

K. R. DEB

A

v.

COLLECTOR OF CENTRAL EXCISE, SHILLONG

April 7, 1971.

[S. M. SIKRI C. J., G. K. MITTER, K. S. HEGDE, A. N. GROVER
AND P. JAGANMOHAN REDDY, JJ.]

B

Service Rules—Central Civil Services Classification—Control and Appeal Rules 1957—Rule 15 contemplates only one inquiry—Inquiry Officer can be asked to record further evidence—Disciplinary authority can reconsider evidence itself and come to its own conclusion under r. 9.

The appellant was a sub-Inspector of Central Excise. A departmental inquiry was held against him in respect of a charge of misappropriation of Government money. The Inquiry Officer exonerated him. The Collector Central Excise, ordered another Inquiry Officer to make a report after taking further evidence. The second Inquiry Officer at first exonerated the appellant but later, after taking some more evidence as directed by the Collector, reported that although the charge against the appellant was not proved his conduct may not be above board. Dissatisfied with the report the Collector ordered a fresh inquiry to be held by a third officer. This time a verdict of guilty was given and the appellant was dismissed. The appellant's writ petition in the Court of the Judicial Commissioner Tripura having failed he appealed to this Court by special leave. The question for consideration was whether the multiple inquiries held against the appellant were in accordance with r. 15 of the Classification and Control Rules. Allowing the appeal,

C

D

HELD: Rule 15 on the face of it really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry 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 other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in r. 15 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 r. 9. [379 H]

E

F

The rules do not contemplate an action such as taken by the Collector in appointing a third Inquiry Officer. It seems 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 against the rules but also harassing to the appellant. [380 B]

G

In the result it must be held that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Art. 311(2) of the Constitution. [380 E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 612 of 1967.

Appeal by special leave from the judgment and order dated February 16, 1966 of the Judicial Commissioner Court, Tripura in Writ Petition No. 12 of 1962.

H

A *M. R. Ramamurthi and Vineet Kumar*, for the appellant.

O. P. Malhotra, Ram Panjwani and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by

B

Sikri, C.J.—This is an appeal by special leave from the judgment of the Judicial Commissioner for Tripura and Agartala dismissing the petition under Art. 226 of the Constitution filed by the appellant, K. R. Deb.

C

The relevant facts are these: The appellant was appointed as a Sub Inspector of Central Excise in a temporary vacancy on September 20, 1958 and he reported for duty on October 15, 1958. On May 30, 1959 he was alleged to have detained five maunds of onion from the house of one Sayed Ahmad at Ramendranagar. It is further alleged that one Siddique Ahmad handed over a sum of Rs. 100 to the appellant, through one Harendra Kumar Dutta, on May 31, 1959, but the appellant did not mention the realisation of this amount in his seizure report.

D

The following charge was framed against the appellant by Shri R. C. Mehra, Collector, Central Excise & Land Customs, Shillong:

E

“That Shri K. R. Deb, Sub-Inspector, was found guilty for concealing the fact of realisation of Rs. 100 from Shri Siddique Ahmed on 31-5-1959 and not reporting the matter in the seizure report or in his diary and thus misappropriated Govt. money of Rs. 100.”

F

The allegations regarding this charge were supplied to the appellant. The appellant applied for copies of certain documents on December 28, 1960. On March 30, 1961 he submitted his written statement of defence. In this written statement the appellant denied the charge. The Collector, by his letter dated May 11, 1961, appointed Shri B. P. Barua, Examiner of Accounts, Central Excise and Land Customs, as Inquiry Officer Shri Barua held an inquiry and submitted a report, dated July 3, 1961, holding that the charge framed against the appellant was not proved. The Inquiry Officer concluded :

G

“There is no conclusive evidence to establish the charge of misappropriation of Govt. money. It is only established that the goods (5 mds. of onions) were seized from the house of Sri Siddique Ahmed but in his diary and seizure report Sri K. R. Deb concealed the fact and seizure was shown to have been made on border. The charge does not include such concealment of fact.”

H

By order dated August 22, 1961, the Collector, Shri R. C. Mehra, appointed Shri R. K. P. Sinha, Superintendent, Central Excise & Land Customs, as Inquiry Officer to conduct a supplementary open inquiry in the disciplinary proceedings instituted against the appellant. The reason for conducting this inquiry is stated in order thus:

"Shri B. P. Barua, Examiner of Accounts, Customs & Central Excise, was previously appointed Inquiry Officer in this case, but he had not recorded an evidence of the prosecution witnesses viz., S/Shri Harendra Kr. Dutta, Jagabandhu Patwari, Syed Ahmed and Siddique Ahmed during the course of open enquiry."

In his report dated October 12, 1961, the Inquiry Officer reported that "there is nothing on record to prove the alleged acceptance of Rs. 100 by Shri K. R. Deb, Sub-Inspector." In his report he stated that Shri Harendra Kumar Datta did not appear in the Inquiry though he acknowledged the receipt of summons issued to him. It appeared to the Inquiry Officer that Shri Dutta was not willing to attend the inquiry. In the course of the report he observed:

"Thus the entire story of handing over the money to Sri Harendra Kumar Dutta in the presence of the Sub-Inspector on 31-5-59 topples down. It is also evident that the Sub-Inspector could not have demanded the money on 30-5-1959 as the seizure it appears was made in the absence of Shri Siddique Ahmed. The whole episode, it appears, therefore, is a cooked up and fabricated to implicate the sub-Inspr. for the seizure he effected."

After this report one would have thought that the Collector would make up his mind, but instead the Collector wrote on Dec. 20, 1961, to Shri R. K. P. Sinha, complaining that the report submitted by him had been found to be very sketchy and that he had failed to appreciate the importance of the evidence of Harendra Kumar Dutta, a prosecution witness in the case. The Collector further observed that "in case he had failed to respond to the summons you would have taken steps to send somebody at his house." He pointed out some further defects and drew the attention of the Inquiry Officer to the statement of Sepoy Monoranjan where from it appeared without any shadow of doubt that a sum of Rs. 100 was given to Shri K. R. Deb in the presence of this sepoy. The Collector further observed that "in the face of overwhelming evidence regarding this allegation of corruption, it is difficult to minimise the importance of the witnesses." The Collector then proceeded to direct the Inquiry Officer to examine Harendra Kumar Dutta, Jagabandha Patwari and Sepoy Monoranjan Ghosh without

A further delay, and to submit the final report before January 10, 1962.

The Inquiry Officer in his report dated January 20, 1962, stated:

B "From the various statements given to me in my enquiry dated 20-9-61, 4-1-62 and 12-1-62, it may kindly be seen that no conclusive proof is forthcoming to establish the charge of acceptance of money (Rs. 100) by Sri K. R. Deb. But in view of the previous enquiry and statements given by witnesses, evading reply of Sri Dutta, the conduct of Shri K. R. Deb may not be above board."

C On February 13, 1962 the Collector passed the following order :

D "In supersession of this office letter O. No. II(10) A/1/Con/60 and O. No. II(10) A/3/Con/61, dated 12-5-1961 and 22-8-61 respectively, the undersigned considers that another Inquiry Officer should be appointed to inquire afresh into the charge framed against Sarbasri K. R. Deb, Sub-Inspector of Central Excise, Shillong Collectorate.

E Now therefore the undersigned in exercise of the powers conferred by rule 15(4) of the C.C.S. (C.C.A.) Rules 1957 hereby appoints Shri K. P. Patnaik, Examiner of Accounts, Customs and Central Excise, Shillong as an enquiry officer to inquire into the charges framed against the said Sarbasri K. R. Deb."

F On March 6, 1962, Shri Patnaik reported that it was proved that "Shri K. R. Deb did not bring into account the sum of Rs. 100 realised on May 31, 1959 from Siddique Ahmad of Ramendranagar. The amount has therefore been misappropriated. The charge of misappropriation of Rs. 100 is therefore proved against Sri K. R. Deb."

G On March 15, 1962 a notice was issued to the appellant to show cause why he should not be dismissed from service. On March 20, 1962 he filed an application giving the list of documents copies of which he wanted. He gave his explanation on May 21, 1962 and asked for personal hearing. On June 4, 1962, he was dismissed from service and on June 14, 1962, he filed the writ petition out of which this appeal arises.

H A number of points have been raised before us but we need only mention one point, viz., that the Collector had no authority to appoint Shri K. P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. It was urged before us that such an inquiry is not contemplated by the Central Civil

Services (Classification, Control and Appeal) Rules, 1957. It was contended that rule 15 of the Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated successive inquiries there was no provision for setting aside earlier inquiries without giving any reason whatsoever. It was further contended that the order dated February 13, 1962 was *mala fide*.

Rule 15(1) of the Classification and Control Rules reads as follows :

“(1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) to (vii) of rule 13 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.”

Clause (2) of rule 15 provides for framing of charges and communication in writing to the government servant of these charges with the statement of allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under cl. (9) “the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge.” Clause (10) provides for issue of show-cause notice.

It seems to us that Rule 15, on the face of it, really 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 other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for

A 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.

B 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.

C 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.

D

In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of art. 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.

E

G. C.

Appeal allowed.