

(1985) 01 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 394 of 1972

J.S. Kapur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-01-1985

Acts Referred:

Citation : (1985) 8 DRJ 345

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : M.L. Bhargav and A.K. Bhasin, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner was appointed as an Upper Division Clerk, Ty (IDC Q/Pt) in the Western Command of the Ministry of defense, Government of India, New Delhi. On 17th April, 1970 respondent No. 4, Garrison Engineer, Nasirabad served a charge-sheet on the petitioner and proposed an enquiry against him on certain charges. The Enquiry Officer gave a finding against the petitioner on the said charges which was confirmed by respondent No. 2, Chief Engineer, Poona and Rajasthan Zone vide letter dated 16th December, 1970. The petitioner, by the said letter, was found not fit to be retained in the service and it was proposed to impose a penalty of removal from service against him. On 14th May, 1971 the petitioner filed a representation before respondent No. 2, against the finding of the Enquiry Officer. In this representation apart from preliminary objection regarding competence of the disciplinary authority, the petitioner raised several other objections regarding the validity of the enquiry. The petitioner also submitted in the representation that the enquiry was being held malafide and that the rules of natural justice were not complied with. On 17th January, 1972 respondent No. 4 communicated to the petitioner that his representation had been accepted and the previous charge-sheet stood cancelled and they proposed to initiate a de novo enquiry. A further representation was made by the petitioner that a de novo enquiry could not be initiated on the same charges. However, the

said representation was rejected by the respondent and another officer was appointed to enquire into the charges.

(2) It was contended by the counsel for the petitioner that a second enquiry on the same charges is not permissible in law. To support his contention the counsel relied on the judgments of the Supreme Court in the case of *State of Assam and Another Vs. J.N. Roy Biswas*, , *K.R. Deb Vs. The Collector of Central Excise, Shillong*, , and *C.D. Prabhu v. D.C. South Kanara*, 1969 Slr 363 (Mysore High Court); and *R.N. Atri v. Union of India*, 1979 (1) Slr 527 (Delhi High Court).

(3) It was submitted on behalf of the respondent that since the first enquiry was procedurally defective, the second enquiry on the same charges was valid. If only the first enquiry was proper, the second enquiry could not have been started. Further, the petitioner could not have any grievance since he was found guilty in the first enquiry.

(4) It is an admitted fact that the letter dated 17th January, 1972 cancelling the earlier enquiry did not disclose which .of the objections of the petitioner made in his representation were accepted. At no time the petitioner was communicated that a fresh enquiry was being initialed de novo because the earlier enquiry was defective due to technical reasons. It is true that if for technical, or procedural reasons an enquiry is found bad in law, the second enquiry can be lodged. The order, dated January.17," 1972 being silent on what ground the earlier enquiry was cancelled and the petitioner having been asked to join duty, and once he had joined duty to start de novo enquiry on the same charges cannot be held to be valid. If. the earlier enquiry was cancelled on technical grounds the reasons for cancelling the enquiry should have been mentioned in that order. Under Rule 15 of the Central Civil Services (CCA) Rules Government of India." has issued instructions and it is clarified that once proceedings initiated under Rule 14 or Rule 16 of the Ccs (CCA) Rules, 1965 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officer unless the reasons for cancellation of the original charge-sheet, or of dropping the proceedings, are properly mentioned, and it is duly stated in the order that the. proceedings were dropped without prejudice to further action which maybe considered in the circumstances of the case. No reasons having been mentioned as to why the previous enquiry was being cancelled, the initiation of fresh enquiry de novo on the same charges cannot be held to be valid.

(5) The second argument of the respondent that since the petitioner was found guilty of the charges in the first enquiry, he should not have a grievance if a de novo second enquiry was started has only to be stated to be rejected. Constitution forbids double jeopardy. A person cannot be prosecuted for the same offence more than once. This would be " so irrespective of whether he was found guilty or exonerated in the first enquiry. This is not a case where the same enquiry officer was asked to record further evidence because some serious defect had cropped in into the enquiry or where an order was made cancelling the first enquiry on technical grounds without prejudice to, the right of the respondent, to

start, a fresh enquiry. Therefore, though" the petitioner was found guilty in the first enquiry, a second enquiry on the same charges cannot be held to be valid.

(6) In the result, I allow the writ and hold that the respondent had no authority to appoint another enquiry officer to enquire into the same charges after the previous enquiry had been cancelled. . The impugned order dated 28-2-72 issued by the respondent is, Therefore, quashed. The petitioner will be entitled to his pay and allowances and other consequential benefits No costs.