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Central Adminisrative Tribunal
Principal Bench

O.A.No.1419/2003

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of June, 2003

V.K.Saxena
s/o Late Sh. Laxmi Narain Saxena
Asstt. Director General (Stores)
r/o B-8/6073, Vasant Kunj
New Delhi - 110 070. ... Applicant

(By Advocate: Sh. S.C.Saxena with Sh. P.P.Relhan)

Vs.

1. Union of India through
The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi - 110 011.
2. The Director General of Health Service
Govt. of India
Nirman Bhawan
New Delhi - 110 011. ... Respondents

(By Advocate: Sh. Madhav Panikar)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 20.5.2003 wherein the disciplinary authority exercising its power under Rule 15 of the CCS (CCA) Rules, 1965, on receipt of the inquiry report by withdrawing earlier order dated 17.4.2003 holding de novo inquiry and appointing a new inquiry officer, remitted back the inquiry to the earlier inquiry officer to be resumed, from the stage at which the charged officer had last participated. Applicant has sought quashment of the aforesaid order.

2. Applicant, who is working as Assistant Director General (Stores) had earlier approached this Court in OA 1470/2002 challenging fresh proceedings into an incident which had taken place in 1989-90

directions have been issued to the respondents on 31.5.2002 to conclude the departmental proceedings expeditiously and in any case within a maximum period of six months from the date of receipt of a copy of the order.

3. As the proceedings were not completed, as directed above, OA 3256/2002 filed by applicant was withdrawn with liberty to file Contempt Petition on 16.12.2002.

4. By an order dated 16.1.2003, notices have been issued on the Contempt Petition No.25/2003 and on 18.2.2003, by a detailed order, presence of Respondent No.1 was sought. On 27.3.2003, taking into the totality of the facts and circumstances, MA 538/2003, seeking extension of time filed by respondents, was allowed and time was extended till 30.6.2003 to complete the disciplinary proceedings with a stipulation that no further time shall be allowed. C.P. was dismissed accordingly. By an order dated 17.4.2003 a de novo inquiry was ordered with appointment of a new inquiry officer by the disciplinary authority.

5. By an order dated 20.5.2003 taking cognizance of the fact that inquiry report was submitted by the inquiry officer holding the proceedings ex-parte, and the fact that applicant preferred OA 1120/2003 praying implementation of inquiry report of President acting as a disciplinary authority under Rule 15 of the Rules ibid on the ground that as the proceedings have been held

ex-parte, denying a reasonable opportunity to the applicant. remitted back the inquiry to be resumed from the stage the applicant had last participated. However, order dated 17.4.2003, appointing a new inquiry officer, was withdrawn.

6. Applicant has approached this Court, through the present OA, notices have been issued on 29.5.2003.

7. MA 1281/2003 has filed by applicant for interim stay of operation of the impugned order dated 20.5.2003, notices have been issued on 13.6.2003 and proceedings have been stayed.

8. Shri P.P.Relhan along with Shri S.C.Saxena, learned counsel appearing on behalf of applicant, vehemently assailed the impugned order by contending that under Rule 15 of the Rules ibid, it is not open for the disciplinary authority to totally discard the earlier inquiry report as not appealable to him and to order a fresh inquiry de novo to fill up the gaps in the inquiry. In this regard, the Constitutional Bench decision of the Apex Court in K.R.Deb v. Collector of Central Excise, Shillong, 1971 (Suppl.) SCR 375 has been placed reliance by the applicant.

9. Learned counsel for applicant further relied on a decision of Principal Bench in Shri S.P.Bansal v. Union of India & Others, ATR 1987(1) CAT 215 to substantiate their plea.

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10. Reliance has been placed to the Full Bench decision of this Court in Sudhir Ranjan Mitra v. Union of India & Ors., AISLJ 1998(1) 589 to contend that inquiry and proceedings are two different things. The inquiry ends with submission of report whereas proceedings continues upto the imposition of penalty.

11. In the aforesaid backdrop, it is stated that the earlier inquiry officer has submitted his report without recording evidence and was an ex-parte proceedings. Accordingly remitted back the case from the stage of recording the evidence, is certainly filling up the gaps and cure the defects which is not within the ambit of Rule 15(1) and what has been ordered is de novo inquiry.

12. On the other hand, Sh. Madhav Panikar, learned counsel for respondents, vehemently opposed the contentions and stated that it is the conduct of the applicant which had delayed the proceedings as on every occasion, he prayed for inspection of the documents and had not participated in the inquiry. It is further stated that by an order dated 27.3.2003(Annexure-F) in MA 538/2003, the disciplinary proceedings are allowed to be completed upto 30.6.2003 and before that the impugned order has been passed on 20.5.2003, which is within the time limit.

13. Referring to Rule 15, it is stated that in order to afford a reasonable opportunity to applicant as the inquiry was proceeded ex-parte without participation of the applicant, in the

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interest of justice, the inquiry has been remanded back from the stage of examination of witnesses, it is not a de novo proceedings. However, it is stated that no prejudice has been caused to applicant.

14. We have carefully considered the rival contentions of the parties and perused the material on record.

15. As provided under Rule 15(1) of the Rules ibid, if the disciplinary authority is not agreeing with the inquiring authority, for reasons to be recorded in writing, it is within the jurisdiction to remit the case to the inquiry officer for further inquiry which shall be held as per the provisions of Rule 14 of the Rules ibid.

16. The following observations have been made by the Apex Court in the Constitutional Bench's Judgement of the Apex Court in K.R.Deb's case supra:

"Rule 15(1) of the Classification and Control Rules reads as follows:

"(1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) to (vii) of rule 13 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided."

Clause (2) of rule 15 provides for framing of charges and communication in writing to the government servant of these charges with the statement of allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may

itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under cl. (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice.

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 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 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."

17. On our pointed question, on being appointed, as to at what stage, the inquiry officer has submitted his report, Shri Madhav Panikar, learned counsel for respondents, on consultation with the departmental representative, stated that the ex-parte proceedings have been held and without examination of prosecution evidence, the inquiry report was tendered to the disciplinary authority.

18. Rule 15(1) *ibid*, does not envisage or provide holding of *de novo* proceedings. The earlier report of the inquiring authority is not to be rejected in *toto* as not appealable to the disciplinary authority. The only scope in such a case to remit the case to the inquiry authority for further inquiry. In this literal meaning a further inquiry, in addition to what has been conducted earlier. In the instant case, the inquiry had proceeded upto the inspection of documents and thereafter without recording the evidence of witnesses on behalf of the prosecution, inquiry officer has submitted its report to the disciplinary authority.

19. In the conspectus of the above, the disciplinary authority took cognizance of the fact that whereas *ex parte* inquiry proceeded depriving the applicant a reasonable opportunity and instead of holding a further inquiry, rather appointed a new inquiry officer to conduct the inquiry *de novo* but the order dated 17.4.2003 was withdrawn. Simultaneously, the inquiry was ordered to be proceeded from the stage the applicant had last participated, i.e., before the evidence stage, this is not in put of the aforesaid position. Respondents have committed a serious lacuna of not examining the witnesses and have concluded the proceedings without following the procedural rules. Now under the guise of an *ex parte* proceedings, and on the pretext of denial of a reasonable opportunity to the applicant, the real intent is to hold the proceedings *de novo* with a view to fill up the gaps in the inquiry also to rectify the procedural illegalities going to the root of the matter.

20. The disciplinary authority, by observing that it has not taken cognizance of earlier inquiry report, has altogether discarded it, which is not permissible as per the decision of the Apex Court. Non-examination of prosecution witnesses has no nexus with the ex-parte proceedings. Absence of applicant in first inquiry, does not absolve the authorities to ~~do~~ away mandatory requirements of procedure.

21. However, we find that Apex Court in Union of India v. P.Thyagajan, 1999(1) SCC 733 being confronted with the similar circumstances distinguished the decision in K.R.Deb's case, under CRPF Rules, 1955. In that case, the disciplinary authority noticing certain irregularities in conduct of the inquiry as the representation of the witness was treated as statement, the matter was remitted to the inquiry officer for further inquiry. The Apex Court observed that if the procedure adopted by the inquiry officer was contrary to the relevant rules which has an affect of the rights of the parties, as evidence has been shut out, the aforesaid de novo proceedings can be held.

22. We have applied ourselves to the aforesaid decision. The case of K.R.Deb supra, squarely covers the controversy and issue. Disciplinary authority has totally discarded the report, not on the ground of procedural defect but on ex-parte proceedings depriving the applicant a reasonable opportunity. However, the latent intention was to cure the defects in the inquiry and to fill up the lacuna of examination the witnesses, which cannot be countenanced.

23. In our considered view, Rule 15(1) of the

Rules, could not have been taken resort to and the action of the disciplinary authority is certainly beyond the ambit of the aforesaid rules making the impugned order as unsustainable.

24. The course open for the disciplinary authority was under Rule 15(2) which stipulate that in case the inquiring authority submits a report, the disciplinary authority shall, in case of disagreement along with its tentative reasons, should submit to the Government servant the report whether the same is favourable or not to him and on receipt of the representation may pass an appropriate order.

25. Another illegality which has vitiated the impugned action is that before exercising his jurisdiction, under Rule 15 the disciplinary authority has not served upon a copy of the report of inquiry officer, i.e., Dr. Sudhir Chandra along with its reasons, and had deprived the applicant a reasonable opportunity to represent whereas the course adopted is in violation of Rule 15(2) as well.

26. In so far as the prejudice caused to applicant is concerned, as the order has been passed in utter violation of the Rules depriving the applicant a reasonable opportunity to comment upon the proposed action, he has been deprived of an opportunity to defend on the basis of the inquiry report.

27. In the result, for the foregoing reasons, OA is partly allowed. Impugned order dated 20.5.2003 is quashed and set-aside. However, this shall not preclude the respondents, if so advised, to act in accordance with rules and keeping in view of our observations made above. If they decide to do so,

applicant be served upon a copy of the inquiry report within two weeks from the date of receipt of a copy of this order. Thereupon the applicant shall represent within two weeks thereafter. The respondents shall conclude the proceedings by passing a final order within one month thereafter. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

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