

(1)

Central Administrative Tribunal, Principal Bench

O.A. No. 2659 of 2003

New Delhi this the 21st day of March, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

D.K. Tomar
SSO-II,
CQAE (MS)
Mumbai.

... Applicant

By Advocate: Shri Prashanti Prasad K.

Versus

1. **Union of India**
Ministry of Defence,
Represented through its Secretary,
Ministry of Defence,
New Delhi.
2. **Director General of Quality Assurance'**
Room No.234,
South Block,
DHQ PO,
New Delhi.
3. **The Director,**
Quality Assurance (WP),
H-Block,
DHQ PO,
New Delhi-110 001.
4. **Chief Quality Assurance**
Establishment (Machinery Spares)
DQAN/NMRL Complex,
Naval dockyard, Tiger Gate,
Mumbai-400 001. ... Respondents

By Advocate: Shri Madhav Panikkar.

Madhav Panikkar

ORDER**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

The applicant is assailing the order dated 29.7.2003 whereby disciplinary authority in a proceeding under Rule 14 of CCS (CCA) Rules, 1965 (Rules 1965), has awarded to the applicant penalty of "reduction in basic pay, by one stage, in the time scale of pay (Rs. 8000-275-13500) for a period of one year" with further direction that "he will not earn increment during the period of reduction and that this reduction will have the effect of postponing his future increments of pay".

2. Briefly, the facts are that the applicant was working as SSO-IIInd Securities in the Directorate of Quality Assurance (Warship Projects) in the Ministry of Defence (DGQA) when vide order dated 16.7.1998, he was transferred to CQAE (MS) Mumbai. On his request his transfer was kept in abeyance till 28.2.1999. He was relieved from his duty and was asked to report to CQAE (MS) Mumbai after availing the necessary 12 days joining time vide order dated 1.4.1999. But the applicant instead of joining at Mumbai, filed an application for leave on medical and family reasons and submitted application subsequently for extension on one or the other ground although his leave applications were rejected and he was asked to join duties at Mumbai Office. The disciplinary proceedings under Rule 14 of the Rules 1965 were initiated against him for unauthorized absence from duty w.e.f.. 2.4.1999 onwards as such, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant thereby violated Rule 3 (1)(ii) and (iii) of the CCS (Conduct) Rules, 1964. The applicant was served with a charge-sheet dated 8.9.2000. In the meantime, he joined CQAE (MS) Mumbai on



15.6.2001. The applicant submitted reply to the Article of Charge served on him. He also participated in the enquiry proceedings. The Inquiry Officer submitted his report to the disciplinary authority, which remitted the matter to another Inquiry Officer vide order dated 1.3.2002. The new Inquiry Officer submitted his report on 30.9.2002 (Annexure A-5). The charge of unauthorized absence from 2.4.1999 to 14.6.2001 was held "as proved" against the applicant. The applicant was served with a copy of the report of the Inquiry Officer and was asked to submit his representation, which he submitted. The disciplinary authority by a detailed and reasoned order has agreed with the findings of the new Inquiry Officer and has imposed the penalty on the applicant, as aforementioned. The applicant has felt aggrieved and has filed the present OA.

3. He has challenged the enquiry report on the ground that the disciplinary authority erred in holding that the remittal of the case to the second Inquiry Officer for fresh enquiry after the first Inquiry Officer had submitted his report, in the absence of any patent irregularity, had vitiated the whole proceedings and also violated Rule 15 of the Rules 1965; the copy of the first Inquiry Officer was not supplied to the applicant so the principles of natural justice were violated; none of the material witnesses cited at the start of the proceedings were examined; as such the applicant was denied opportunity to cross-examine and to bring out true facts and this was in gross violation of the principles of natural justice; the grounds on which the applicant remained absent from duty were probed and investigated by both the Inquiry Officers and they were found to be correct, therefore, the order of the disciplinary authority is without application of mind; the applicant remained absent from duty for reasons beyond his control and all those reasons were duly proved and they were sufficient to treat the applicant compassionately in view

Praveen S. Gade 16

of the fact that the applicant did not draw his salary and had unblemished clean and good record of service; some of the documents were not proved by oral evidence, witnesses were not examined, the defence of the applicant was not taken and the applicant was also not questioned as to clarify the circumstances which appeared in the evidence against him, as required by Rule 18 of the Rules, 1965. The applicant has prayed that the order of the disciplinary authority impugned in the OA be quashed.

4. The respondents in the reply to the OA controverted the allegations of the applicant. It was submitted that the applicant remained unauthorisedly absent from duty for a period over 2.1/2 years and although his leave application had been rejected and he was repeatedly ordered to join at the transferred place in Mumbai, he failed to comply with the order. It was also stated that the applicant was posted at Mumbai, therefore, Mumbai Bench of the Tribunal would have the jurisdiction. According to the respondents on receipt of the first Inquiry Report the disciplinary authority had taken a conscious decision that the enquiry was not held in accordance with the Rule 14 of Rules 1965, therefore, it had remitted the case to the Inquiry Officer in exercise of its power under Rule 15 (1) of the Rules 1965 and there is no legal infirmity in this order. The inquiry was in consonance with the principles of natural justice. As per the Inquiry Officer the Article of Charge has been proved against the delinquent official. The representation of the applicant was duly considered by the disciplinary authority and the penalty imposed upon the applicant is commensurate to the gravity of the proven misconduct. The order of the disciplinary authority is a detailed, speaking and reasoned order which does not suffer from any legal or procedural irregularity. It is prayed that the OA be dismissed.

for record only

5. We have heard the learned counsel for the parties and we have gone through the records of the case.

6. The main question which arises for consideration in this case, is whether the disciplinary authority could have remitted the enquiry proceedings to a new Inquiry Officer for fresh enquiry in exercise of the power vested in it by Rule 15(1) of the Rules 1965. The order of the disciplinary authority dated 29.7.2003, Annexure A-1, which is impugned in the OA, showed that the disciplinary authority was of the view that the enquiry had not been conducted as per prescribed procedure under Rule 14 of Rules 1965, therefore, it remitted the matter to new Inquiry Officer vide its order dated 1.3.2002. Neither the first Inquiry Report nor is the order dated 27.1.2002 placed on the file. The disciplinary authority had exercised the power ostensibly under Rule 15 (1) of Rules 1965. Rule (1) of Rule 15 provided as under:-

“ 15. Action on the inquiry report

(1) The Disciplinary authority, 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”.

7. The provision spelt out that the disciplinary authority after recording reasons in writing may remit the case to the inquiring officer “for further enquiry and report” and the inquiring officer shall “thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be”. Sub-rule (1) as such empowered the disciplinary authority to order the Inquiry Officer in writing to hold further inquiry into the matter and submit its report. The rules is clear. It does not give power and discretion to the disciplinary authority to remit the case for “a fresh enquiry”. The word “further”



used in the rules is significant. It would mean, that the material and evidence which had been collected during the first enquiry would not be excluded from consideration but certain material and other evidence which was not admitted by the Inquiry Officer or the statement of the charged official or his defence evidence which has not been recorded shall be admitted by the Inquiry Officer and the report submitted on the conclusion of the inquiry. The Rule does not contemplate a "de novo" enquiry. New inquiry being not inconsistent with Rule 15(1) will render the proceedings and inquiry report vitiated.

8. In the present case it has been fervently argued by the learned counsel for the respondents that the disciplinary authority on perusal of the first Inquiry Report, had taken a conscious decision that the report was not in accordance with the prescribed procedure under Rule 14 of Rules 1965 so he exercised his power under sub-rule (1) of Rule 15 of Rules 1965 for remitting the matter to a new Inquiry Officer. Sub-Rule(1) mandated the disciplinary authority to record reasons in writing before remitting the case. But neither in the reply nor in the argument the flaws or deficiency in the prescribed procedure which was noticed, have been disclosed. Even the first Inquiry Report has not been produced in support of the pleadings that the Inquiry was not conducted as per the requirement of Rule 14 of the Rules 1965, which necessitated the disciplinary authority to exercise the power under Rule 15 and remit the case. Moreover the case was not remitted to the same Inquiry Officer but it has been sent to a new Inquiry Officer, appointed to conduct the enquiry and submit his report. Such a course is not envisaged in Rule 15 of the Act. The remittance to the new Inquiry Officer under Rule 15 could be where the Inquiry Officer for some reasons was unable to hold further inquiry and submit the report or there were some other good reasons for appointing a new Inquiry Officer. Such

Leave to file b

reasons may be many for instance: he may have retired from service or had rendered himself incapable of conducting the enquiry, he was personally not available or did not want to conduct the enquiry etc. etc. The Inquiry Officer cannot be changed only because his report is not to the liking of disciplinary authority otherwise the provision of Rule 15(1) may be grossly abused.

9. In the present case, the disciplinary authority has remitted the matter to the new Inquiry Officer for holding a fresh enquiry into the same article of charge. It is not stated that some new material has been received by him or the documents or the oral evidence which were not available had become available and has been admitted by him. The material evidence against the applicant was documentary in nature. No oral evidence seemed to have been recorded in the old enquiry proceedings or in the new enquiry proceedings. The evidence and the material which was available before the earlier Inquiry Officer and the new Inquiry Officer, remained unchanged. The inquiry proceedings, therefore, could not have been remitted by the disciplinary authority to the new Inquiry Officer without good and cogent reasons which have not been divulged in this case.

10. Above all writing reasons for remitting the enquiry is a condition precedent to the exercise of discretion vested in the disciplinary authority under Rule 15(1). In the counter the respondents have simply alleged that the disciplinary authority on receipt of the first Enquiry Report had taken a conscious decision to remit the enquiry to a new Inquiry Officer since procedure laid down in Rule 14 of Rules 1965 was not followed. Recording of reasons is meant to serve dual purpose. Firstly, it would show that there is no element of arbitrariness in the exercise of power and, second, the power has been exercised

Reasons available

judiciously and not whimsically, capriciously or for some extraneous reasons. It will prevent abuse of the provision and the process of law. Procedure laid down under Rule 14 has not been followed, is a vague expression. Some of the procedural lapses or irregularities may be material to render the inquiry illegal and cause great prejudice to the delinquent employee in his defence. It is possible that the inquiry is vitiated since parties have not been given opportunity to lead evidence, cross-examine the opponents witnesses, delinquent being not examined to explain evidence and circumstances appearing against him or principles of natural justice not followed resulting in prejudice to the charged official etc. etc. There may be certain other procedural flaws which may not cause prejudice to the delinquent employee in his defence. Therefore, reasons which actuated the disciplinary authority to remit the proceedings if not reduced in black and white will vitiate the remittal order.

11. Hon'ble Supreme Court in U.O.L Vs. K.D. Pandey and Another (2002) 10 SCC 471 has observed as under:-

“3. The proceedings were initiated against respondent No.1 in respect of six charges. The inquiry authority in the report made, held that none of the charges stood proved. Thereafter, the Railway Board in exercise of powers under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence and, thereafter, remitted the matter for further inquiry as contemplated under Rule 25(1)C of the Rules.

4. On remit the inquiry officer made a report finding respondent 1 guilty of four charges. Based on that report, the Railway Board dismissed respondent 1, which was challenged in the dispute raised by him. The Tribunal as well as the High Court are of the view that on the same material a fresh opinion has been furnished and it was not a case of further inquiry. Indeed, it was not noticed by the disciplinary authority that the inquiry held earlier was bad or that the management or the establishment did

Rescindendum

not have the proper opportunity to lead evidence or the findings were perverse. In the absence of the same, it was held that there was no justification on the part of the disciplinary authority to commence fresh inquiry on the same set of charges.

5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier enquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussion the matter and, if that is so, we fail to understand as to how there could have been a remit to the enquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.

12. Chandigarh Bench of this Tribunal in Surjit Kumar Dubey Vs. U.O.I. & Others, 195 Swamy's CL Digest 1997/1 has been held that "the de novo enquiry itself being against the statutory rules, all proceedings held afresh are thus vitiated and should be quashed which could result in automatic quashing of the orders of the disciplinary authority".

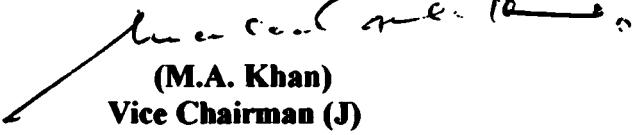
13. The principles of law laid down in the above cited judgments apply to the case in hand also. It is a case where a de novo enquiry has been ordered by the disciplinary authority in violation of Rule 15(1) of Rules 1965. The fresh enquiry ordered is in contravention of the statutory rules and has vitiated the order passed by the disciplinary authority on the basis of the illegal enquiry proceedings. The new enquiry report and the

Recd on

order of the disciplinary authority dated 29.7.2003, therefore, are illegal and are liable to be quashed.

14. For the reasons stated above, the order by which the disciplinary authority had remitted the enquiry to a new Inquiry Officer, the proceedings conducted by him and the enquiry report submitted by the new Inquiry Officer, the order dated 29.7.2003 passed by the disciplinary authority imposing the penalty on the delinquent employee, are all quashed. The case is remitted back to the disciplinary authority for proceeding from the stage the first enquiry report was received by him, in accordance with law and in the light of the observations made in this order. The disciplinary authority shall act in the matter preferably within 2 months from the date on which the certified copy of the order is received by him. The parties shall, however, bear their own costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh