

# KERALA HIGH COURT

Kesavan Namboodiri

Vs

State of Kerala

(P. Govinda Menon, J.)

21.06.1982

## JUDGEMENT

### **P. Govinda Menon, J.**

( 1. ) THE question which arises for consideration in this petition is whether the second respondent, Director of Public Instruction has jurisdiction to completely wipe out the enquiry conducted by the Regional deputy Director of Education, Ernakulam into the charges framed against the petitioner, an Asst. Educational Officer working in Trichur District and direct a de novo enquiry and that too by another officer, the Deputy Director of Education, trichur. That he has no jurisdiction to do so is clear from the decision of the supreme Court in K. R. Deb v. Collector Central Excise, Shillong (AIR. 1971 SC 1447 ). In that case, the Supreme Court had to consider the effect of Rule !5 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and after doing so, came to the following conclusion: "13. It seems to us that R. 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 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 R. 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 R. 9. "

( 2. ) THE rule considered by the Supreme Court is more or less similar to R. 15 of the Kerala Civil Services (Classification, Control and appeal) Rules (for short 'the Rules' ). R. 15 (11) authorizes the Disciplinary authority (other than the Government) where it is not the inquiring authority, to consider the record of the inquiry and record its findings on each charge. Under sub-rule 12, if the Disciplinary Authority having regard to the findings is of opinion that any major penalty should be imposed, it has to follow the procedure prescribed therein after giving a notice. THE procedure for imposing minor penalty is provided for in sub-rule (13 ). An examination of

R. 15 shows that the Disciplinary Authority cannot wipe out the inquiry already conducted and direct a de novo enquiry. Where the findings of the inquiring authority are adverse to the delinquent officer, it is open to the Disciplinary Authority to consider the material and evidence, come to a different conclusion and exonerate him from charges. It, on the other hand, the inquiring authority holds that the charges are not proved, it is open to the Disciplinary Authority to take a different view and record findings. Where the Disciplinary Authority is satisfied that some evidence which would have been available was not collected by the Inquiring Authority, it may even direct the Inquiring authority to proceed further with the inquiry in the interests of justice. THERE is no provision in the rules to order a de novo inquiry after wiping out the inquiry already conducted Since the second respondent had no authority to do so, Ext, P4 deserves to be and is hereby quashed. It is, however, open to him to apply his mind once again to the record of inquiry and take appropriate action in accordance with law. THE petition is allowed in this manner but. under the circumstances without costs. Issue carbon copies to both parties on usual terms. Allowed. . . ;