

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

APOT 351 of 2023

WITH

WPO 1597 OF 2023

IA NO. GA 1 OF 2023

Partha Chongdar.

Vs.

The Kolkata Municipal Corporation & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Soumya Majumdar, Adv.
Mr. Shuvasish Sengupta, Adv.
Mr. Soumyajit Mishra, Adv.
Mr. Abhrajit Roy Chowdhury, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
Mr. Arijit Dey, Adv.

Judgment on : 30.01.2024

Apurba Sinha Ray, J. :-

Factual Matrix:-

1. A departmental proceeding was initiated against the appellant, an employee of the corporation, by the concerned disciplinary authority of the Kolkata Municipal Corporation. Initially one Sri Chaitanya De Sarkar was appointed as Inquiry Officer but as he submitted resignation from his engagement, one Sri Biswajit Majumder, Director General (Bustee Cell and S.S.E.P) was appointed as the Inquiry Officer. The Inquiry Officer submitted his enquiry report to the Disciplinary Authority but the said authority came to the conclusion that the Inquiry Officer had not specifically dealt with each article of charge and did not express his definite findings on each article of charge/imputations. Accordingly, the Disciplinary Authority vide order dated 04.09.2003 under Memo No. P/12(21)/VI/115/23 set aside the enquiry report dated 10.02.2023 and appointed a new Inquiry Officer to inquire *de novo* into the charges framed against the delinquent officer, that is, the petitioner/appellant before this Court.

2. The petitioner/appellant challenged the order dated 04.09.2023 of the Disciplinary Authority by filing a writ petition being no. WPO 1597 of 2023 and the learned Single Judge passed an interim order on 25.09.2023 stating that the Inquiry Officer may conduct the enquiry

but no effect to the enquiry report shall be given without taking leave of the Court. As the appellant is dissatisfied with and aggrieved by such interim order, the instant appeal has been preferred.

3. According to the learned counsel of the appellant Mr. Soumya Majumdar the Disciplinary Authority has no jurisdiction/competence under the relevant law, rules and regulations to order fresh *de novo* inquiry. Learned counsel pointed out that Regulations 9, 10, 11 of the Calcutta Municipal Corporation Officers' and Employees' (Conduct) Regulation, 1991 have laid down the elaborate process for proceeding after completion of the enquiry. The said regulations do not empower the Disciplinary Authority to order fresh enquiry. Moreover, when an act is required to be done in a certain manner then such act must be done in that manner only and not in any other mode or manner. Learned counsel has drawn the attention of this court to the decisions **Nazir Ahmad Vs. The King Emperor** reported at **(1935-36) 63 Indian Appeals 372** and also **Hukam Chand Shyam Lal Vs. Union of India and Others (1976) 2 SCC 128**.

4. Learned counsel for the appellant further argued out that the ground for initiating *de novo* enquiry was that the Inquiry Officer did not deal with each article of charge by expressing his definite findings on each article of charge. According to learned counsel this is contrary

to the role of an Inquiry Officer vis-à-vis the role of a disciplinary authority. The Inquiry Officer is a delegate and material collecting agent of the disciplinary authority. Whereas the disciplinary authority is the real authority to come to its own definite findings in relation to charges. There is no error in the process of hearing in the enquiry or in the process of collecting evidence. In this regard learned counsel has drawn the attention of this court to the case laws reported at **(1988) 2 SCC 196 (Union of India & Ors. Vs. E. Bhasyan and (1993) 4 SCC 727 (Managing Director, ECIL Hyderabad & Ors. Vs. B. Karunakar & Ors.)**. Learned counsel of the appellant vehemently contended that the reason for conducting *de novo* inquiry clearly indicates a clear intention to obtain result in a definite manner by the Disciplinary Authority. Such a ground is unsustainable. The validity of such order has to be tested on the grounds mentioned therein alone and cannot be supplemented by the respondent. In this regard the case of **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.** reported at **(1978) 1 SCC 405** has been cited.

5. Learned counsel for the KMC Mr. Alak Kumar Ghosh submitted that Regulation 9(c) of the CMC Services (Classification, Control and Appeal) Regulations, 1985 states that the report of the Inquiry Officer must show that evidence on each article of charge has been assessed but in the instant case no evidence was recorded for such assessment

as per the above Regulations. Further, Regulation 9(d) states that the findings on each article of charge and the reasons therefor are to be recorded but there is no finding at all. According to Regulation 10(i) the disciplinary authority shall consider the records of the enquiry and shall record its findings on each charge. The Disciplinary Authority considered the records of enquiry but it was unable to record its findings on each charge as there was no evidence at all and as such the order for *de novo* enquiry was passed.

6. Learned counsel for the KMC further submitted that the Regulations, 1985 do not say that the second enquiry could not be directed under any circumstances and in the absence of specific bar under the Regulations, it is open to the Disciplinary Authority to direct initiation of *de novo* enquiry in appropriate cases. Moreover, the Regulations being procedural in nature, the theory of substantial compliance and test of prejudice are required to be applied herein. There is no scope of causing prejudice to the appellant in the event of holding second enquiry since it will be open for the appellant to urge that the two charges held to be proved in the report under consideration are not liable to be proved.

7. Learned counsel for the KMC referred to the decisions in the case of **State of Assam and Anr. Vs. J.N. Roy Biswas** reported at

(1976) 1 SCC 234 wherein the Hon'ble Supreme Court was pleased to observe as hereunder:-

“.....no government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official re-instated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry.”

8. Learned counsel for the KMC also submitted that the judgment reported at **(1988) 2 SCC 196 (Union of India & Ors. Vs. E. Bashyan)** as relied on by the appellant, is not applicable in the present case since the KMC employee is not a civil servant or government employee. The KMC employees are holders of Civil Posts. In **Nahar Singh Vs. Union of India & Ors. reported at 1991 (21) DRJ 171=(1992) II LLJ 573 Del** a Division Bench of the Delhi High Court held as hereunder:-

“In the present case the Enquiry Officer had found that the charges against the appellant had been proved. Nevertheless the disciplinary authority came to the conclusion that the summary of allegations which had initially been prepared did not bring out all the relevant facts. In the absence of detailed summary of allegations the appellant must have been placed at a disadvantage. It is on the basis of the summary of allegations that

evidence of prosecution witnesses was recorded and opportunity granted to cross-examine them. Such right cannot be effectively exercised if the summary of allegations is vague. Realizing this serious infirmity, the disciplinary authority ordered the re-framing of the summary of allegations and de novo enquiry. We find no illegality have been committed. Apart from the law laid down by the Supreme Court we find that even Section 21 of the General Clauses Act, 1897 would give a power to an authority to rescind, amend or revoke an order passed by it. What has happened, in effect, in the present cases is that the order dated January 17, 1980, whereby the enquiry was initially ordered, has been rescinded and a fresh enquiry ordered. The principles enshrined in Section 21 of the General Clauses Act, are clearly applicable and it cannot be said that the disciplinary authority could not act in the manner in which he did. Rather we do not find any infirmity in the decision of the learned Single Judge and in our opinion he rightly came to the conclusion that the disciplinary authority has not acted contrary to law”.

9. Learned counsel has also urged that as Section 21 of the General Clauses Act, 1897 has given power to make, to include power to add, to amend, vary or rescind, orders, rules or bye-laws, the disciplinary authority can direct the initiation of de novo enquiry and there is no scope for a wrong doer to raise any objection in that regard.

10. In reply learned counsel for the appellant argued that the case law reported at **State of Assam and Anr. (supra)** relied upon from the side of the Kolkata Municipal Corporation, in fact, goes against the stand of the KMC since in para 3 of that reported judgment the

Hon'ble Supreme Court clearly held that reopening of proceedings is permissible only if the rules vested such revisionary power. In the instant case such rules are absent. The learned counsel has further submitted that several rules and regulations can be permitted but to exemplify the same. The rules he referred to are as follows:-

West Bengal Services (Classification, Control and Appeal) Rules, 1971	Rule 10(10)
The Central Civil Services (Classification, Control and Appeal) Rules, 1965	Rule 15
The All India Services (Discipline and Appeal) Rules, 1969	Rule 9(1)
Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976	Rule 7(1)
Kolkata Port Trust Employees' (Classification, Control and Appeal) Regulations, 1987	Reg. 8A

11. Accordingly, learned counsel submitted that the impugned order of *de novo* enquiry suffers from lack of jurisdiction and the same should be set aside. Moreover, conducting *de novo* enquiry after seizure of documents by anti-corruption branch will severely prejudice the petitioner's defence.

Decision:-

12. From the above argument it transpires that the appellant has tried to impress upon this court that as there is no provision in the relevant rules of KMC, *de novo* enquiry could not have been ordered by the concerned disciplinary authority. Learned counsel also based his argument on the ground that when a statute or rule or regulation requires a certain thing to be done in a particular manner, then the same can be done in that manner only and not in any other manner. He further argued that *de novo* enquiry has been directed and designed only to inflict punishment upon the appellant.

13. Learned counsel of the KMC, on the other hand, has indirectly admitted that the relevant Rules of 1985 are silent about the *de novo* enquiry at the instance of the disciplinary authority, although he has tried to impress upon this court that the disciplinary authority can direct *de novo* enquiry into the relevant charges against a delinquent officer on the basis of Section 21 of General Clauses Act, 1897. Furthermore, learned counsel also relied upon the judgments in the case of **State of Assam & Another (supra) and Nahar Singh (supra)**. Learned counsel strenuously argued that if the enquiry officer fails to record appropriate evidence and findings on each article of charge and thereby puts the disciplinary authority in a serious predicament to

record its own findings on the basis of materials collected by the enquiry officer, the disciplinary authority can order *de novo* enquiry.

14. After considering the submission and counter-submission of the parties it appears that though the appellant has argued on different points of law to convince this court that the disciplinary authority of the KMC is not competent to direct *de novo* enquiry, he did not deal with KMC's submission that the enquiry officer did not record the appropriate evidence on each article of charge. The main argument on behalf of appellant was that as the relevant rules 1985 are silent, initiation of *de novo* enquiry at the instance of disciplinary authority after receipt of the first enquiry report, is bad in law.

15. Now let us consider the relevant excerpts of the CMC Services (Classification, Control and Appeal) Regulations 1985. Regulations 9 to 12 of the said Regulations state that:-

“9) After the completion of the inquiry, a report shall be prepared and it shall remain -

a) the articles of charge and the statement or imputations of misconduct or misbehaviour,

b) the defence of the corporation employee in respect of each article of charge;

c) an assessment of evidence of each article of charge;

d) the findings on each article of charge and the reasons therefor.

10) The disciplinary authority shall consider the record of the inquiry and record its findings on each charge.

11) If the disciplinary authority, having regard to its findings on the charges, is of opinion that any of the penalties specified in clauses (i) to (iii) of regulation 7 should be imposed it shall pass appropriate orders on the case:

Provided that in every case in which it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for advice and such advice shall be taken into consideration before passing the orders.

12) If the disciplinary authority, having regard to its findings on the charges, is of opinion that any of the penalties specified in clauses (iv) to (viii) of regulation 7 should be imposed or where the Commission recommends, in any of the cases, referred to it under sub-regulation (11) one or other of the penalties specified in clause (iv) to (viii) of regulation 7 and the disciplinary authority agrees with the views, it shall -

a) furnish to the corporation employee a copy of the report of the inquiring authority and a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority, and

b) give him a notice stating the punishment proposed and the grounds therefore and calling upon him to submit within a specified time such representation as he may wish to make on the punishment proposed but only on the basis of the evidence adduced during the enquiry.”

16. Learned counsel for the appellant has referred to the decisions reported at **(1935-36) 63 Indian Appeals 372 (Nazir Ahmad Vs. The King Emperor)** in support of his contention that the powers of a statutory authority are to be exercised in the prescribed way and not in any other manner. In this regard the Hon'ble Privy Council has laid down the rule in the following words:

“The rule that where a power is given to do a certain thing in a certain way the thing must be done in that way, to the exclusion of all other methods of performance, or not at all.”

17. Learned counsel for the appellants has also relied on the decision in the case of **Hukam Chand Shaym Lal Vs. Union of India & Ors.** supra, wherein the Hon'ble Supreme Court has been pleased to hold in paragraph 18 as hereunder:-

“...It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice.....”

18. In view of such celebrated legal principle, it has become the law of the land that when a certain act is required to be done in a certain way then such act should be done in that way only and not in any

other manner. Now, this principle is not only applicable to the disciplinary authority alone, it is also applicable to the enquiry officer who conducted the enquiry in the present case. Therefore, at first the enquiry officer is under an obligation to show that he complied with the rigors of law or the relevant rules in conformity with the above legal principle.

19. Undisputedly, the CMC Services (Classification Control and Appeal) Regulations 1985 ('Regulations 1985' in short hereinafter for convenience) require that after the completion of the enquiry a report is to be submitted by the enquiry officer which shall contain, first the articles of charge and the statement or imputations of misconduct or mis-behaviour, secondly the defence of the Corporation employee in respect of each article of charge, thirdly, an assessment of evidence on each article of charge, fourthly the findings on each article of charge and the reasons therefor.

20. From the enquiry report it appears that the officer who conducted the enquiry did not follow the said requirement of relevant rules. Rather he had jumbled up all the issues and wrote an enquiry report not as per requirements of Rule 9 of the Regulations 1985. No assessment of evidence on each article of charge has been clearly made by the concerned officer. The findings on each article of charge

and the reasons therefor are also not clear. Therefore it transpires that though the enquiry officer was required by the Regulations to assess the evidence on each article of charge and to record its findings on each article of charge with reasons, he did not do so. If the enquiry officer did not follow the requirements of the relevant regulations, the disciplinary authority could not have been bound by such irregular and incompetent activities of the enquiry officer. The purpose for which the enquiry is being done is bound to be frustrated due to such lackadaisical attitude on the part of the enquiry officer.

21. Needless to mention, the purpose for which enquiry in a disciplinary proceeding is commenced, is for collection of material evidence in respect of article of charges and to assess the evidence collected in respect of the allegation made against the concerned officer. The findings of the enquiry officer on each article of charge with reasons are also very important. As the disciplinary authority is under an obligation to impose penalties or to discharge the delinquent officer from the allegation, the collection of materials along with assessment of evidence and findings on each article of charge from the side of the enquiry officer are of enormous significance. If the enquiry officer does not comply with the directions or requirement of relevant rules precisely and perfectly, the disciplinary authority will not be able to consider the record of the enquiry and record its findings on each

article of charge. Under the Regulations 1985 the disciplinary authority is under an obligation either to impose punishment or to absolve the delinquent officer from the charges in view of the evidence and findings of the enquiry officer.

22. The term ‘consider’ denotes ‘to think about something carefully, especially in order to make a decision’ (Oxford Learners’ Dictionary). The Longman Dictionary of Contemporary English defines that the term ‘consider’ as “to think about something carefully, especially before making a choice or decision”. The Marriam-Webster Dictionary says that the term ‘consider’ means to think about carefully such as, to think of especially with regard to taking some action, to take into account, to record or treat in an alternative or kindly way, to come to judge or classify etc. According to Concise Law Dictionary by P Ramanatha Aiyar (7th Edition, 2020 published by Lexis Nexis) the word ‘consider’ merely connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of penalty to be imposed on the delinquent employee on his conviction on a criminal charge.

23. Therefore, when a disciplinary authority is under an obligation to consider the records of the enquiry and record its findings on each

charge, it necessarily implies that the disciplinary authority is to apply its mind to the materials collected by the Enquiry Officer and, accordingly, it is trite to say that the duty of the enquiry officer is thus to collect materials on each article of charge and to record and assess the evidence on each article of charge and thereafter to record his findings on each article of charge and to submit a detailed report before the disciplinary authority. If the enquiry officer does not follow the relevant rule in letter and spirit and also the legal principles propounded in Nazir Ahmad's case (supra) and Hukam Chand's case (supra), it would be preposterous to ask the disciplinary authority to follow the legal principles as aforesaid on a defective record of enquiry.

24. It is true that there is no specific provision in the Regulations 1985 that the disciplinary authority can direct second enquiry or denovo enquiry, like other regulations, e.g., Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976, the Central Civil Services (Classification Control and Appeal) Rules 1969, West Bengal services (Classification, Control and Appeal) Rules, 1971, Kolkata Port Trust Employees' (Classification Control and Appeal) Rules 1987. But In my considered opinion, when the requirement of relevant Regulations is not followed by the enquiry officer in letter and spirit by himself, there is no enquiry at all *strict sensu*. Such enquiry is useless and is void ab initio. Therefore as there was no enquiry at all

in view of the failure of the enquiry officer in complying with the direction of the Regulations, 1985 the disciplinary authority could direct denovo inquiry and there is no irregularity or illegality in directing such denovo inquiry since there is no enquiry in the eye of law. In view of the above we do not find any illegality or infirmity in the relevant order passed by the learned Single Judge.

25. As such we affirm the order of the Learned Single Judge passed in WPO No. 1597 of 2023 dated 25.09.2023. The instant appeal is hereby dismissed without any order as to costs. The connected application is also disposed of.

26. Interim order stands vacated. Mr. Ghosh, learned counsel for KMC, prays for extension of time to file Affidavit-in-Opposition before the Learned Single Judge. We think that it will be proper if such prayer is made before the Learned Single Judge.

27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)