

(2011) 09 DEL CK 0398
In the Delhi High Court
Case No : Writ Petition (C) 6930 of 2011

Dr. M.L. Bhuyan

APPELLANT

Vs

Union of Delhi (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(18)

Citation : (2011) 09 DEL CK 0398

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Mahabir Singh, Madhusmita Bora and Gagandeep Sharma, for the Appellant; Jatan Singh, Ashok Singh and Kunal Kahol, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties at the admission stage itself. Pleading waived.

2. The Petitioner had filed a writ petition challenging the charge sheet issued to him. The same, registered as W.P.(C) No. 7139/2009 was disposed of as withdrawn vide order dated 22.2.2011, with right reserved in favour of the Petitioner to agitate issues raised in the writ petition should penalty be levied.

3. Thereafter, the Petitioner filed a civil miscellaneous application in the writ petition which was disposed of raising a grievance that the inquiry was unnecessarily being lingered on. He stated therein that the object to linger on the inquiry was to somehow or the other deny promotion to the Petitioner.

4. The application was disposed of vide order dated 26.7.2011 requiring the department to conclude the disciplinary proceedings within 4 weeks for the reason we were informed that the Inquiry Officer had completed the inquiry and submitted a report to the disciplinary authority. The Inquiry Officer had partly indicated and partly vindicated the Petitioner. It was noted that qua said part of

the inquiry report wherein the Petitioner was absolved of the indictment, the disciplinary authority had not penned any note of disagreement. It was noted that the Inquiry Officer's report had been forwarded to the Petitioner for his response and requisite advise had been obtained from UPSC.

5. In other words, qua the inquiry, everything was over. With respect to the report of the Inquiry Officer, advise from UPSC had been obtained. Disciplinary authority had applied his mind and taken a decision not to differ with said part of the report of Inquiry Officer wherein Petitioner had been absolved.

6. The Inquiry Officer has now summoned the Petitioner to examine him and for which, vide notice dated 21.8.2011 Petitioner was directed to appear before the Inquiry Officer on 25.8.2011. This he did pursuant to an order dated 19.8.2010 wherein, in exercise of the alleged Presidential power another person has been appointed as the Inquiry Officer who has intimated Petitioner to appear before him on 27.8.2011.

7. Order dated 19.8.2010 reads as under:

WHEREAS an inquiry under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against.

1. Dr. M.L. Bhuyan, Ex.DIG (Med)
2. Dr. (Mrs.) N. Bhuyan, Commandant (Med)
3. Dr. S.M. Singh, AS (Vety)
4. Shri D.K. Thongon, SAO
5. Shri Dalbir Gogoi, SFA (Medic)

2.WHEREAS Smt. D.R. Doley Barman, Inspector General was appointed Inquiring Authority to inquire into the charges against the above mentioned officers vide Force Hqrs, New Delhi Order No. 13/SSB/A4/2005(4)-II-963-71 dated 29.01.2009.

3. WHEREAS, UPSC has observed that the General Examination of the Charged Officers in terms of Rule 14 (18) of CCS (CCA) Rules, 1965 has not been conducted.

4. AND WHEREAS Smt. D.R. Doley Barman, Inspector General after having heard and recorded the whole/part of the evidence has since been repatriated to her parent cadre and it is necessary to appoint another officer as Inquiring Authority to inquire into the charges against the above mentioned officers.

5. NOW THEREFORE, the President in exercise of the powers conferred by Sub-rule (2) read with Sub-rule (22) of Rule 14 of the CCS (CCA) Rules, 1965, hereby appoints Shri S.K. Singhal, Inspector General, Frontier Hqrs., SSB, Guwahati as Inquiring Authority to inquire into the charges framed against the said officers from the stage where the General Examination of the Charged Officer is to be

conducted in terms of Rule 14 (18) of CCS (CCA) Rules.

8. Wherefrom the Presidential power can be exercised under Sub-Rule 22 of Rule 14 of the CCS Rules remains a mystery. Sub-Rule 22 of Rule 14 of the CCS (CCA) Rules 1965 reads as under:

(22) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

9. The said Rule empowers the Inquiry Authority to further examine a witness or recall a witness. It just does not empower the President of India to do anything.

10. Learned Counsel for the Respondents states that since a violation of Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules 1965 has occurred, in that, the Inquiry Officer has not examined the Petitioner on the circumstances appearing against him, thus corrective action is being taken. But, learned Counsel concedes that this would be within the power of Disciplinary Authority and that too if the Petitioner has raised said issue in response to the reply filed by him to the report of the Inquiry Officer for the reason the Petitioner may waive the beneficial right conferred upon him. Further, in said eventuality the report of the Inquiry Officer has to be withdrawn. All proceedings pursuant to the report have to be set at naught. Nothing of that kind has been done.

11. Wherefrom has the Presidential power been exercised? Nothing has been shown to us and indeed no such power exists.

12. We reiterate, it is only if the Petitioner is found to have raised such a plea that the disciplinary authority has to consider its effect with respect to the report of the Inquiry Officer. It is he who has then to determine whether the report of the Inquiry Officer suffers from a procedural irregularity. It is for him to pass the necessary orders.

13. We dispose of the writ petition quashing the impugned notice issued and served upon the Petitioner.

CM No. 15909/2011

Since writ petition has been disposed of instant application which seeks interim orders is disposed of as infructuous.