

(2024) 02 CAT CK 0059

Central Administrative Tribunal Ahmedabad Bench

Case No: Original Application No. 437 Of 2017, Miscellaneous Application No. 1 Of 2024

Balakrishnan K. Nair

APPELLANT

Vs

Union Of India Notice To Be
Served Through The Secretary,
Govt. Of India, Ministry Of
Finance, Department Of Income
Tax, New Delhi 110001

RESPONDENT

Date of Decision: Feb. 27, 2024

Acts Referred:

- Central Civil Services (Classification, Control And Appeal) Rules, 1965 - Rule 14(18), 15
- Central Civil Services (Pension) Rules, 1972 - Rule 9
- Central Civil Services (Conduct) Rules, 1965 - Rule 15
- Central Civil Services (Classification, Control And Appeal) Rules, 1957 - Rule 15(1)

Hon'ble Judges: Dr. A.K. Dubey, Member (A); Umesh Gajankush, Member (J)

Bench: Division Bench

Advocate: Maithili D. Mehta, Riya Navin

Final Decision: Partly Allowed

Judgement

Umesh Gajankush, Member (J)

1. The present Original Application has been filed by the applicant challenging the order dated 09.08.2017, by which the Disciplinary Authority rejected the Inquiry Officer's report and proposed to conduct a fresh inquiry by appointing another Inquiry Officer. Another order dated 17.08.2017 (Annexure-A/2) has also been challenged by the applicant, by which Inquiry Officer was appointed and charges were framed against the officer.

2. The brief facts which are emerging from the records are:-

2.1 At the relevant point of time, i.e., in the year 2013, charge memorandum dated 16.04.2013 (Annexure-A/9) was issued to the applicant by leveling two articles of charge while he was functioning as a Tax Recovery Officer, Gandhidham during the Financial Year 2011-2012. Thereafter, Inquiry Officer and Presenting Officer were appointed. Inquiry was conducted and the Inquiry Officer had submitted the inquiry report on 18.10.2016 (Annexure-A/17). The said inquiry report was submitted to the Disciplinary Authority who in turn issued the impugned order dated 09.08.2017 (Annexure-A/1) rejecting the Inquiry Officer's report on the ground that the Inquiry Officer had travelled beyond his mandate and had assumed a different jurisdiction in holding that the sanction of prosecution was made without application of mind and signed on

dotted line. Grounds also included the contention that the Inquiry Officer had failed to put the mandatory questions to the complainant, witnesses, ACB and its witnesses under Rule 14(18) of the CCA Rules. Further, the Inquiry Officer failed to conclude on the mandate for which he was appointed viz., (i) whether bribe was accepted by the CO and (ii) whether it was with malafide intention on the part of the CO in retaining the impugned materials and survey folders, despite having no jurisdiction over the case in Original Application.

2.2 The said order has been challenged by the applicant on the ground of competence and jurisdiction of the Disciplinary Authority who passed the said order. It was stated that during the proceeding, applicant retired on 30.11.2016 and therefore in terms of Rule 9 of CCS (Pension) Rules 1972, after retirement the President alone has the power to pass any order. It was further submitted that in view of Rule 15 of the CCS (Conduct) Rules, 1965, there is no provision of ordering fresh/denovo inquiry. In support of the aforesaid contention, the applicant has placed reliance on judgment reported in (1971) 2 SCC 102 of the Hon'ble Supreme Court in the case of K.R. Deb vs. Collector of Central Excise. Therefore, on the facts and grounds mentioned in the Original Application, the applicant has prayed for quashing the impugned orders with further relief as claimed in para 8 of the original application.

3. After notice, respondents have filed reply and justified the impugned orders more specifically based upon the facts mentioned in para 5.10 and 5.11 of reply, which are reproduced hereunder:-

“5.10 In light of all the above facts and circumstances of the case, the erstwhile DA found report of the I.O. (dated 28.3.2016, 31.5.2016 and 18.10.2016) as inconclusive and non-specific to the mandate laid before him and devoid of evidences substantiating the findings and averments made by him. At this point, there appeared no wisdom in referring the matter back to the IO. as he had travelled beyond his mandate and has superseded his jurisdiction in holding that the sanction of prosecution was made without application of mind, that the Appointing authority signed on dotted lines, that he failed to ask the mandatory questions to the Complainant, his witnesses, ACB and its witnesses, under Rule 14(18) of the CCA Rules as discussed above. More importantly, the IO failed to conclude on the mandates for which he was appointed viz., (i) whether bribe has been accepted by the CO and (ii) whether there was any malafide intention on the part of the CO in retaining the impounded materials and survey folders, despite having no jurisdiction over the case.

5.11 Hence, vide this office letter dated 2.2.2017, addressed to the Addl. DG (Vig), Mumbai, Shri O.P. Mehra (the then D.A.) had proposed to reject the inquiry reports and to appoint another I.O. to hold fresh inquiry. This decision was conveyed to the Addl. DG (Vig), Mumbai. Thereafter, a copy of latest panel was sought vide this office letter dated 17.3.2017. Thereafter, vide letter dated 26.5.2017, the Vigilance Directorate was recommended of probable Officers to be appointed as I.O. Finally, vide speaking order dated 9.8.2017, the appointment of Shri Vilas Shinde as I.O. was cancelled. A copy of the said order is annexed herewith as Annexure-R-7. Thereafter vide order dated 17.8.2017, Shri Ranjit Singh, CIT (Appeals)- 2 Rajkot was appointed as I.O. On 23.8.2017, this office received one letter from Shri Ranjit Singh who expressed his reservation in taking up the role of I.O. as the appeal of the complainant is pending for adjudication before him. Therefore, in the interest of justice, the appointment of Shri Ranjit Singh was cancelled vide order dated 23.8.2017. These events were communicated to the Addl. DG (Vig), Mumbai, the Pr. Chief Commissioner of Income tax, Gujarat

Ahmedabad and the Chief Commissioner of Income tax, Rajkot.”

On the basis of reply, official respondents have prayed for dismissal of the OA.

4. Thereafter, rejoinder has been filed by the applicant explaining and elaborating against the stand taken by the respondents.

5. The applicant appeared before this Tribunal in person and argued his case by reiterating the submissions as stated in the Original Application. It was specifically argued that in terms of Rule 15 of CCS (CCA) Rules, Disciplinary Authority has no power or jurisdiction to reject the Inquiry Officer's report and remit the matter for fresh inquiry. It is also contended that in terms of Rule 9 of CCS (Pension) Rules, 1972, for passing any order only The President is the competent authority since the applicant retired on 30.11.2016. To substantiate his argument, applicant has placed on record the written arguments.

6. On the other hand, Ms.Maithily D Mehta counsel for the respondent assisted by Ms.Riya Navin vehemently contended that in the impugned order dated 0.08.2017 the Disciplinary Authority in paragraph 9 categorically recorded the facts on the basis of which it was necessary to reject the Inquiry Officer's Report and to hold fresh inquiry. Learned counsel for the respondents also filed written submissions.

7. After hearing the applicant in person and counsel for the respondent, the principle issue which requires consideration by this Tribunal is whether the Disciplinary Authority has power or authority to reject the Inquiry report and remit the matter for fresh inquiry by appointing another Inquiry Officer.

8. To answer the aforesaid point, it is relevant here to reproduce the relevant provision of Section 15 of CCS (CCA) Rules which reads as under:-

“15. Action on the inquiry report.

(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.”

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority, or where the Disciplinary Authority, a copy of the report of the Inquiring Authority together with its own tentative reason for disagreement, if any, with the findings of the Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days irrespective of whether the report is favourable or not to the Government servant.

(3)(a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice. :

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the finding of Inquiring Authority on any article of charge; and

(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the Commission received under Clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days on the advice of the Commission.

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or Clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceedings further in the matter as specified in sub-rules (5) and (6).

(5) 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 in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty.

(6) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:"

9. Aforesaid point was considered by the Hon'ble Supreme Court in the case of K R Deb (supra) and after referring to Rule 15 it was held that on the face of it, provides for one inquiry, but it may be possible that in a particular case if there has been no proper inquiry because some serious defect crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined for some other reasons, 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.

10. Further, in the case of Vijay Shankar Pandey vs Union of India reported in (2014) 10 SCC 589 the Hon'ble Supreme Court has observed as under:-

"21. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the Enquiry already undertaken and resort to appointment of a fresh Enquiring Authority (multi-member). The issue is not really whether the Enquiring Authority should be a single member or a multi member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb v. The Collector of Central Excise, Shillong, (1971) 2 SCC 102, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case 15 where an enquiry was ordered against a sub-Inspector, Central Excise (the appellant before this Court). The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge".

22. The Court held that:

“12. 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 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.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us 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 not warranted by the rules but was harassing to the appellant.” (Emphasis supplied) and allowed the appeal of K.R. Deb.

23. It can be seen from the above that the normal rule is that 16 there can be only one Enquiry. This Court has also recognized the possibility of a further Enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the Report submitted by the Enquiring Authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second Enquiry.”

11. In view of the aforesaid proposition of law laid down by the Hon’ble Supreme Court, it is apparent that there is no provision for fresh inquiry. For any reason as per the provisions of law, Disciplinary Authority may remit the case to the Inquiry Officer for further inquiry. In view of the aforesaid discussion, impugned orders are not sustainable. Even during the course of argument or by way of written submissions, respondents have failed to show any provisions which authorizes the Disciplinary Authority to order for fresh inquiry by rejecting the inquiry officer’s report in toto.

12. Thus, in view of the aforesaid factual matrix, Original Application is allowed in part. Impugned orders dated 09.08.2017 (Annexure-A/1) and 17.08.2017 (Annexure-A/2) are quashed and set aside. Applicant is entitled all consequential benefits following from quashing of orders dated 09.08.2017 & 17.08.2017 except back wages if any. However, the competent authority is always at liberty to proceed in respect of inquiry report dated 18.10.2016 in accordance with law and taking into account his date of retirement i.e., 30.11.2016. Pending MA if any, also stands disposed of. There is no order as to Cost.