

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.133 OF 2019

Shri K. Kamaladinni,
Fatima Manzil, Virginkar Nagar,
Davorlim, Navelim, Salcete, Goa. Petitioner.

Versus

1. State of Goa, through its
Chief Secretary, having office at
Secretariat, Porvorim, Goa.

2. The Director (Vigilance) &
Ex-Officio Addl. Secretary of the
Government of Goa,
Directorate of Vigilance,
Serra Building, Near All India Radio,
Panaji, Goa.

3. The Under Secretary (Personnel)
having office at Secretariat,
Porvorim, Goa.

4. The Director,
Directorate of Accounts,
Government of Goa,
Panaji, Goa. Respondents.

Mr. Vivek Rodrigues, Advocate for the Petitioner.

Mr. Sagar Dhargalkar, Additional Government Advocate for the
Respondents.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 9th December, 2019.

ORAL JUDGMENT : (Per M.S. Sonak, J.)

Heard Mr. Vivek Rodrigues for the Petitioner and Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondents.

2. Rule. Rule made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. The Petitioner challenges the order dated 28th August, 2018 made by and on behalf of the Respondents, ordering the *de novo* inquiry into the charges levelled against the Petitioner vide Charge Memorandum dated 4th February, 2015. The Petitioner seeks quashing of the impugned order dated 28th August, 2018 and consequential benefits.

4. By an order dated 2nd May, 2013, the Petitioner was placed under suspension in contemplation of the disciplinary proceedings. This was followed by issuance of charge memorandum dated 4th February, 2015, in which it was alleged that the Petitioner, fraudulently awarded 847 works pertaining to WD XVII (PHE-N), Public Works Department for an estimated costs of Rs.52.59 crores, without publishing notice in newspapers and electronic media in gross violation of the provisions contained in the CPWD Manual.

The allegation was that the Petitioner was, by such fraudulent acts, awarded several works to private contractors without publishing tenders and without following the CPWD guidelines, thereby depriving the State exchequer of revenue which could have been earned by sale of tender documents and also by receipt of competent bids.

5. Mr. Menino D'Souza, Selection Grade Officer of the Goa Civil Service was appointed as an Inquiring Officer to inquire into the charges in the Charge Memorandum dated 4th February, 2015. The Inquiring Officer submitted his report/findings on 1st September, 2017, holding that the charges levelled against the Petitioner have not been proved.

6. By Memorandum dated 29th November, 2017, copy of the Inquiry Report was furnished to the Petitioner and the Petitioner was required to submit his written representation or submissions to thereto to the Competent Authority, if he so desires as required under Rule 15(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules).

7. The Petitioner, on 8th December, 2017, filed his response to the Memorandum dated 29th November 2017. In the response, the Petitioner made a specific reference to Rule 15(2) of the CCS

(CCA) Rules and complained that the tentative reasons for disagreement, if any, had not been made available to him and, therefore, it is presumed that report of the Inquiring Authority has been accepted in toto by the Disciplinary Authority. The Petitioner added that if there is any disagreement, he is entitled to be informed about the disagreement in terms of Rule 15(2) of CCS (CCA) Rules before any action is taken against him by the Disciplinary Authority. This is quite clear from the reading of paragraphs 1 and 2 of the response dated 8th December, 2017. On this basis, the Petitioner urged that the Disciplinary Authority be pleased to exonerate the Petitioner by dropping the charges levelled against the Petitioner.

8. After a period of almost 8 months, the impugned order dated 28th August, 2018 came to be issued, informing the Petitioner that a decision has been taken to conduct a *de novo* inquiry into the matter. Hence, the present Petition.

9. Mr. Rodrigues, learned Counsel for the Petitioner submits that from the fact that the Memorandum dated 29th November, 2017 by which copy of the inquiry report came to be forwarded to the Petitioner, there was nothing stated about any tentative reasons for disagreement. Therefore, it must be presumed that the Disciplinary Authority had, in fact, agreed with the findings recorded by the Inquiring Authority. He submits that in such a situation, the

Disciplinary Authority had no option, but to accept the inquiry report and on the basis of the same, exonerate the Petitioner by dropping the charges which, in any case, were held as not proved by the Inquiring Authority. Mr. Rodrigues submits that the order which contemplates a *de novo* inquiry is, *ex facie* ultra vires Rule 15 of the CCS (CCA) Rules and therefore, deserves to be quashed and set aside.

10. Mr. Rodrigues, without prejudice, submits that in terms of Rule 15 of the CCS (CCA) Rules, the Disciplinary Authority, upon receipt of the report of the Inquiring Authority has, broadly speaking, three options :

- (i) The first option is to accept the report and on such basis, exonerate the employee;
- (ii) for reasons to be recorded, in writing, remit the case to the Inquiring Authority for further inquiry and report; and
- (iii) To furnish, own tentative reasons for disagreement, if any, and then require the employee to submit written representation as to why the Disciplinary Authority should not take a different view in the matter and impose penalty upon the employee.

11. Mr. Rodrigues submits that in the present case, since, no decision was taken by the Disciplinary Authority to remit the matter to the Inquiring Authority or express any tentative reasons for

disagreement, the only option to the Disciplinary Authority was, to go by the first option and exonerate the Petitioner. Mr. Rodrigues submits that the impugned order, by which the *de novo* inquiry has been directed, is *ex facie* in breach of the provisions of Rule 15(2) of the CCS (CCA) Rules, not to mention the principles of natural justice and fair play. On these grounds, he submits that the impugned order is liable to be quashed and set aside.

12. Mr. Dhargalkar, learned Additional Govt. Advocate submits that the charge levelled against the Petitioner was a very serious one. He submits that no proper inquiry was held in the matter and, therefore, the impugned order came to be made. He submits that in the *de novo* inquiry, full opportunity will be afforded to the Petitioner and consequently, there is no breach of the principles of natural justice and fair play. On these grounds Mr. Dhargalkar submits that the present Petition be dismissed.

13. Mr. Dhargalkar, in the alternate, submits that if the impugned order is set aside on the ground of non-compliance with the provisions of Rule 15 of the CCS (CCA) Rules, then, opportunity be granted to the Respondents to take action on the inquiry report. He submits that if such a course of action is adopted, then, the issue about the non-compliance with either the provisions of Rule 15, or the principles of natural justice will really not survive.

14. Rival contentions now fall for our determination.

15. In this case, there is really no dispute that the charge memorandum dated 4th February, 2015 came to be served upon the Petitioner, levelling certain serious charges against him. The charge was inquired into by the Inquiring Authority specially appointed for the purpose and the Inquiring Authority submitted a report dated 1st September, 2017 holding that the charges levelled against the Petitioner have not been proved. Such a report was then submitted by the Inquiring Authority to the Disciplinary Authority.

16. Rule 15 of the CCS (CCA) Rules, reads as follows :

“15. ACTION ON 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.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of

whether the report is favourable or not to the Government servant.

[(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and

(ii) comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission.

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and (6).

(5) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty.

(6) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to

(ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.]”

17. The aforesaid does indicate that the Disciplinary Authority broadly has three options, when it comes to initiating action on the inquiry report. First is to accept the inquiry report as it is and take further action as is contemplated under Rule 15. The second is to remit the case to the Inquiring Authority for further inquiry and report. In order to do this, however, the Disciplinary Authority has to record reasons in writing. The third option is spelt out in Rule 15(2) of the CCS (CCA) Rules. The occasion to exercise such options would arise where the Disciplinary Authority *prima facie* disagrees with the findings recorded by the Inquiring Authority.

18. Rule 15(2) of the CCS (CCA) Rules provides that in such a situation, the disciplinary authority should forward a copy of the report of the inquiry, together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

19. The aforesaid requirement as spelt out in Rule 15(2) of the CCS (CCA) Rules, in fact, is in compliance with the principles of natural justice and fair play which is requirement to be adhered to, in such matters. If the Inquiring Authority has exonerated the Government Servant and the Disciplinary Authority wishes to disagree with the findings recorded by the Inquiring Authority, then, it is only appropriate that the Government Servant is informed of the tentative reasons for disagreement, if any, so that the Government Servant can make a written representation or submission to the disciplinary authority and attempt to persuade the disciplinary authority to accept the findings recorded by the Inquiring Authority.

20. In this case, we agree, at least partly with the submission made by Mr. Rodrigues that there has been no compliance with the provisions of Rule 15(2) of the CCS (CCA) Rules.

21. Before any order like the impugned order dated 28th August, 2018 could have been made in this matter, the Respondents were duty bound to serve a copy of the inquiry report upon the Petitioner. This, they have done. Further, if the disciplinary authority wishes to remit the matter to the Inquiring Authority for further inquiry and report, then, the disciplinary authority was duty bound to record reasons, in writing, for adoption of such a course of action. The Disciplinary Authority in the present case has neither recorded any reasons, nor remitted the case to the Inquiring

Authority for further inquiry and report.

22. However, from the context, it is quite clear that the Disciplinary Authority does not wish to agree with the findings recorded by the Inquiring Authority and for this purpose, has ordered a *de novo* inquiry. If the Disciplinary Authority does not wish to agree with the findings recorded by the Inquiring Authority, then in terms of Rule 15(2) of the CCS (CCA) Rules, the Disciplinary Authority was obliged to state its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any article of charge and thereafter afforded the Petitioner an opportunity of making his written representation or submission in the matter, irrespective of whether the report is favourable or not. This has not been done by the Respondents, or rather by the Disciplinary Authority. On this short ground the impugned order dated 28th August, 2018 is required to be quashed and set aside.

23. The aforesaid does not mean that the matter is to be closed and no further opportunity is to be afforded to the Respondents to comply with the provisions of Rule 15 of the CCS (CCA) Rules, as suggested by Mr. Rodrigues. Even, according to Mr. Rodrigues, there is no illegality in the steps taken by the Respondents upto to the stage of submission of the inquiry report by the Inquiring Authority. The grievance of Mr. Rodrigues, on behalf of the Petitioner, almost, entirely relates to non-compliance with the

provisions of Rule 15 of the CCS (CCA) Rules which, as noted earlier, deals with action on the inquiry report. We have also agreed with Mr. Rodrigues that there was no proper compliance with the provisions of Rule 15 of the CCS (CCA) Rules. If the Petitioner's response dated 8th December, 2017 is perused, the grievance was also about non-furnish of tentative reasons for disagreement only. In such circumstances, it is only appropriate that the alternate submission of Mr. Dhargalkar, learned Additional Govt. Advocate is accepted and the Respondents are permitted to proceed in the matter consistent with the provisions of Rule 15 of the CCS (CCA) Rules.

24. From the impugned order, coupled with the response filed by and on behalf of Respondent No.2, it is very apparent that the Disciplinary Authority, at least, *prima facie*, was not inclined to agree with the findings recorded by the Inquiring Authority. There is nothing in Rule 15 of the CCS (CCA) Rules which obliges the Disciplinary Authority, in every case, to agree with the findings of the Inquiring Authority. In fact, Rule 15(2) CCS (CCA) Rules expressly contemplates a situation where the Disciplinary Authority does not agree with the findings of the Inquiring Authority. In such a situation, however, it is necessary that the Disciplinary Authority indicates its own tentative reasons for disagreement, if any, and thereafter affords opportunity to the employee to make a written representation or submission, irrespective of whether the report is

favourable or not to such an employee. Therefore, it is apparent that the Respondents, in the present case, have erred in not complying with the latter part of Rule 15(2) of the CCS (CCA) Rules, by not furnishing the Petitioner with the tentative reasons for disagreement and thereafter affording an opportunity to the Petitioner to make his representation or submission in the matter.

25. Accordingly, the impugned Order dated 28th August, 2018 is, hereby set aside. However, liberty is granted to the Respondents to take action on the inquiry report in terms of Rule 15 of the CCS (CCA) Rules. Such action to be taken within a period of four months from today, since the complaint of the Petitioner is that his retiral benefits have been held up consequent upon his retirement with effect from 31st May, 2017.

26. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

27. All concerned to act on the basis of an authenticated copy of this judgment and order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.