

**(2013) 07 DEL CK 0473**

**In the Delhi High Court**

**Case No : Writ Petition (C) 3510 of 2013**

K.K.S. Sirohi and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 03-07-2013**

**Acts Referred:**

**Citation : (2013) 07 DEL CK 0473**

**Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J**

**Bench : Division Bench**

**Advocate : L.R. Khatana, for the Appellant; R.V. Sinha, Advocate and Mr. A.S. Singh, Advocate for R-1 to R-3, for the Respondent**

**Final Decision : Disposed Off**

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## **Judgement**

Pradeep Nandrajog, J.—O.A. No. 2917/2012 and O.A. No. 3320/2012 filed by the writ petitioners pertaining to disciplinary action initiated against them have been disposed of by the Central Administrative Tribunal vide impugned order dated March 19, 2013, directing the respondents to complete the disciplinary proceedings against the petitioners within three months. Brief facts necessary to understand the issue raised in this writ petition are that in the year 2007 common proceedings under Rule 14 read with Rule 18 of the CCS (CCA) Rules, 1965 were initiated against 4 persons including the petitioners herein who were working as Assistant Agricultural Marketing Advisor and Marketing Officer respectively under the Directorate of Marketing and Inspection, Faridabad. As per the annexures to the charge-sheet 13 documents were listed in Annexure III on the basis of which it was stated that the charge would be proved. We note that as per Annexure IV no witness was named through whom the said documents were intended to be proved.

2. The petitioners submitted their statement of defence and thereafter an Inquiry Officer was appointed who neither exhibited the documents nor recorded any evidence. He did not even record that the petitioners admit the documents. He submitted a report indicting the petitioners which was supplied to them for the

response and two points urged by the petitioners pertaining to the procedure i.e. relying upon unproved documents and not following the mandate of Sub Rule 18 of Rule 14 i.e. since petitioners had not examined themselves, incrimination circumstances appearing in the evidence against them not being put to the petitioners, being found correct vide order dated March 08, 2011 the Disciplinary Authority remitted the matter to the Inquiry Officer to re-submit a report after removing the procedural taint.

3. Surprisingly at the remanded stage the Inquiry Officer simply took on record the documents filed by the prosecution by marking them as P-1, P-2 etc. How they incriminate the petitioners has not been put to the petitioners. No witness of the department has been examined. A vagueness in the charge-sheet which alleges violation of a rule without mentioning the rule has been sought to be filled up by questioning the Presenting Officer and noting his response. A report has been submitted which was forwarded to the petitioners for the response and along with the response matter has been referred to UPSC which vide its letter dated June 26, 2012 has reiterated once again violation of Sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965 as also treating relied upon documents as proved without the same being proved or alternatively not recoding that the petitioners have accepted the documents. UPSC required the defects to be removed and accordingly on July 31, 2012 and August 01, 2012 the petitioners were informed that the matter would be re-inquired into. It is these communications which the petitioners challenged before the Tribunal stating that under the guise of further inquiry, the department is trying to fill up gaps and lacunae in the evidence, a plea which has been rejected by the Tribunal with a direction that the inquiry be completed within 3 months. Said order is in challenge.

4. To see the record of inquiry we had directed on May 24, 2013 that the Inquiry Officer Mr. R.K. Tiwari, a Joint Secretary level officer in the Government of India should be present in Court with the record of inquiry. He has appeared in Court today with the record and informs that he has submitted the report of inquiry.

5. We have perused the record and at the outset would note that we are shocked that once again Mr. R.K. Tiwari has submitted a report of inquiry repeating the same mistake. No prosecution witness has been examined to prove the relied upon documents of the prosecution. He has not recorded that the petitioners admit the said documents and thus there being no requirement to prove the same. He has not examined the petitioners with respect to the incriminating circumstances appearing in the evidence against the petitioners. When questioned by us as to why has he not so done, Mr. R.K. Tiwari states that since the documents have come from Government files their authenticity is not in doubt and thus the documents do not require to be proved. When questioned as to why has he not examined petitioners as required by Sub Rule 18 of Rule 14 of the CCS (CCA) Rules, 1965, to our horror and shock, Mr. R.K. Tiwari responds by telling us that the requirement of Sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965 requires him to question the department and the petitioners and elicit the

response with respect to the charge-sheet and thus he is not required to put the incriminating circumstances appearing in the evidence against the petitioners. When confronted with the language of the Rule in question which states: "The Inquiring Authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him." Mr. R.K. Tiwari stands before us shaking his head and insists that the Rule requires him to simply seek clarifications from the parties with respect to the charge-sheet.

6. We are at our wits end.

7. Mr. L.R. Khatana, learned counsel appearing for the petitioners would at the stage submit that petitioner No. 1 has since retired from service. He would further submit that the order dated July 31, 2012/August 01, 2012, issued by the respondents is totally illegal as the same does not have the authority of law, is against the rules governing the process of inquiry. According to him the attempt on the part of the Disciplinary Authority is to fill up the gaps/lacuna in the conduct of the inquiry so as to ultimately punish the petitioners. He would rely upon the opinion of the Supreme Court reported as (2003) 3 LLJ 557 SC *Union of India v. K.D. Pandey and Anr.* , to urge that if the Disciplinary Authority is not satisfied with the report of the Inquiry Officer then he cannot remit the matter to the Inquiry Officer for further inquiry. Per contra Mr. R.V. Sinha learned counsel for the respondents, while conceding that the Inquiring Officer has just not understood what he was required to do pleads before us that the last report submitted by the Inquiring Officer may be directed to be ignored and pleads that since the lapse is procedural the matter may be required for fresh inquiry with a direction that the Inquiry Officer should either record, by questioning the petitioners whether they admit the documents relied upon by the Department and if they do not admit the same as proved to call upon the Department to lead evidence. Thereafter if any incriminating circumstances appears in the evidence against the petitioners the same be put to them and thereafter report to be submitted.

8. While not agreeing with the contention urged by Sh. L.R. Khatana which is premised in the decision in *K.D. Pandey's* case (*supra*), because instant case is one where a procedure of law has been violated, we are inclined to quash the inquiry proceedings for the reason a novice has been appointed as an Inquiry Officer and we are pained to note that a Joint Secretary Level Officer in the Government of India has repeatedly shown, if we may use a soft expression: "A" sweet ignorance of law". The sweetness of the ignorance oozes from the facts which we have noted in paragraph 6 above.

9. We have perused the record of the inquiry produced during the course of the hearing today. It is seen that after the order dated July 31, 2012/August 01, 2012 was issued remitting back the matter to the Inquiry Officer to remove the

deficiencies we find that the Inquiry Officer held proceedings on September 05, 2012, which the petitioners did not attend. He passed the following order:

Present:

1. Shri R.S. Singh, Charged Officer
2. Shri Om Prakash, Presenting Officer

Shri K.K.S. Sirohi and Shri V.S. Yadav, charged officers (C.O.) did not attend.

The Disciplinary Authority in their order No. 31011/03/2005-AVU dated 31st July, 2012/01st August, 2012 have remitted the case to the enquiry officer for making further enquiry in the light of some procedural deficiencies mentioned in the order.

Shri R.S. Singh was asked whether he has got the copies of the Exhibits and whether these exhibits on the enquiry file, he answered in affirmative. Shri Singh was provided copies of the exhibits, which were already on record during the oral enquiry. However, as required in the order, the relevant documents (Annexure III of the charge sheet) are again taken on record and marked as S.1 to S.20. He stated that whatever he has submitted earlier may be taken into consideration and he has nothing further to submit. List of defence documents submitted by Shri R.S. Singh along with his written brief dated 19.1.2009 has been taken on record and marked as D-1 to D-38.

The documents submitted by Shri K.K.S. Sirohi on 30.9.2008 and marked as D-1 to D-18 are also taken on record.

The Presenting Officer was asked about the specific rule of GFR that has been violated by the charged officer. The Presenting Officer submitted as under:

The question was raised by Shri K.K.S. Sirohi and has been addressed in the Inquiry report (2nd last para) stating that "However, in my opinion mentioning of incorrect provision/rule during inquiry or absence of specific rule in the charge sheet does not in any way lessen the gravity of charge. However, PO is of the view that they have violated the standard principles of financial propriety mentioned in the Govt. of India decision below 6 of GFR" (Swamy Compilation of General Financial Rules 2000 Edition) which are reproduced below:-

Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.

Whether the offers have been invited in accordance with governing rules and after following a fair and reasonable procedure in the prevailing circumstances.

Whether the authority is satisfied that the selected offer will adequately meet the requirement for which it is being procured.

Whether the price on offer is reasonable and consistent with the quality required.

Above all, whether the offer being accepted is the most appropriate one taking all relevant factors into account and in keeping with the standards of financial propriety.

On being asked about the specific rule of GFR that has been violated, he submitted that no specific rule exist, however, CO has violated above principle of financial propriety.

As the Presenting Officer is not in a position to clearly specify the rule of GFR that has been violated by the charged officer, he may seek necessary instructions in this regard and the matter may be referred back to the Disciplinary Authority to specify the rule of GFR, if any, that has been violated by the charged officer.

The charged officer was asked if he has any objection to file or if he wants to submit any further evidence in this matter. However, he denied filing any objection of any further evidence.

In respect of article of Charge II, he was asked how he allowed calling limited quotations from three cable operators instead of inviting open tender as the amount of work was more than Rs. 2 lakh, he replies that open tenders were not being invited in DMI in the past and he accepted the advice of Shri K.K.S. Sirohi, the then AAMA and got the work done to save time and government money.

The charged officer was also asked why he did not enquire or verify or prescribe the minimum eligibility criteria or availability of infrastructure/network with the selected firms, he replied that this should have been done by Shri Sirohi as he was the administrative incharge of DMI Regional Office. He further stated that Shri Sirohi did not show the letter to be issued to the cable operators to him and he was not aware how the three cable operators were selected.

On being questioned about how he forwarded the proposal to approve the advance without safeguarding the interest of the government or without securing the advance being provided, he said that he had only sent the proposal to Head Office for approval.

In respect of article of charge III, the charged officer was asked why he did not monitor the work and why he did not plan the publicity in advance, he replied that orally he had asked Shri Sirohi and Shri Yadav to do the same.

The charged officer requested for at least four weeks time for next hearing. Therefore, next date of hearing is fixed for 4th October, 2012.

Since Shri Sirohi and Shri V.S. Yadav did not appear today, therefore, they are given another opportunity to appear on 25.9.2012. They are warned that in case they do not appear on the next date of hearing, further proceedings will be conducted in their absence on the basis of available evidence and record.

10. A perusal of the aforesaid order would reveal that the documents submitted by petitioner Mr. K.K.S. Sirohi have been marked as D-1 to D-18 and are taken on record. Since the charge sheet did not mention which GFR Rule was violated,

the Inquiry Officer has asked the Presenting Officer as to which Rule was violated and has recorded that the Presenting Officer is not in a position to clearly specify the Rule which has been violated.

11. The next date notified was September 25, 2012. Before said date the Original Applications were filed and the Tribunal directed the inquiry proceedings to be kept in abeyance. No proceedings were held by the Inquiry Officer till when the Original Applications were disposed of on March 19, 2013.

12. After the instant writ petition was filed and was listed on May 24, 2013, counsel for the respondents stated that the Inquiry Officer would appear with the record today and we find that the Inquiry Officer fixed June 17, 2013 as the date for further proceedings to which petitioner sent a fax on June 14, 2013 praying that the Inquiry Officer should not proceed further because of instant writ petition being pending. On June 17, 2013 the Inquiry Officer has passed an order as under:-

Present: Shri Om Prakash, Presenting Officer and Under Secretary Deptt. Agriculture & Cooperation, Krishi Bhawan, New Delhi. None of the Charged Officers viz. Shri R.S. Singh, Shri K.K.S. Sirohi & Shri V.S. Yadav was present in spite of notices issued to them.

1. Shri V.S. Yadav, CO had sent a fax on 14.6.2013 requesting not to hold further inquiry before 03.07.2013 as the matter is pending before the Hon "ble High Court of Delhi. A letter dated 11.6.2013 received by PO from Shri R.S. Singh making similar request has been placed before me by the PO. Shri R.S. Singh has also sought adjournment of the inquiry on the ground that the order of CAT has been challenged before the Hon"ble High Court of Delhi. In this regard, it is noted that in their order dated 19.3.2013, Hon"ble CAT has directed to complete inquiry preferably within three months from the date of receipt of the certified copy of the order. Since then date were fixed to conduct further inquiry on 29.4.2013, 27.5.2013 and 17.6.2013. Thus, sufficient time has already been given to charged officers for conducting further inquiry including questioning the charged officers regarding the circumstances appearing against them as prescribed under rule 14(18) of CCS (CCA) Rules.

2. The prosecution documents had already been taken on record earlier and these have also been marked as exhibit S-1 to S-20 (Annexure-III of charge sheet) in the case of Shri R.S. Singh and S-1 to S-13 in the case of Shri K.K.S. Sirohi and as SS-1 to SS-XIII in respect Shri V.S. Yadav. It is abundantly clear from the records that the charged officers are well aware about these prosecutions documents being on record and they have also been given copies thereof earlier. In view of their absence and repeated requests for adjournment on some pretext or others, it appears that they are not serious and do not want the inquiry to complete inquiry within the prescribed period and there is no stay order for these proceedings from any other court, there is no justification to grant further adjournment in this matter. Therefore, the requests for

adjournment are rejected.

3. In view of this, it is decided to conclude the inquiry. The inquiry report is being sent to the appointing authority along with entire records of the proceedings for further action in the matter.

13. We find that the inquiry report submitted by the Inquiry Officer repeats the twin taint i.e. not recording that the documents relied upon by the department were admitted by the petitioners and hence do not require to be formally proved nor has he examined the petitioners with respect to the incriminating circumstances appearing in the said documents (if they are treated as proved).

14. So ignorant is the Inquiring Officer that it would be useless to set aside the latest inquiry report and require a further inquiry. A charge sheet issued in the year 2007 has not resulted in a report being filed after following the procedures of law. One of the two petitioners has superannuated from service and the second would be superannuating shortly.

15. Mr. R.V. Sinha learned counsel for the respondents does not dispute that the Inquiry Officer has not followed the procedures prescribed by the law and has shown his total ignorance of the requirement of law by stating that Sub-Rule 18 of Rule 14 of the CCS (CCA) Rules, 1965 does not enjoin upon him to examine the charged officers with respect to the incriminating circumstances which appear in the evidence against them.

16. It is no doubt true that a civil servant is accountable for his actions in discharge of his official duties but the process of accountability cannot be converted into one which tests the patience of the charged Government servant.

17. We dispose of the writ petition quashing the disciplinary proceedings against the petitioners and issue a mandamus to the respondents to close the disciplinary proceedings ignoring the last inquiry report which has been submitted without following the process of law.

18. Copy of this order be sent to Secretary DOPT who is requested to ensure that such Government officials who are appointed as Inquiry Officers be made aware of the procedures of law to be followed so that in future the painful situation as we find in the instant case does not re-occur. No costs.