

(2015) 10 P&H CK 0221
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22347 of 2015

Ravinder Kumar Jhingan

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2015) 10 P&H CK 0221

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Alka Chatrath, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The petitioner relies on the judgment of the Constitution Bench of the Supreme Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, to press his case but while doing so he misreads it while trying to locate its ratio. Therefore, the accompanying discussion on the case has become essential to examine if the contention of the learned counsel Ms. Alka Chatrath is legally correct. K.R. Deb is an authority on the point that a delinquent will not be vexed twice by holding a fresh inquiry after the first inquiry has been conducted, findings returned on the charges levelled and proven on the evidence produced by the parties before the Inquiry Officer. The rule is against de novo inquiry.

2. However, the Supreme Court considered in K.R. Deb a case where the appellant was charged with misappropriation of Government money. K.R. Deb was a Sub Inspector in the Central Excise department. The facts of the case were that on May 30, 1959 he detained five maunds of onions from the house of one Sayed Ahmad in Ramendranagar. One Siddique Ahmed handed over a sum of Rs. 100/- to the appellant, through one Harendra Kumar Dutta on the next day but the appellant did not mention the realisation of this amount in his seizure report. K.R. Deb was tried in a domestic inquiry for concealment of fact. The Inquiry Officer found no conclusive evidence to establish the charge of misappropriation.

All that was established by evidence was that onions were seized from the house of Siddique Ahmed. The Inquiry Officer found nothing on record to prove the alleged acceptance of Rs. 100/- by K.R. Deb. Dutta did not appear in the inquiry though he acknowledged receipt of summons issued to him. In the absence of Dutta the entire story of handing over money to him in the presence of K.R. Deb was found to have toppled down. It was also evident that the Sub Inspector could not have demanded the illegal gratification money on May 30, 1959 as the seizure it appears was not made in the absence of Siddique Ahmed. The whole episode, it appeared to the Inquiry Officer was cooked up and fabricated to implicate K.R. Deb in a false case. The Collector of the District was unhappy with the report and found it very sketchy and thought that the Inquiry Officer had failed to appreciate the importance of the evidence of Dutta, the prosecution witness in the case has come forward to depose. The Collector further observed that in case Dutta had failed to respond to the summons the Inquiry Officer should have taken steps to send somebody at his house to call him. The Collector then proceeded to direct the Inquiry Officer to examine Dutta and two others without further delay and to submit the final report before January 10, 1962. The Inquiry Officer by his report dated January 20, 1962 held while reverting to his findings in the previous inquiry that no conclusive proof came forth when the statements of witnesses were recorded on three dates in September 1961 and two in January 1962 to establish the charge of acceptance of unlawful money. But in view of the previous inquiry and the statements given by witnesses, evading reply of Sh. Dutta, the conduct of K.R. Deb was held as one which may not be above board. The Collector picked up the threads from where the Inquiry Officer had left off in the remand proceedings and held that the charge of misappropriation was proved.

3. On March 15, 1962 a notice was issued to the appellant Deb to show cause why he should not be dismissed from service. His reply was not considered and he was dismissed from service on June 04, 1962 which brought him to challenge the dismissal order before the Judicial Commissioner for Tripura and Agartala under Article 226 of the Constitution of India but the writ was dismissed from which special leave was granted and the judgment in Civil Appeal of the Supreme Court is reported as supra. The Supreme Court considered Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 ("1957 Rules"). The rule did not contemplate successive inquiries, at any rate, even if it contemplated successive inquiries there is no provision for setting aside earlier inquiries without giving any reason whatsoever. The Supreme Court read the provision and it seemed to the Hon. Judges in a quorum of five that on the face of it, Rule 15 of the 1957 Rules really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defects have crept into the inquiry and some important witnesses were not available at the time of the inquiry or not examined for some other reason, then the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 of the 1957 Rules for completely

setting aside previous inquiries on the ground that the report of the Inquiry Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has power to reconsider the evidence itself and come to its own conclusion under Rule 9 which prescribes the manner of infliction of punishment. The Supreme Court observed that since rules do not contemplate an action such as was taken by the Collector on February 13, 1962 it seemed to their lordships that the Collector, instead of taking responsibility himself, was determined to get some Officers to report against the appellant. The procedure adopted was not only unwarranted by the rules but was seen as one causing harassment to the appellant. In para. 12 to 14 the Supreme Court observed:--

"12. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, 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.

13. Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant.

14. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of article 311(2) of the Constitution. The appeal is accordingly allowed and the order dated June 4, 1962 quashed and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office. The appellant will have his costs here and in the Court of the Judicial Commissioner. Fees shall be payable by the appellant to his advocate and be allowed on taxation."

4. In the result, the Supreme Court held that no proper inquiry had been conducted and, therefore, there had been a breach of procedure and, therefore, there was a violation of Article 311(2) of the Constitution of India. The order of the Collector was quashed and it was declared that the appellant should be treated as still continuing in service.

5. On facts, there is no dispute that in K.R. Deb the inquiry report was supplied to the petitioner and he replied to it. It was another matter that the course of justice was deflected by the Collector.

6. The facts of this case may be briefly noticed as are necessary for deciding the case. The petitioner was issued a charge-sheet for major misconduct on August 29, 2013. The inquiry was marked to Daljit Singh Sidhu, Joint Director (Infrastructure) to be the Inquiry Officer. The petitioner was working as a Block

Level Extension Officer, Block Majitha with additional charge of Ajnala in the Department of Industries & Commerce, Punjab. His official duties involved checking illegal mining in his beat. He gave a contract of Raipur Kalan Khud (Gorge) comprising an area of 9 acres 3 kanals and 12 marlas to one Parshant Joshi s/o Shri Lalit Joshi, Aggar Nagar, Ludhiana on July 01, 2011 for a period of 3 years till June 30, 2014. The bids were received by e-auction. A spot inspection was conducted on July 30, 2013 by the Committee constituted by the Deputy Commissioner, Amritsar which included as members the Sub Divisional Magistrate, Ajnala, Superintendent of Police (D), Rural, Amritsar and the General Manager-cum-Mining Officer, District Industries Centre, Amritsar and it was discovered that sand mining had reached the depth of 15 to 18 feet which was more than the approved limit of 10 feet under the contract. Therefore, in two years" time the auction party had excavated in excess by 5 to 8 ft. of the permissible limit. The imputation against the petitioner was that he took no steps to stop the illegal mining and, therefore, he was guilty of negligence in performance of duties. The discovery was for all to see and in itself was proof of irresponsibility. It is not necessary to go into all other facts on the merits of the inquiry as that is not the scope of the present petition since the charge-sheet remains pending and no comment should be made on the conduct of the petitioner pending inquiry.

7. This petition has been filed to assail an order passed on August 13, 2015 by the Principal Secretary, Industries & Commerce, Punjab endorsed to the petitioner on August 26, 2015. The office order says nothing more except that Sh. R.C. Nayyar, I.A.S. (Retired) is appointed as Inquiry Officer to find out the truth in the charges levelled in the charge-sheet issued to the petitioner on August 29, 2013 under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 and to enquire into the culpability of the then General Manager-cum-Mining Officer, Amritsar as well. The order appoints Kuldip Singh, Superintendent (Technical) as Presenting Officer. The impugned order recites nothing more than that. There appears ex facie nothing wrong in the impugned order since the inquiry proceedings are pending.

8. However, the petitioner says that this office order amounts to holding a de novo inquiry which is not legally permissible and is hit by the principles in K.R. Deb. The story narrated in the petition is that earlier an officer, namely, Daljit Singh Sidhu was appointed as Inquiry Officer. Statements of prosecution witnesses were recorded. Documents were placed by the delinquent on record and a statement was made by him. The inquiry report was drawn which is placed as Annexure P-13 with the petition. The photocopy of the inquiry report in original Punjabi is placed on record at pages 105 to 108 of the paper book. The photocopy bears signature but no date. This is of vital importance.

9. During the course of the arguments, the Court asked Ms. Alka Chatrath, learned counsel appearing for the petitioner whether the inquiry report had been communicated to the petitioner and from where had the petitioner obtained its

photocopy which is annexed to this petition. A further query was put whether Daljit Singh Sidhu was in service or had retired. In the index to the petition, the date of the inquiry report is not mentioned. The petitioner could not dispute that Daljit Singh Sidhu had retired from service. There is a clear admission in para.27 of the petition as follows:--

"27. That after the enquiry report was submitted by the Inquiry Officer not proving the charges against the petitioner, no copy of the enquiry report was supplied to the petitioner. The petitioner applied under the RTI Act to get copy of the enquiry report which was supplied to him at a later stage on 15.09.2015."

10. The petitioner was not communicated with the inquiry report. Thus, there was no question of officially submitting a reply to it. The inquiry report came to the knowledge of the petitioner for the first time when he received information together with a photocopy of the inquiry report on an application filed under the Right to Information Act, 2005. This was on September 15, 2015. The petition has been filed thereafter making out a case against de novo inquiry by relying on the ruling in K.R. Deb. The request letter under RTI has not been placed on record to connect the application with the document though the Court has no doubt that it must be so. Information supplied under the Right to Information Act, 2005 may be true to record but a case of the present kind cannot be built on its foundations since the Public Information Officer is duty bound to supply photocopies of the record as it exists on Government files without any comment or explanations. If the inquiry report was not supplied to the petitioner it had no legal value without due communication on the petitioner. In the absence of communication, the inquiry report adds up to nothing even if it is in favour of the petitioner. The Disciplinary Authority was well within its rights to ignore the inquiry report which was not communicated to it officially for comments and further action. The petitioner cannot have any advantage of an uncommunicated inquiry report and it remains at best nothing more than papers under consideration [PUC] and the Disciplinary Authority was well within its rights to issue the impugned office order August 13, 2015 endorsed to the petitioner on August 26, 2015. When Daljit Singh Sidhu retired from service and the inquiry was not completed by him and the report signed, the inquiry had by the very nature of things to be entrusted to someone else and therefore rule was not breached. When the petitioner admits that the inquiry report was not supplied to him he cannot build a case on the superstructure of K.R. Deb since in K.R. Deb the present fact situation did not arise and, therefore, the case is distinguishable on facts. It is well settled that one fact can make all the difference and change the fate of a case. I have, therefore, the least hesitation in dismissing this petition.

11. However, as I say this I have no doubt that the present Inquiry Officer will pick up the threads from the stage when the evidence was recorded and closed by order, if it is so, since the petitioner may be right to the extent that he cannot be compelled to again cross-examine the witnesses produced before the earlier

Inquiry Officer as that would neither be fair nor proper exercise of jurisdiction. However, the opinion formed by the earlier Inquiry Officer in an uncommunicated inquiry report is a personal opinion which has not seen in the light of the day in the official conduct of business of administration and, therefore, the successor Inquiry Officer would be free to form independent final opinion on the evidence on record and the evidence which the parties may produce before him in case a request is made by either party in this regard subject to the consideration of the Inquiry Officer on the merits of the proposed additional evidence and the purposes for which it is required to prove facts in issue.

12. The petition is consequently dismissed as premature. Neither is it maintainable at the stage brought on a misconception of the law in K.R. Deb ruling as applicable to the case in hand. The argument is found fallacious and unsustainable.