

Union of India and Others

Vs

P. Thayagarajan

Civil Appeal No. 5914 of 1998

(S. Saghir Ahmed, S. R. Babu JJ)

24.11.1998

JUDGMENT

RAJENDRA BABU, J. -

1. Leave granted.

2. The respondent, while discharging his duties as Assistant Sub-Inspector in CRPF at Guwahati, was transferred to Jammu by order dated 31-5-1991 and he was relieved on the same day to enable him to proceed to Jammu. The respondent failed to report for duty at Jammu but had remained absent on the ground that he was not well and he had been advised to take rest. He was served with a memorandum of charges. The gist of it is as under :

1. That he did not report for duty at the Office of the IGP(OPS), CRPF, J&K, Srinagar on his transfer/attachment and did not proceed to his new posting from present office as ASI(M) in GC, CRPF, Guwahati and thereby committed an act of disobedience of the orders of his superiors in the discharge of his duties in his capacity as a member of the force under Section 11(1) of the CRPF Act, 1949,

2. That he committed an act of neglect of duty in his capacity as a member of the force inasmuch as he remained absent from duty from 1-6-1991 to 2-9-1991 without proper permission from the competent authority and without sufficient cause, reason or ground thereby violated Section 11(1) of the CRPF Act, 1949;

3. That he committed an act of misconduct by sending an application dated 1-6-1991 directly to IGP, NES, CRPF in violation of the provisions contained in para 3 of Circular Order No. 3/80 read with the decision of the Government of India in this regard.

3. The enquiry officer conducted an enquiry on the aforesaid charges and made a report to the disciplinary authority. The disciplinary authority noticed certain irregularities in the conduct of the enquiry which were of a vital nature, in particular, that the enquiry officer acted on the letters of one U. N. Chaini, who was a witness on behalf of the Department and K. M. Verghese, who was a witness on behalf of the respondent on the basis of a representation made by them stating that they are not in a position to attend the enquiry proceedings but indicating the facts within their knowledge. The authority concerned was of the view that the witnesses should have been examined in person and the procedure adopted by the enquiry officer was contrary to the relevant rules in taking their letters as statements. The enquiry officer did not ascertain the facts necessary for the

conclusion of the case. Therefore, he set aside the findings recorded by him and directed de novo enquiry by an order made on 19-5-1995 which was communicated to the respondent on 7-6-1995. Challenging this order, the respondent preferred a writ petition in the High Court of Guwahati. The learned Single Judge directed issue of rule but did not grant any interim order on the basis that Rule 15 of the Disciplinary Rules enables the authority to remit the matter to the enquiry officer for further enquiry and that the power has been exercised by the authority under Rule 15 and mere use of the expression "de novo" will not change the tenor of the order. A writ appeal was preferred against the said order and the Division Bench of the High Court granted initially an interim order staying further proceedings in the enquiry and thereafter by an order made on 15-12-1997, allowed the appeal by taking the view that in an appeal arising out of an order of punishment made by the disciplinary authority accepting or rejecting the conclusion reached by the enquiry authority, the appellate authority could direct a fresh or de novo enquiry and such power is not available to the disciplinary authority. Thus, the Division Bench set aside the order made by the disciplinary authority on 6-6-1995. Hence this appeal by special leave.

4. Shri K. N. Raval, learned Additional Solicitor General appearing for the appellant, drew our attention to the Central Reserve Police Force Rules, 1955 and in particular to Rule 27 thereof. Detailed procedure is set forth therein. Rule 27(c)(6) enables the Commandant, if he himself holds the enquiry, to record his findings and pass orders where he has power to do so and if the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass orders where he has power to do so. He submitted that such power includes power to set aside findings of the enquiry officer if there is any serious infirmity in the conduct of an enquiry which may be detrimental either to the interests of the Department or the delinquent official and in such a case, it is certainly open to the disciplinary authority to order further or fresh enquiry, as the case may be. He further submitted that the disciplinary authority has the power to record his findings and pass appropriate orders in that regard and such a power is inherent in such disciplinary authority.

5. Shri K. T. S. Tulsi, learned Senior Counsel appearing for the respondent, relied upon the decision of this Court in *K. R. Deb v. CCE* ((1971) 2 SCC 102) wherein, while interpreting Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, it was held that the disciplinary authority has no power to set aside an earlier enquiry and order a fresh enquiry. He submitted that this decision makes it clear that it is not open to the disciplinary authority to order to conduct a fresh enquiry in this matter. Therefore, he urged that the view taken by the High Court is justified.

6. In order to satisfy ourselves of the correctness of the contentions raised on behalf of the parties, we called for the original record of the enquiry and of the disciplinary authority and on going through the same, we find that letters addressed to the enquiry officer have been treated as statements made before him of U. N. Chaini (PW 2) and letter sent by K. M. Verghese, who was to be examined as a defence witness.

7. What is contemplated in Rule 27(c)(2) is that evidence material to the charge could be either oral or documentary and, if oral, (i) it shall be direct; (ii) it shall be recorded by the officer conducting the enquiry himself or by any officer; and (iii) the accused shall be allowed to cross-examine the witness. When reliance is sought to be placed on oral evidence of witnesses, it will have to be obtained in the manner indicated in the said Rule and the oral statement has to be recorded by the officer himself conducting the enquiry in the presence of the parties and it cannot be done in any

other manner. The procedure in taking letters as statements is in violation of Rule 27(c)(2). Therefore the contention put forth on behalf of the appellant and the reasons set forth in the course of the order setting aside the enquiry is justified. What Shri Tulsi urged with reference to the decision in K. R. Deb ((1971) 2 SCC 102) is that there is no power in the disciplinary authority to set aside an earlier enquiry and to order a fresh enquiry. We may, in particular, refer to para 12 of the said decision which is as follows : (SCC p. 105)

"12. It seems to us that Rule 15, on the face of it, really provides for one enquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiry officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous enquiries on the ground that the report of the enquiring 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."

8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature.

9. The reasoning adopted by the Division Bench of the High Court was plainly incorrect. Whatever may be the powers of the appellate authority, the disciplinary authority will have to be satisfied with the procedure adopted by the enquiry officer before passing an order. It does not stand to logic that in a given case, the appellate authority could order a fresh enquiry and not the disciplinary authority at whose instance the enquiry began and which is not satisfied with the enquiry held for some vital defects in the procedure adopted. Therefore the order made by the High Court cannot be sustained. The same stands set aside and we allow the appeal and dismiss the writ petition filed by the respondent.

10. Considering the fact that this matter has been pending before the authorities for a long time, we direct the appellant to complete the enquiry as expeditiously as possible but within three months from today and take an appropriate decision. The appeal is allowed in the aforesaid terms. No order as to costs.