Therefore the order made by the High Court cannot be sustained. The same stands set aside and we allow the appeal and dismiss the writ petition filed by the respondent."

14. The position in the present case is identical. The inquiry officer had submitted the report which has been conveyed to the applicant. The disciplinary authority, it appears, was not satisfied. He called the witnesses ~~afresh~~ a-fresh and recorded their statements, copies of which are on the record. In fact, he did not record any note of disagreement, nor deemed it proper to remit back to the inquiry officer.

15. We do not dispute the right of the disciplinary authority to deffer and if necessary record additional evidence. In the present case, evidence of Vinod Kumar was recorded. However, merely on the ground that if statements of the witnesses were not signed on each page by the inquiry officer, without setting aside the report, we deem it not proper that the witnesses should have been examined all over again as has been done by the disciplinary authority. This would certainly amount to be a de novo inquiry without setting aside the

report of the inquiry officer. It is in this backdrop that the above precedents referred to come into play. At this stage, we are not inclined to hold that the disciplinary authority could not take any action. If there was a technical flaw, he could certainly set aside or even disagree with the report of the inquiry officer or pass proper order. That has not been done.

16. Not only that, when the matter went in appeal, the appellate authority, it appears, called certain persons in good faith to confirm the facts. There was no plea for getting into additional evidence in this regard. There is nothing in the record to indicate that the witnesses, even by the appellate authority, were examined in the presence of the delinquent. Therefore, even principles of natural justice, in this regard, would be violated.

17. Keeping in view these procedural flaws, we find that the order passed by the disciplinary as well as appellate authorities cannot be sustained.

18. Keeping in view the nature of the orders passed, other questions could not be dealt with.

19. For these reasons, we allow the present applications and quash the impugned orders. It is directed that disciplinary authority, from the stage the report of the inquiry officer was received, may pick up loose threads in accordance with law and pass a fresh order. No costs.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

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