

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2841 OF 2003

New Delhi, this the 16th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

R.D. Mittal
(Retd. Principal Govt. Boys
Senior Secondary School No.1,
Najafgarh New Delhi-110043.
4/10, Teg Bahadur Road, Lane No.-3,
Delhi-110043 (Uttaranhal)Applicant
(By Advocate : Shri K. Rohatgi)

Versus

1. Lt. Governor of Delhi,
Through the Secretary
6, Raj Niwas Marg,
Delhi-110054.
2. Govt. of NCT of Delhi
Through the Chief Secretary,
Delhi Sachivalaya, I G Stadium,
Indraprastha Estate, New Delhi-110002.
3. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat Delhi.Respondents
(By Advocate : Shri Mohit Madan for Mrs. Avnish Ahlawat)

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL:-

The applicant has been served with the following article of charges:-

"That the said Sh.R.D. Mittal while functioning as Vice Principal in G.B.S.S. School, Vikas Puri, Delhi during the period from July '92 to October '94, committed gross misconduct in as much as he mis-appropriated Govt. property worth Rs.5,44,816.62 with ulterior motive and malafide intention.

Shri R.D. Mittal has thus failed to maintain absolute integrity and exhibited conduct and unbecoming of a Govt. servant thereby by violating rule (3) of the CCS (Conduct) Rules, 1964."

2. It appears that in pursuance of the same, the inquiry officer had been appointed and he submitted



the report, a copy of which is Annexure R/1. The inquiry officer concluded that the charges were not proved. Operative part of the report reads:-

"The Presenting Officer was directed to look into the facts and come out with necessary presentation. On 8.11.2001 i.e. last day of the hearing it was argued on behalf of the CO that there is nothing in the charge memo f.7(4)/98/DOV/6398 dated 13.10.1999 to support the charge framed against him. It is argued on behalf of the CO that necessity of further proceeding will arise only if the relevant documents relating to entrustment of the Government properly, worth Rs.5,44,816/- to the CO and any other evidence / document showing its misappropriation or loss by him are supplied to him so that he can counter the charge. As on date no such documents has been listed in Annexure III of the Charged memo the charges framed against him is without basis / evidence. Copy of the paper filed by CO has been supplied to PO.

When confronted with this Presenting Officer said that he does not have any document to prove the entrustment and misappropriation in spite of his best efforts to locate such documents. He further says that charter of duties which have been given to PO does not mention that Vice-Principal is responsible for safe custody of property.

Since the key documents relating to substantiation of the charge of entrustment of property the misappropriation of the property mentioned in the statement of imputation of misconduct i.e. Annexure II have not been mentioned in the documents listed in Annexure III to prove the charges, there is no course left but to hold that the charges cannot be proved on the basis of the documents listed and supplied."

3. On receipt of the said report, the impugned order dated 11.11.2002 had been passed. The said order reads:-

"WHEREAS Shri R.D. Mittal, Principal, (now retired) was chargesheeted for major penalty under rule 14 of the CCS (CCA) Rules, 1965 by the disciplinary authority vide charge



memo No.F 7(4)/98-DOV/6398 dated 13.10.99 for misappropriating the Government property worth Rs.5,44,816.62.

AND WHEREAS, Shri D.K. Mishra, DANICS Officer, was appointed as the Inquiry Authority to inquire into the charges framed against Shri R.D. Mittal, Charged Officer by the disciplinary authority vide order dated 19.8.2000.

AND WHEREAS, Shri D.K. Mishra, Inquiry Authority furnished his report of inquiry holding the charge not proved.

AND WHEREAS, the disciplinary authority considered the inquiry report and observed that the Inquiry Authority did not take the listed documents on records nor examined the witnesses, nor did he follow the procedure and hurriedly summed up his findings, and as such the competent authority has decided not to agree with the findings of the Inquiring Authority.

NOW THEREFORE, the competent authority under rule 15(1) of the CCS (CCA) Rules, 1965 remit this case back to the Inquiring Authority for holding fresh inquiry from the stage of taking on record the listed documents of the case and also examine the listed witnesses of the case and then record her findings."

4. By virtue of the present Original Application, the applicant assails the impugned order of 11.11.2002. It is urged that (a) a fresh inquiry could not be ordered under sub-rule (1) of Rule 15 of CCS (CCA) Rules, 1965 (hereinafter for short 'the Rules'); and (b) there was no material before the inquiry officer to hold that the charges stood proved.

5. The assertions of the applicant's learned counsel are being controverted.

6. We have heard the parties counsel.



7. So far as the argument that under sub-rule (1) to Rule 15 of the Rules fresh inquiry could not be ordered is concerned, we do not dispute the broad proposition. But sub-rule (1) to Rule 15 of the Rules permits the disciplinary authority if it is not the inquiry officer for reasons to be recorded to remit the case to inquiry officer and further inquiry and report. In other words, if there is a procedural flaw and basic principles have been ignored for conduct of the inquiry the matter can always be remitted back to the inquiring authority.

8. In the present case before us though the words 'holding fresh inquiry', have been used, necessarily the expression has to draw its strength and clout from the totality of the facts. We have already reproduced above the order that has been passed by the disciplinary authority. It was noticed that the inquiry officer did not take the listed documents on the record nor examined any witness nor followed the procedure. Therefore, it is a case of remitting the matter to the inquiry officer rather than a fresh inquiry.

9. As regards the second contention, we were informed during the course of the submissions that the presiding officer had been warned for wrong conduct. But as for the present the same is not relevant.

10. Under sub-rule (14) of the Rule 14 of the Rules, the inquiry officer is duty bound to record the

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statements of the witnesses. In the present case before us along with the article of charges the statement of imputation had been given. The list of documents and list of witnesses had also been appended. The list of documents referred to the note of one Shri Malkhan Singh who at the time of his retirement had handed over charge to the applicant. The list is also relied upon pertaining to shortage item of property besides the store register. List of witnesses had also been given to prove the documents. Unfortunately, inquiry officer did not examine any of the witnesses or the documents. We would hasten to add that the above fact cannot be taken as an expression of opinion on the merits of the case. This observation has simply been made only to stress the point that the inquiring authority has committed procedural flaw in this regard. In that backdrop, it cannot be termed that the second plea raised by the learned counsel has any legs to stand.

11. Resultantly, we find that the present Original Application being without merit, must fail and is accordingly dismissed.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(V.S. AGGARWAL)
CHAIRMAN

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