

THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment delivered on : 25.09.2012**

+ **W.P.(C) 8705/2010**

UOI AND ORS

... Petitioners

versus

P SASI

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Rajeeve Mehra, ASG with Mr D.S. Mahendru and Mr
Kunal Kahol

For the Respondent : Mr Bharat Bhushan

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J. (ORAL)

1. The only point for consideration in this writ petition is whether the Disciplinary Authority by virtue of his order dated 13.02.2004 has directed a 'further' inquiry or a *de novo* inquiry? In case the direction is construed to be a mere direction for a further inquiry, it would be well within the its

power of the Disciplinary Authority under Rule 15(1) of the CCS (CCA) Rules, 1965. However, if it is understood that the direction given by the Disciplinary Authority in his order dated 13.02.2004 meant a *de novo* inquiry, the same would, therefore, not be sustainable in law as that would amount to double jeopardy, inasmuch as, there cannot be two enquiries in respect of the very same state of affairs.

2. The Tribunal by virtue of the impugned order dated 21.10.2010 passed in O.A. No.1497/2009 has come to the conclusion that the direction given by the Disciplinary Authority in the said order dated 13.02.2004 was for a *de novo* inquiry, which is not permitted in law and, therefore, the Tribunal set aside the proceedings pursuant thereto which included the punishment order passed by the Disciplinary Authority as confirmed by the Appellate Authority.

3. We may first of all refer to the order dated 13.02.2004. The said order is the bone of contention between the parties and, therefore, it would be appropriate for us to set it out in full:-

“A/27/639/CAO/DD/01
Government of India
Ministry of Defence
O/o the JS (Trg) & CAO
E-Block, Dalhausie Road
New Delhi-110 011

Dated the 13 Feb 2004

O R D E R

WHEREAS Shri Trilochan Rout, Deputy Director was appointed as the Inquiring Authority to enquire into the charges framed against Shri P. Sasi, Asstt (under Suspension) vide order No.A/27639/CAO/DD/01 dated 01.03.2002.

AND WHEREAS the said Inquiring Authority conducted the inquiry and submitted his report dated 17 Sep 2003. In the report Article-I of the charge has been proved only to the extent that he has shown lack of devotion to duty and acted in a manner unbecoming of a Govt servant. The charge relating to lack of integrity has not been proved. While the 2nd Article has not been proved at all.

AND WHEREAS it is observed that the prime witness Shri Samuel Mathew whose presence was crucial to the case, failed to appear before the inquiry despite invoking Departmental Inquiry Act to ensure his attendance. However, it is nowhere mentioned in the inquiry report that he refused to attend the inquiry. He has simply not appeared.

NOW, THEREFORE, the undersigned hereby remits the report back to IO under Rule 15 of CCS (CC&A) Rules, 1965 for further inquiry with a view to have evidence of Shri Samuel Mathew, prosecution witness no.2 by way of his deposition before inquiry so that ends of natural justice are met.

(P.K. Rastogi)
Joint Secretary (Training) &
Chief Administrative Officer

Shri Trilochan Rout,
Deputy Director
(Inquiring Authority)
Registrar, CAT, Cuttak (Orissa)

*Alongwith documents received vide your
letter dated 17 Sep 2003.*

Copy to

1. Shri P Sasi, Asstt
(Under Suspension)
583, Sector-5
RK Puram, New Delhi-22

2. Shri A.K. Toor,
Asstt Registrar (Presenting
Officer)
C/o Ravi & Beas Waters
Tribunal, East Block-7,
Level-II, R.K. Puram,
New Delhi-110066

(Suresh Kumar)
Administrative Officer/Legal
O/o JS (Trg.) & CAO
Ministry of Defence 'E' Block
DHQ PO New Delhi-110011"

4. The entire focus of arguments has been on the third recital in the above order. According to the learned counsel for the petitioner the reason for directing a further inquiry was that the prime witness Mr Samuel Mathew had not been examined. Despite efforts having been made by the Inquiry Officer, the said witness had not appeared. Therefore, according to the learned counsel for the petitioner, it was open to the Disciplinary Authority to direct the Inquiry Officer to conduct a further inquiry by requiring the attendance of the said crucial witness (Mr Samuel Mathew). He submitted that this did not entail a *de novo* inquiry, inasmuch as, the other witnesses and evidence on record remained the same.

5. On the other hand, the learned counsel for the respondent submitted

that this very direction given by the Disciplinary Authority required the conduct of a *de novo* inquiry. He also sought to raise the issue of prejudice that was caused to him by the non-supply of the earlier so-called inquiry report dated 17.09.2003. According to him, unless that report was supplied to him, the respondent would not know as to whether the said witness, namely, Mr Samuel Mathew had refused to attend the inquiry or whether he had simply not appeared. He submitted that in case the said witness had refused to attend the inquiry then a different set of conclusions would have been arrived at from if the witness had simply not appeared. Hence, as long as the report dated 17.09.2003 was not made available to the respondent; he could not challenge the said order effectively.

6. At the outset we may point out that the contention of the learned counsel for the respondent is not borne out from the record inasmuch as the order sheet of the earlier part of the inquiry proceedings dated 18.06.2003 clearly brings out the fact that the notices/summons sent to the said Mr Samuel Mathew had been received by him and that a person had, in fact, called up the Inquiry Officer on 12.06.2003 stating that he was Samuel Mathew and that he had informed that he was no longer working with Tehelka.com and since he had received the notice from the Inquiry Officer

in the second week of June, 2003, he wanted to know as to what was required of him at that stage. That person left his mobile number (9810903324) as his contact number, if required. It appears that this was conveyed to the Presenting Officer for bringing the same to the notice of the Disciplinary Authority. From the said order sheet it is also apparent that the Presenting Officer had informed the Inquiry Officer that he had tried to contact Mr. Samuel Mathew on the said number to check his availability but he did not receive any response from the said mobile number. It is further revealed from the order sheet dated 18.06.2003 that the then Inquiry Officer had observed that Mr Samuel Mathew was not interested to depose as a witness before the inquiry.

7. We can straightaway say that this conclusion is not borne out from the facts as indicated in the order sheet dated 18.06.2003. Paragraphs 2 and 3 of the said order sheet are relevant for this purpose and the same are reproduced below:-

“2. The IO received a telephone call on 12 Jun 2003 at about 1330 hrs from a person claiming to be Shri Mathew Samuel. He informed that he was no more working with the Tehlka.com and had received the notice of the IO in second week of June 2003 and wanted to know what he was required to do at this stage. He had left his Mobile No.98109 03324 for the contact, if required. The development was conveyed to the PO for

bringing it to the knowledge of disciplinary authority. The PO has informed that he tried to contact Shri Mathew Samuel on this number to check his availability before making a submission to the IO for calling him as the Prosecution Witness. However, there was no response from the Mobile No.98109 03324. The DA submits that the case of the disciplinary authority has already been closed and the CO has opened his defence by making Shri Narender Singh examined as Defence Witness. It will be procedurally irregular if the Prosecution Witness is allowed to depose at this stage.

3. In the considered view of the IO, Shri Mathew Samuel has been given notices five times directly and two times through the Court of the Hon'ble District Judge. The notice dated 30 Apr 2003 was received from the Process Server on 05 May 2003 by one Shri Satbir Singh after consulting Shri Mathew. In that event, it cannot be accepted that Shri Mathew had no knowledge about the requirement to attend the inquiry. Moreover, there is no response from the Mobile Number given by Shri Mathew. The IO is convinced that Shri Mathew is not interested to depose as a witness before the inquiry.”

8. It is an admitted position that all notices that were sent by the Inquiry Officer to Mr Samuel Mathew were prior to his telephone call on 12.06.2003. He had left his mobile number for being contacted in case he is required. After that for whatever reason the said Mr Samuel Mathew was not contacted and, therefore, it cannot be said that he had refused to appear in the proceedings. In this context, we may say that the observation of the Disciplinary Authority in the order dated 13.02.2004 to the effect that Mr Samuel Mathew had simply not appeared, is correct. The contrary

contention of the learned counsel for the respondent to the effect that Mr Samuel Mathew had refused to appear, is not tenable and is not supported by the material on record.

9. The facts of this case are that the respondent was proceeded against for his alleged involvement in the Tehelka disclosure case. A charge sheet was issued to him on 04.12.2001 containing two articles of charge:-

“(i) He came in contact with Sh Samuel Mathew of Tehelka.com who was impersonating as an agent for a fake firm viz. West-End and assisting the firm in this endeavour of getting an evaluation letter issued for supply of Army equipments for consideration in kind and money.

(ii) He passed on official information and documents to persons he was not authorized to communicate.”

10. An inquiry was ordered in the matter. We have already stated that Mr Samuel Mathew had allegedly been interacting with the respondent (Mr P. Sasi) during the Tehelka case as an agent for M/s West-End, which was a dummy firm of Tehelka.com, in order to obtain evaluation letters from Army Headquarters. It was alleged that the said Mr Samuel Mathew had induced the said respondent on consideration of money and promise of employment to his family members. It is in this backdrop that the evidence of Mr Samuel Mathew was a key to the inquiry. The Inquiry Officer

submitted a report dated 17.09.2003 to the Disciplinary Authority. Of course, the said report was submitted without consideration of the key evidence of Mr Samuel Mathew in the circumstances which we have already indicated above. As per the report dated 17.09.2003, Article-I of the charges was partially proved and Article-II had been found to be not proved.

11. It is thereafter that the Disciplinary Authority remitted the matter to the Inquiry Officer by virtue of the said order dated 13.02.2004 under the provisions of Rule 15(1) of the CCS (CCA) Rules, 1965 for further inquiry with a view to have the evidence of Mr Samuel Mathew (PW-2). Thereafter, the new Inquiry Officer, Mr A. Sinha, conducted the inquiry in which the said Mr Samuel Mathew appeared and gave his evidence. In fact, the said evidence of Mr Samuel Mathew was recorded on six separate dates ranging from 24.06.2005 to 13.10.2005. On five out of the six occasions, the said witness had been cross-examined by the respondent himself. Thereafter, the said Mr Sinha, the Inquiry Officer, submitted his inquiry report on 26.12.2006 wherein it was held that Article-I of the charge was proved and that Article-II of the charge was partially proved.

12. Since the controversy in the present matter is with regard to the

question as to whether the inquiry conducted by the said Inquiry Officer (Mr A. Sinha) was a *de novo* inquiry or a further inquiry, it would be necessary to note the opening paragraphs of the inquiry report. The same reads as under:-

“ The undersigned was appointed as Inquiry Officer by JS (Trg) & CAO vide Order No.A/27639/CAO/DD/01 dated 16 Jun 2004 with a view to record evidence of Shri Mathew Samuel, PW-2 by way of his deposition in the Departmental Inquiry against Shri P Sasi, Asstt. (Under Suspension), MGO Branch. The Inquiry Report dated 17 Sep 2003 submitted by the previous Inquiry Officer Shri Trilochan Rout had been remitted back to the IO by the Disciplinary Authority under Rule 15 of CCS (CC&A) Rules, 1965 for further inquiry vide Order No.A/27639/CAO/DD/01 dated 13 Feb 2004, so that ends of natural justice are met. The case on behalf of the Disciplinary Authority was presented by Shri AK Toor, SO. Shri P Sasi, the Charged Officer participated in the Inquiry and personally presented his Defence before the undersigned.

2. I have completed the inquiry and on the basis of documentary and oral evidence produced before me and the previous IO Shri Trilochan Rout, I am submitting the Inquiry Report.”

13. From the above, it would be clear that purpose of remitting the matter to the Inquiry Officer was only to record the evidence of Mr Samuel Mathew (PW-2) inasmuch as the same had not been done at the earlier stage. In our view, even the Inquiry Officer construed the direction given by the Disciplinary Authority on 13.02.2004 to be a direction for further

inquiry and not for a *de novo* inquiry. This can be noticed from the two paragraphs extracted above which clearly indicate that the said Inquiry Officer (Mr A. Sinha) completed the inquiry on the basis of the documentary or oral evidence produced before him as also before the previous Inquiry Officer (Mr Trilochan Rout). It is on that basis that the inquiry report dated 26.12.2006 was submitted to the Disciplinary Authority.

14. We may also point out that in total there were four witnesses who were examined. PW-1 was one Mr Anirudh Bahl, Editor Investigations of Tehelka.com, who had already been examined by the earlier Inquiry Officer; PW-2 was Mr Samuel Mathew who was to be examined in the further inquiry conducted by Mr Sinha. DW-1 Mr Narendra Singh had been examined before the earlier Inquiry Officer (Mr Trilochan Rout). However, DW-2 Mr Gopal K. Nair was not available earlier and had not been examined before the first Inquiry Officer. As such, he was examined subsequently before the second Inquiry Officer, after the matter had been remitted for further inquiry by the Disciplinary Authority by virtue of his order dated 13.02.2004. Therefore, as per the mandate given to Mr A. Sinha, the second Inquiry Officer, he completed the inquiry by, *inter alia*,

examining the key witness PW-2 Mr Samuel Mathew. Opportunity was given to the charged officer to cross-examine Mr Samuel Mathew as is evident from the fact that he was so cross-examined on five separate dates.

15. Based on the findings of the Inquiry Officer, recorded in the report dated 26.12.2006, the Disciplinary Authority, upon consideration of all the material placed before it, imposed a penalty of dismissal of service by virtue of his order dated 10.10.2007.

16. The Appellate Authority concurred with the Disciplinary Authority by virtue of his order dated 07.04.2008. Being aggrieved thereby, O.A. No.1497/2009 was filed by the respondent wherein the impugned order dated 21.10.2010 has been passed.

17. Rule 15(1) of the CCS (CCA) Rules, 1965 reads as under:-

“15. Action on the inquiry report. – (1) The Disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.”

18. A plain reading of the said Rule clearly indicates that the Disciplinary Authority has the power to remit the case to the inquiry authority for further inquiry and report. However, that power has to be

exercised only after the Disciplinary Authority records the reasons in writing. Generally speaking, the ambit of the power for further inquiry has been explained by the Supreme Court in **K.R. Deb vs. Collector, Central Excise, Shillong** : AIR 1971 SC 1450, though, in the context of the earlier CCS (CCA) Rules, 1957. However, the general principles would apply. The observations of the Supreme Court in this connection are as under:-

“13. 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....”

19. What is of importance is that the Supreme Court observed that where there has not been a proper inquiry because some serious defect has crept in the inquiry, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. Such a direction may also be given, as observed by the Supreme Court, where some important witnesses were not available at the time of inquiry or were not examined for some other reason.

20. In the present case, it is evident that Mr Samuel Mathew had not been examined by the first Inquiry Officer. It is an admitted position that

Mr Samuel Mathew is a key witness in this case. We have also noted from the order sheet of 18.06.2003 of the first Inquiry Officer that Mr Samuel Mathew had indeed contacted the Inquiry Officer and had told him his contact number and had also indicated that he may be informed if he was required. After that, the said Mr Samuel Mathew had not been contacted, for whatever reason, as a result of which it can be safely inferred that Mr Samuel Mathew did not at all know as to whether he was to appear before the Inquiry Officer. Therefore, it cannot be said that Mr Samuel Mathew had refused to appear before the first Inquiry Officer. The Disciplinary Authority, as we have already pointed out above, was right in recording that it was simply a case that Mr Samuel Mathew had not appeared. In order to remove this lacuna/defect in the proceedings, the Disciplinary Authority had directed further inquiry for recording the evidence of Mr Samuel Mathew. It so happened that in the subsequent round Mr Samuel Mathew did appear and his evidence was recorded. From this fact also it would be clear that there could be no inference that Mr Samuel Mathew was not willing to appear even in the first round or had refused to do so.

21. We may also point out that because of the further inquiry directed by the Disciplinary Authority, the charged officer also got an opportunity to

produce his own witness, namely, DW-2 Mr Gopal K. Nair, who was not available in the earlier round. Therefore, all that the second Inquiry Officer (Mr A. Sinha) had done was to continue the inquiry proceedings further. In our view, he did not conduct any inquiry *de novo* and it was merely a continuation of the earlier proceedings inasmuch as the evidence of PW-2 Mr Samuel Mathew and that of DW-2 i.e., Mr Gopal K. Nair was recorded. The evidence already on record in the first round was also taken into consideration by Mr A. Sinha while submitting his report dated 26.12.2006.

22. The learned counsel for the respondent has placed before us three decisions of the Supreme Court which, according to him, were in support of his case:-

- (i) **Kanailal Bera vs. Union of India and Others** : (2008) 1 SCC (L&S) 63.
- (ii) **Union of India vs. K.D. Pandey and Another** : (2002) 10 SCC 471.
- (iii) **Union of India vs. Kunisetty Satyanarayana** : (2007) 2 SCC (L&S) 304.

23. We may say straightaway that none of these decisions come to the aid of the learned counsel for the respondent. In ***Kanailal Bera*** (*supra*) itself it has been observed by the Supreme Court that in a given situation further evidences may be directed to be adduced but the same would not

mean that despite holding a delinquent officer to be partially guilty of the charges leveled against him ‘another inquiry’ could be directed to be initiated on the same charges which could not be proved in the first inquiry. The present case is one of ‘further evidence’ and not of ‘another inquiry’. We have already noted that Mr Samuel Mathew had not been examined in the earlier round at all. It is only to complete this part of the inquiry that the further inquiry was directed. It was definitely not a case of ‘another’ inquiry or a *de novo* inquiry. Therefore, the decision in **Kanailal Bera** (*supra*) would be of no help to the respondent.

24. Insofar as the decision in **K.D. Pandey** (*supra*) is concerned, it is clearly distinguishable inasmuch as in that case the Tribunal as well as the High Court were of the view that on the same material a fresh information had been furnished and, therefore, it was not a case of further inquiry. In the present case, the report of the Inquiry Officer (Mr A. Sinha) is not based on the same material. In fact, the report of Mr Trilochan Rout was rendered without the benefit of the evidence of Mr Samuel Mathew (PW-2). Therefore, by no stretch of imagination can it be said that the second report was on the same material as the first report. The present case, as we have already indicated above, is a clear case of further inquiry and not of a

second inquiry.

25. Now we deal with the third decision of the Supreme Court in the case of ***Kunisetty Satyanarayana*** (*supra*) which also talks about a ‘second’ full-fledged inquiry and not of a further inquiry. It is obvious that if a second full-fledged inquiry ordered it would amount to double jeopardy but, this is not the case here.

26. In view of the foregoing discussion, the inquiry conducted by Mr Sinha cannot be regarded as a *de novo* inquiry. It was merely a ‘further’ inquiry. Consequently, the impugned order of the Tribunal cannot be sustained. The same is set aside.

27. We note from paragraph 11 of the impugned order that the Tribunal had examined the case only from the standpoint of whether the direction given on 13.02.2004 by the Disciplinary Authority was for a further inquiry or for a *de novo* inquiry. It is further noticed that the other grounds were not examined by the Tribunal and, in fact the Tribunal has stated in paragraph 11 of the impugned order that the other grounds are left open. Consequently, for considering the other grounds, if any, in O.A., the matter is remitted to the Tribunal. In the first instance the parties shall appear before the Tribunal on 05.11.2012.

28. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 25 , 2012
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