**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Chander Singh Vs. Delhi Development Authority and anr.**

**Chander Singh Vs. Delhi Development Authority and anr.**

**SooperKanoon Citation** : sooperkanoon.com/696979

**Court** : Delhi

**Decided On :** Mar-09-1993

**Reported in** : 1993(25)DRJ582; (1993)IILLJ380Del

**Judge** : P.N. Nag, J.

**Acts** : Central Civil Services (Temporary Services), 1965 - Rule 5(1); Central Civil Services (Conduct), 1964 - Rules 3, 14 and 15; Delhi Development Authority (Salaries, Allowances and Conditions of Services) Regulations, 1961 - Regulation 18; Central Civil Services (Classification, Control and Appeal) Rules, 1957 - Rules 9 and 15

**Appeal No.** : Civil Writ Petition No. 3326 of 1989

**Appellant** : Chander Singh

**Respondent** : Delhi Development Authority and anr.

**Advocate for Pet/Ap.** : Maninder Achary, Adv

**Judgement** :

**P.N. Nag, J.**

(1) The petitioner in this writ petition has challenged the order of his reversion dated 10.1.1989 (AnnexureP-11) whereby on the basis of a disciplinary enquiry he has been reduced in rank to the level of Ldc from the stage he was promoted to

UDC.

(2) The relevant facts set out in the petition for determining the controversy are that the petitioner was appointed as Ldc with the respondent in 1965 and he was promoted to the post of Udc on 1.2.1969 and he was assigned the duties of Rent Supervisor in Jj Department of the respondent from 1974. It appears the petitioner's services were terminated original only under the provisions of Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Services), 1965 vide Annexure P-1 dated 28.2.1978, which was later revoked by the respondent and thereafter he was suspended pending disciplinary proceedings contemplated against him. Ultimately, the petitioner was charge sheeted on 5.10.1981 (Annexure P-4) on certain charges, inter alia, that while working as Rent Collector in Jj Department of the Dda during the period from 5/77 to 2/78, the petitioner deliberately issued receipts No.G-459 and G-460 to help Shri V.K. Garg, Eo, Ndmc in procuring plots by illegal means thereby depriving the rightful owners S/Sh. Mool Chand and Jaswant Singh of the plots. He issued receipts in favor of Smt. Mohini Garg, W/o Shri V.K. Garg and Shri Sanjay Garg, S/o Shri V.K. Garg in an irregular manner. S/Shri Mool Chand and Jaswant Singh were the original allottees of plot Nos.G-459 and G-460 at Shakurpur Resettlement Colony and had been allotted allotment slips during the clearance scheme. The petitioner by his above acts exhibited lack of integrity and displayed conduct unbecoming of a Government servant thereby violating Rule 3 of the Ccs (Conduct) Rules, 1964.

(3) Consequently Mr. O.P. Verma was appointed as the Enquiry Officer to hold enquiry. The Enquiry Officer held the enquiry and submitted his report dated 15.10.1985. In this report, the charges framed against the petitioner were not proved.

(4) However, the Disciplinary Authority, as is apparent from the order dated 17.3.1987 (Annexure P-6) came to the conclusion that the Enquiry Officer has not gone to the case in sufficient depth and hence there is a need to hold further enquiry (as per regulation 18 of the said Regulations, 1961). Vide the aforesaid order dated 17.3.1987 i.e appointed Shri K.D. Gupta, C.D.I, as the Enquiry Officer to enquire afresh into the charges framed against the petitioner.

(5) Shri K.D, Gupta, Enquiry Officer, held the enquiry and submitted his report dated 9.8.1988. According to this report, the charges leveled against the petitioner have been roved beyond any shadow of doubt.

(6) On the basis of the report dated 19.8.1988, the impugned order dated 10.1.1989 annexure P-11 has been passed by the Disciplinary Authority whereby he was reduced rank to Ldc from the stage he was promoted to U.D.C.

(7) In the counter affidavit, the stand taken by the Dda is that the second enquiry was ordered by the Disciplinary Authority vide order dated 17.3.1987 (Annexure P-6) because the Enquiry Officer had not gone into the case in sufficient depth and in the circumstances there was no escape from getting the enquiry conducted denovo as the enquiry did not help the Disciplinary Authority to prove about the guilt or otherwise of the petitioner. According to the respondent the Disciplinary Authority is empowered to hold further departmental enquiry under para 1.3 of para 2 of Chapter 12 of the Vigilance Manual Vol. I which is reproduced below: Para 1.3 of Chapter 12 of Vigilance Manual. Vol.I:

'IF disciplinary authority disagrees with the finding of the Enquiry Authority on any article of the charge it will while recording its own findings, also record reasons for its disagreement.'

Para 2 of Chapter 12 of Vigilance Manual. Vol.I:

'IF disciplinary authority consider that a clear finding is not possible or there is any difficulty in the enquiry e.g. enquiry authority had taken into consideration certain facts without giving the delinquent officer an opportunity to defend himself in this regard. Disciplinary Authority may for reasons to be recorded by it in writing remit the case to the enquiry authority for further enquiry and report. The enquiring Authority will thereupon proceed to hold further enquiry according to the provisions of Rule 14 of the Cca Rules as far as may be'.

(8) Other alleged source of power in the Disciplinary Authority although not referred to in the affidavit has been mentioned in the order dated 17.3.1987 itself, that is power conferred by Regulation 18 of the Delhi Development Authority

(Salaries, Allowances and Conditions of Services) Regulations, 1961 (hereinafter referred to 'Regulations, 1961').

(9) Ms. Maninder Acharya, counsel for the petitioner, has strenuously urged that the regulation contemplates only one enquiry and no second enquiry on the same charges can be ordered by the Disciplinary Authority by abrogating the main enquiry altogether and the impugned order, which is consequential and based on the second enquiry on the same charges, thereforee, is entirely with out jurisdiction and has to be set aside.

(10) There is no dispute that the second enquiry has been held on the same charges.

(11) There is good deal of force in the submission of learned counsel for the petitioner.

(12) Regulation 18 of the Regulations, 1961 refers to the 'Joint Inquiry' and deals with different situations and does not empower the Disciplinary Authority to order fresh and denovo enquiry on the same charges and, thereforee, this regulation is wholly irrelevant in this context. I have also examined paras l.3 and 2 of Chapter 12 of Vigilance Manual, Vol.I, relied upon by the respondents. It may be seen that para 2 empowers the Disciplinary Authority to remit the case to the enquiry authority to further enquiry, i.e., in continuation of the previous enquiry and not fresh enquiry and that the enquiry authority will then proceed to hold further enquiry according to the provisions of Rule 14 of the Cca Rules as far as may be. This clearly shows that the rule on the face of it provides for one enquiry only and for example it is possible the enquiry authority has taken into consideration certain factors without giving the delinquent official giving an opportunity of being heard in this regard, then the Disciplinary Authority may, for reasons to be recorded in writing, remit the case to further enquiry into the matter but there is no provision in this para for completely setting aside the previous enquiry. The case can only be remitted for further enquiry in accordance with Rule 14 of the Cca Rules and not for fresh or denovo enquiry.

(13) This question arose for consideration in K.R. Deb v. The Collector of Central Excise, Shillong 1971 1 SLR 29. The provisions of the Para 2 of Chapter 12 of Vigilance Manual relied upon by the respondents are almost para materia with the provisions of Rule 15 of CCS(CCA) Rules, 1964. In this context, it was observed by the Supreme Court:

'RULE15 of Central Civil Services (Classification,Control and Appeal) Rules, 1957 on the face of it 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 reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 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 of Central Civil Services (Classification. Control and Appeal) Rules, 1957. It seemed that punishing authority 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.

(14) Similar question arose before this Court also in Shri Prabhu Dayal and others v. Municipal Corporation of Delhi and another 1980 2 Slr 488. In that case.this Court has also relied upon Supreme Court's case K.R. Deb v.The Collector of Central Excise, Shillong (supra) and has held that the respondent Corporation was not entitled to order fresh enquiry in respect of same charges. The observations of this Court in para 9 are noted as under:

'DOMESTIC enquiries into charges of misconduct of employees do not always inspire any great or abiding faith and confidence in their impartiality because employer virtually becomes a judge in his own cause by appointing his own nominee as the Enquiry Officer. The eroding faith in the domestic enquiry will vanish altogether if an employer can go on repeating enquiries till the ultimate result satisfies him in the style of repeating the mixture till the patient is dead. It is,

thereforee,.statutory to visit even domestic enquiries with an increasing content of fairness and insulating as far as possible their perfunetoriness.'

(15) Similar view has been expressed by the Allahabad High Court in Govind Saran Aeron v. Deputy Director of Education and others 1982 3 Slr 321 and it has been held that the petitioner once exonerated cannot be proceeded against again on the same set of charges and order of dismissal on the second enquiry was held illegal.

(16) In the present case, since the petitioner has been reverted vide impugned order Annexure P-11 on the basis of the second enquiry on the same charges, it was without jurisdiction. thereforee, the impugned order has to be quashed.

(17) The writ petition is allowed and the impugned order dated 10.1.1989 (Annexure P-11) is quashed. The petitioner shall been titled to all consequential benefits. However, in the circumstances of the case. I make no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**