CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2171/2003

This the 30th day of June, 2004

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HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A. SINGH, MEMBER (A)

Madan Pal
S/o Late Sh. Ghamandi Singh
R/o C-339, East Kidwai Nagar,
New Delhi.

(By Advocate: Sh. K.C.Mittal)

Versus

1. Union of India
through Secretary,
Ministry of Health and Family Welfare,
Govt. of India
Nirman Bhawan,
New Delhi.

2. Director General
Health Services
Govt. of India
Nirman Bhawan,
New Delhi.

3. The Principal & Medical
Superintendent,
VMMC & Safdarjung Hospital
New Delhi.

4. Surinder Kumar
Chief Sanitary Superintendent
Sanitation Department
Safdarjung Hospital
New Delhi.

(By Advocate: Sh. S.M.Arif)

O R D E R

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA under Section 19 of the AT Act seeking following reliefs:-

a) to quash and set aside the impugned order dated 3.2.2003 and declare the same as illegal and arbitrary.

b) declare and hold that the charge sheet issued in respect of the applicant cannot be sustained in the eyes of law since no charges could be proved as a result of the three enquiries held by the Enquiry Officer.

c) to quash and set aside the impugned charge sheet dated 1.2.1997 as a consequence of the charges not being proved by the Enquiry Officer.

d) direct the respondents to open the sealed cover in respect of DPC held on 29.11.2001 pertaining to the promotion for the post of Chief Sanitary Superintendent.

e) declare and hold that the holding of repeated enquiries one after another on the same set of allegations without any additional allegations and after the findings of the Enquiry Officer to the effect of charges having not been proved, was totally malafie, arbitrary and illegal.

f) direct the respondents to call for a review DPC, thereby considering the applicant for promotion to the post of Chief Sanitary Superintendent from the date his junior stands promoted to the said post.

g) quash and set aside the promotion granted to respondent No.4 (order dated 3.12.2001) (Annexure A-1).

(27)

h) direct the respondents to produce the relevant records, particularly the enquiry reports dated 18.4.2000, 12.6.2000 and 13.12.2001.

i) direct the respondents to give all the consequential benefits to the applicant including the payments of arrears as a consequence of the promotion given to the post of Chief Sanitary Superintendent.

2. Facts in brief as alleged by the applicant are that the applicant was initially appointed as Head Supervisor in the year 1972. Thereafter he had been promoted to various posts and at the relevant time he was working as Sanitary Superintendent. Applicant is also stated to have joined Safdarjung Hospital Karamchari Sangharsh Union in the year 1996 and was also elected as Vice President which fact is not appreciated by the official respondents. It is further stated that applicant was suspended on 7.10.96. He was later on elected as President of the Union also. He was issued a chargesheet dated 2.1.97 for violation of Rule 7(2) of the CCS (Conduct) Rules for which enquiry was conducted by Dr. A.K.Singh, the charge memo was also disputed by the applicant as stated to have been issued on false facts. But the enquiry was conducted by Dr. A.K.Singh who submitted his report in April 2000 holding the charges against him not proved. It is submitted that no copy of the enquiry report was supplied to the applicant but instead of accepting the report the respondents ordered further enquiry.

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3. It is further stated that Dr. A.K.Singh conducted further enquiries and again submitted a report on 12.6.2002 again holding that the charges are not proved. But again the report submitted by Dr. A.K.Singh was not accepted and respondents directed the enquiry officer to conduct further enquiry.

4. Again on 13.12.2001 Dr. A.K.Singh submitted a report stating that the charges not proved against the applicant but still no copy etc. was supplied to the applicant. But again a fresh enquiry was ordered and in the meanwhile the promotion of the applicant was also withheld as sealed cover process was adopted.

5. Applicant appears to have filed an OA wherein he had sought opening of the sealed cover for the post of Chief Sanitary Superintendent and in the said OA he had also filed an application MA-723/2003 wherein he had impugned order dated 3.2.2003 which is impugned in this case. Applicant says that the order dated 3.2.2003 is illegal and arbitrary on the face of it because the said memo was issued as a result of disagreement between the report of enquiry officer and disciplinary authority but the fact remains that no charges are proved against the applicant in respect of the three charges for which enquiry was held by the enquiry officer. But since disciplinary authority did not accept the report, the impugned memo has been issued. In order to challenge the same, applicant has submitted that it is a settled law that once an enquiry is complete, charged officer has to supply a copy of the enquiry report and in case the same is not done the enquiry stands dropped and hence no further action can be taken.

6. Applicant further states that successive enquiries were being held in which charges could not be proved, so no fresh enquiry could be conducted. Since the applicant being an active member of the union, the disciplinary authority was bent upon to harass him and to deny his legitimate rights. Thus, it is prayed that the order dated 3.2.2003 be declared illegal and be quashed.

7. Respondents are contesting the OA. Respondents pleaded that the appliant has not come to the Court with clean hands as he has suppressed the true facts from the Court. It is further submitted that the present OA is not maintainable, since the same is premature like his previous OA-3062/2002. It is further stated that applicant has impugned a wrong document as Annexure A-1 dated 3.2.2003 which is not an order of Resp. No.3 but merely a reminder to show cause letter dated 21.10.2002 and 23.12.2002 issued to the applicant conveying the enquiry report dated 13.12.2001 of the enquiry officer and also the reasons of disagreement of the disciplinary authority, i.e. respondent No.3. It is further stated that the applicant for malafide reasons bent upon to mislead the Tribunal by intentionally and erroneously naming a show cause notice issued to the applicant in consonance with the principles of natural justice as impugned order and the applicant has intentionally concealed the letter dated 21.10.2002 and 23.12.2002 issued to him.

8. It is further stated that applicant has himself stated that vide impugned letter dated 3.2.2003 he was called upon to reply the same and though the applicant has submitted his reply to letter dated 3.2.2003, however, without waiting for his outcome of the reply applicant has rushed to this Tribunal

which is not permissible under the law and the applicant has not exhausted all the remedies available to him, so present OA is liable to be dismissed on this ground alone.

9. It is further stated that by submitting reply to the impugned letter applicant has subjected himself to the jurisdiction of the disciplinary authority and the applicant now wants to prevent Resp. No.3 to exercise his legitimate and lawful powers, therefore, the present OA is not maintainable. Applicant is merely apprehending the penalty to be imposed so he has rushed to the Court.

10. It is further stated that the chargesheet issued to the applicant dated 2.1.97 has not culminated into passing of any final order by the disciplinary authority. Respondents also explained the reasons as to why the enquiry officer had been asked to conduct further enquiries and stated that Rule 15 (1) of CCS (CCA) Rules empowers the disciplinary authority to remit the case back to the same enquiry officer for further enquiry and since the enquiry officer had submitted his report without examining the witnesses who were available so the disciplinary authority was within his rights and powers to call upon the enquiry officer to conduct further enquiry. The impugned letter is nothing but a reminder to the applicant to reply to the earlier letters which have been issued to the applicant after disagreement note has been accorded by the disciplinary authority. Thus, the OA is premature and is liable to be dismissed.

11. We have heard the learned counsel for the parties and gone through the record.

12. Learned counsel for applicant submitted that various enquiry reports had been submitted one of them is 18.4.2000, the another is 12.6.2000 and then 13.12.2001. In the report dated 18.4.2000 the enquiry officer clearly held that no charge against the applicant has been proved. Similarly in the report dated 12.6.2000 the enquiry officer again reiterated that his report dated 18.4.2000 be treated as full and final report and no charge has been proved against the applicant. But each time the respondents had been ordering de novo enquiry, fresh enquiry whereas no fresh enquiry could have been ordered and once the report has been submitted it is for the disciplinary authority to accept it or to record his dissent note but no fresh enquiry could be ordered.

13. In support of his contention counsel for applicant referred to various judgments such as K.R.Deb vs. Collector of Central Excise reported in (1971) SUPP. S.C.R. 375. M.Kolandai Gounder vs. The Divisional Engineer, Tamil Nadu Electricity Board, Thuraiyur & ors. reported in 1997 (1) SLR 467. Similarly, applicant has also relied upon the judgment of Calcutta High Court reported in 1993 (2) SLR 631 titled as Calcutta Municipal Corporation vs. S.Wajid Ali.

14. Relying upon these judgments counsel for applicant submitted that these judgments clearly lay down the law that disciplinary authority has no right to ask the enquiry officer to conduct a de novo enquiry or to set aside the findings given by the enquiry officer. As regards the case of K.R.Deb is concerned, we find that in this case Sub-Inspector of Central Excise was proceeded departmentally in respect of a charge of misappropriation of Govt. money. Enquiry officer exonerated him. The Collector, Central Excise ordered another

enquiry officer to make a report after taking further evidence. The second enquiry officer at first exonerated the appellant but later after taking some more evidence reported that although the charge against the appellant was not proved but his conduct may not be above board. Dissatisfied with the report the Collector ordered a fresh enquiry to be held by a third officer. This time a verdict of guilty was given and the appellant was dismissed. So in those circumstances Court held as under:-

> "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 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.
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> 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.
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> 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 Article 311 (2) of the Constitution."

15. In this case as the law laid down by the Hon'ble Supreme Court goes to show that the Supreme Court does say that the disciplinary authority may ask the enquiry officer to record further evidence. But the disciplinary authority cannot completely set aside the previous enquiries. So the present case is to be examined on the touchstone of this law laid down

by the Hon'ble Supreme Court and to find whether in this case also the disciplinary authority had simply asked the enquiry officer to hold further enquiry and to record further evidence or had completely set aside the previous enquiry reports.

16. We have perused the departmental file also and the perusal of the file as well as the reply and the enquiry reports placed on record by the applicant itself goes to show that the disciplinary authority did not completely set aside the report of the enquiry officer but since certain material witness who were not produced before the enquiry officers despite the fact that they were available in the hospital staff itself, those witnesses were not examined and in the counter affidavit also explanation has been given as to why those witnesses could not be examined and why those witnesses were not appearing before the enquiry officer. So the case in hand is clearly distinguishable from the case of K.R.Deb. As in the present case it was a simple direction to hold further enquiry and to examine the witnesses who were available in the hospital staff itself. But no fresh enquiry or a de novo enquiry is ordered. It is only a further enquiry which has been ordered.

17. In the case of M.Kolandai Gounder (supra) the Hon'ble Madras High Court found that authorities has been making orders for de novo enquities till the delinquent had been held guilty by the enquiry officer. In the said case the complainant had even not supported the prosecution but the report was not accepted by the disciplinary authority for quite long time and another memo was issued and again the impugned charge sheet has been issued on the same charges. But in the present case there is nothing of issuing a fresh

chargesheet. It is only the enquiry report which was not accepted by the disciplinary authority and a further enquiry was ordered to be conducted because witnesses had not been examined by the enquiry officer though they were available in the office itself, i.e. in the hospital where enquiry was held.

18. Similarly in Calcutta Municipal Corporation case (supra) the Hon'ble High Court had observed that the disciplinary authority has no jurisdiction to set aside the findings of the enquiry officer and direct a fresh enquiry after taking fresh evidence. So all these rulings do not apply to the present case because in this case the disciplinary authority did not order for a de novo enquiry after rejecting the findings submitted by the enquiry officer. Rather the disciplinary authority had disagreed with the findings given by the enquiry officer and had issued a copy of the disagreement note alongwith the enquiry report and had asked the applicant to give his comments. So it is not a case of de novo enquiry or another enquiry on the same charges but it is a simple case of further enquiries. So none of these judgments help the applicant at all. Even otherwise, we find that the order impugned by the applicant is a memo dated 3.2.2003 which itself mention that an office memorandum of 21.10.2002 and subsequent reminders dated 23.12.2002 were sent to the applicant alongwith a copy of enquiry report dated 13.12.2001 and applicant had been earlier directed to submit his representation but since the same has not been done, therefore another opportunity was given to the applicant to submit his representation. But it is quite strange that the applicant did not challenge the memo dated 21.10.2002 nor the reminder dated 23.12.2002 but had impugned only the order dated

3.2.2003 which is nothing but a reminder and as stated in the counter affidavit applicant has also submitted a reply to this which was duly considered by the disciplinary authority.

19. We have also been informed that though initially vide order dated 5.9.2002, respondents were directed not to pass any adverse order against the applicant but vide order dated 11.9.2003 respondents were permitted to pass any order but the order would be subject to the outcome of the present OA. Respondents informed that thereafter respondents have passed an order against the applicant. So in this background that this impugned letter dated 3.2.2003 could not have been challenged at this stage because vide this letter the respondents had simply asked the applicant to give his representation and if any adverse order were to be passed after the representation, applicant had a right to challenge the same. But by no stretch of imagination applicant could have challenged the letter dated 3.2.2003 wherein he had been only called upon to submit his representation against the disagreement note and the enquiry officer's report. To that extent OA is also premature.

20. Even on merits also, we find that since it is not a case of de novo or fresh enquiry and it is a case of only holding a further enquiry for which the disciplinary authority is competent under Rule 15 of CCS CCA Rules, so we find that the OA is bereft of merit and the same is liable to be dismissed. We accordingly dismiss the OA.

(S.A. SINGH)
Member (A)

(KULDIP SINGH)
Member (J)

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