JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4049 of 2016
Rana Tahir Hassan Khan
Versus
Capital Development Authority and others

Date of Hearing: 13.10.2021
Petitioner by: Raja Saif-ur-Rehman, Advocate
Respondents by: Mr. Husnain Haider Thaheem, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Rana Tahir Hassan Khan, impugns the order dated 25.01.2016 issued by the Human Resource Development Directorate of the Capital Development Authority **("C.D.A.")** whereby office order dated 17.11.2015 was withdrawn and a *de-novo* inquiry was ordered to be conducted. Vide the said office order dated 17.11.2015, the petitioner had been exonerated from the charges of misconduct, inefficiency, corruption, and misuse of powers under the provisions of the Capital Development Authority Employees Service Regulations, 1992 **("the 1992 Regulations")**.

2. The facts essential for the disposal of this petition are that in October 2009, the Directorate of Parks, C.D.A., had submitted a proposal for the collection of entry fee at Lake View Park, Islamabad. For the purpose of collecting the entry fee, five thousand receipt books had been printed by the said Directorate.

3. On 08.03.2011, an auction was held by the C.D.A. for outsourcing the collection of the entry fee. In this auction, M/s Fazal-e-Wahab & Co. had submitted the highest bid of Rs.27 million. The Member Environment, C.D.A, approved this bid. Before a formal contract could be executed between the C.D.A. and the highest bidder, the site was handed over to the contractor on 19.04.2011. The contractor was also given the receipt books which had been printed by the Directorate of Parks, C.D.A. The contractor collected the entry fee but apparently did not pay the amount collected to the C.D.A. The contract was executed with the contractor and it was made effective from 28.11.2011.

4. A three-member inquiry committee was constituted vide letter dated 29.10.2013 to conduct an inquiry against the officials in the C.D.A., including the petitioner, for having caused a loss to the C.D.A. The allegation against the petitioner was that he neither prepared the work order nor the contract despite having custody of the case file for more than six months; that he made the contract effective from 28.11.2011 even though the contractor had started collecting the entry fee from August 2011; that he caused a loss of Rs.7.101 million to the C.D.A.; and that he did not take timely measures to recover the outstanding amount of Rs.16.250 million from the contractor.

5. The inquiry proceedings culminated in findings that the charges against the petitioner had not been proved. In the inquiry report, it was mentioned *inter alia* that the petitioner had joined his duties as Deputy Director (Parks) on 25.08.2011 whereas *"the matter had been messed up by his predecessors."*

6. Vide office order dated 03.10.2014, the petitioner was informed by the Human Resource Development Directorate of the C.D.A. that the case has been considered by the competent authority in the light of the inquiry report, and that the charge of misconduct / inefficiency and corruption had not been established against him, and therefore he had been exonerated from the charges levelled against him.

7. Vide order dated 17.11.2015, the petitioner was again informed by the Human Resource Development Directorate of the C.D.A. that he had been exonerated. Perusal of the said order shows that penalties had been imposed on other employees of the C.D.A. against whom an inquiry had been conducted in the matter of embezzlement in the collection of entry fees in Lake View Park.

8. Vide impugned order dated 25.01.2016, the earlier order dated 17.11.2015 (whereby the petitioner was exonerated) was withdrawn and it was decided to conduct a *de-novo* inquiry. Vide order dated 10.02.2016, an inquiry committee was constituted under Regulation 8.06(i) of the 1992 Regulations with the mandate to conduct a *de-novo* inquiry *inter alia* against the petitioner. The

order to conduct the *de-novo* inquiry against the petitioner has been assailed in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that after the inquiry committee had found that the allegations against the petitioner had not been proved, the Authorized Officer exonerated the petitioner; that upon the petitioner's exoneration, the matter had become a past and closed transaction to the extent of the petitioner; that after the issuance of his exoneration orders, the petitioner could not have been subjected to a *de-novo* inquiry; that the site had been handed over to the contractor before the petitioner joined his duties as Deputy Director (Parks) in the Environment Directorate of the C.D.A.; that in the inquiry report, it was clearly mentioned that the petitioner had joined his duties as Deputy Director (Parks) on 25.08.2011 whereas the site has been handed over to the contractor on 19.04.2011; and that the order for the initiation of the *de-novo* inquiry against the petitioner is without lawful authority and of no legal effect. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. On the other hand, learned counsel for the C.D.A. submitted that although in the inquiry report dated 31.03.2014 it was found that the allegations against the petitioner had not been proved; that in the said report it had also been recommended that penalties be imposed on other employees/officers of the C.D.A.; that the officers/ employees on whom penalties had been imposed by the authorized officer submitted application dated 07.12.2015 for the review of the decision to impose penalties on them; that in the said review application, it was mentioned that show cause notices had not been issued to the officers/employees of C.D.A. before the authorized officer imposed penalties on them; that thereafter, the Member Administration, C.D.A. proposed that bearing in mind the anomalies pointed out by the officers/employees on whom penalties had been imposed by the authorized officer, the Chairman, C.D.A. may revise the order passed by the authorized

officer and a *de-novo* inquiry be conducted; that the said proposal was approved by the Chairman, C.D.A. on 23.12.2015; that vide order dated 25.01.2016, the earlier order dated 17.11.2015 for the petitioner's exoneration was recalled; that against the said order dated 25.01.2016 and the order dated 10.02.2016 whereby a *de-novo* inquiry was ordered to be conducted *inter alia* against the petitioner, the latter filed the instant writ petition; that the petitioner had also submitted a representation against the said orders; that during the pendency of the instant petition, this Court directed the C.D.A. to decide the said representation; that vide letter dated 07.10.2021 the said representation was turned down; that after that, on the advice of the Legal Advisor, C.D.A., the Chairman, C.D.A. decided to review the earlier order dated 17.11.2015 (whereby the petitioner was exonerated) and to order a *de-novo* inquiry to be conducted; that this decision was taken in exercise of the power under Regulation No.8.08(i) of the 1992 Regulations; and that the order for initiating *de-novo* inquiry against the petitioner does not suffer from any legal infirmity. Learned counsel for the C.D.A. prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contenting parties and have perused the record with their able assistance.

12. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

13. This is not the case where the authorized officer, after pointing out procedural irregularities in the inquiry conducted against the petitioner, ordered for a *de-novo* inquiry to be conducted. This is also not the case where the competent authority (i.e., Chairman C.D.A.), after examining the inquiry report and considering the recommendations of the inquiry committee as well as the decision of the authorized officer on such recommendations, came up with a valid reason for ordering a *de-novo* inquiry.

14. This is a case where the inquiry committee had found that the charges against the petitioner had not been proved and recommended that penalties be imposed on other employees/officers of C.D.A. against whom an inquiry was conducted. Admittedly, vide office orders dated 03.10.2014 and 17.11.2015, the C.D.A. informed the petitioner that he had been exonerated. Perusal of the office order dated 17.11.2015 shows that the petitioner had been exonerated and penalties had been imposed on other employees/officers of the C.D.A. with the approval of the competent authority (i.e., Chairman, C.D.A.). This office order clearly mentions that the petitioner had been exonerated. By recalling the said office order dated 17.11.2015, through office order dated 25.01.2016, and by initiating a *de-novo* inquiry through office order dated 10.02.2016, the C.D.A. opened, to the extent of the petitioner, a matter that was past and closed.

15. The justification put forth by the C.D.A. for initiating the *de-novo* inquiry against the petitioner was that Regulation 20.02 of the 1992 Regulations authorized the Chairman, C.D.A. to initiate such an inquiry after the decision of the authorized officer to exonerate the petitioner had been approved by the Chairman, C.D.A. The said Regulation gives no such authority to the Chairman, C.D.A. Regulation 20.02 appears in Chapter-20 titled "Appeal and Representation" of the 1992 Regulations. Regulation 20.02(1) gives an employee, on whom a penalty is imposed by an authority or an authorized officer, a right of an appeal to the appellate authority whereas Regulation 20.02(2) explains as to who the appellate authority would be in different cases. This Regulation does not empower the Chairman, C.D.A. to order a *de-novo* inquiry or to review his earlier approval of the authorized officer's decision to exonerate an employee/officer of the C.D.A.

16. It may be mentioned that Regulation 8.09 of the 1992 Regulations provides that the authority may call for the record of any case pending before or disposed of by the authorized officer and to pass such order in relation thereto as it may deem fit. This provision is in the nature of a *suo moto* revisional power conferred

on the authority, and therefore must be strictly construed. It empowers the authority to call for the record of any case pending or disposed of by the authorized officer. Indeed, in the case at hand, the case against the petitioner stood disposed of by the authorized officer when he decided to exonerate the petitioner, and the latter was informed accordingly vide C.D.A.'s office orders dated 03.10.2014 and 17.11.2015. As mentioned above, the competent authority (i.e., Chairman, C.D.A.) had accorded approval to the petitioner's exoneration. Since there is no provision in the 1992 Regulations which empowers the competent authority (i.e., Chairman, C.D.A.) to review his own previous decision to exonerate an officer/employee of C.D.A., I am of the view that the decision to withdraw the order to exonerate the petitioner is without lawful authority.

17. The findings of the inquiry committee that the charges against the petitioner had not been proved did not terminate the disciplinary proceedings. Departmental proceedings do not end with the submission of the inquiry report. It is only after the findings or the recommendations of the inquiry committee are accepted by the authorized officer and he passes an order to the said effect can it be held that the disciplinary proceedings come to a close. This is, however, not the case where the decision of the authorized officer would be subject to the approval of the competent authority under the applicable service rules.

18. The authorized officer is not bound to accept the findings or follow the recommendations of the inquiry committee. Recently, in the case of Fayyaz Hussain Vs. Executive District Officer (Education), City District Government, Rawalpindi (2021 SCMR 1358), the Hon'ble Supreme Court has held that the findings of the inquiry officer are not binding on the competent authority. The authorized officer, only after assigning reasons, can disagree with the inquiry committee's findings that charges against the officer under inquiry had not been proved or the inquiry committee's recommendation to exonerate the officer. After assigning such reasons the authorized officer can order a *de-novo* inquiry. In the

case of Federation of Pakistan Vs. Shafqat-ur-Rehman (2021 PLC (C.S.) 405), an order by the authority for a *de-novo* inquiry was held to be valid since such an order was passed before a final order accepting the recommendations of the inquiry committee had been passed, and valid reasons had been recorded by the authority to order a *de-novo* inquiry. In this regard it was held as follows:-

> ***"12. The learned High Court has held that in case of the Respondent de novo inquiry could not have been ordered as this amounts to "Double Jeopardy" envisaged in Article 13 of the Constitution. Unfortunately, we are unable to agree. In our opinion, considering the facts and circumstances of the instant case the action ordered against the Respondent does not fall within the purview of double jeopardy for the reason that, as per Rule 5(iv), a final order could only have been passed by the Authority. Admittedly, no such final order was passed. Further, the Authority had the power to agree with the recommendation or disagree with the recommendation and either pass a final order on the basis of the record before it after providing the accused of opportunity of a hearing or it dissatisfied with the inquiry order a de novo inquiry for valid and recorded reasons. In the instant case valid and justifiable reasons were recorded by the Authority, and such exercise of executive power, in the absence of mala fides or malice could not have been interfered by the High Court."***

19. Unless there are procedural improprieties in the inquiry proceedings or there are circumstances which prejudicially affect the rights of the parties or there are apparent violations of the applicable rules or the principles of natural justice, there can hardly be any occasion for the authority to direct a further or a *de-novo* inquiry. In the case of K. R. Deb Vs. The Collector of Central Excise, Shillong (AIR 1971 SC 1447), it was held as follows:-

> ***"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 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."***

20. Where the authorized officer feels that a harsher penalty than the one proposed by the inquiry committee is to be imposed on the officer or that the officer is subjected to another inquiry, it is

imperative for not just reasons to be assigned for doing so but to also afford an opportunity of a hearing to the officer in question. However, once a final order for the exoneration of the officer is passed by the authorized officer and the competent authority approves such an order, a *de-novo* inquiry cannot be ordered against the exonerated officer.

21. It is trite law that there can be only one set of disciplinary proceedings on a particular charge of misconduct against an officer. Repeated inquiries against an officer on the same charge of misconduct are clearly impermissible in law. If such *de-novo* inquiries are permitted on the same misconduct notwithstanding an earlier exoneration, it will amount to an open ended power to the employer and become arbitrary. In the case of Administrator/Pakistan Defence Officer Housing Authority Vs. Ghulam Mustafa Khan (2011 SCMR 480), departmental proceedings against a civil servant were set-aside by the Service Tribunal and the judgment of the Service Tribunal was maintained by the Hon'ble Supreme Court. Subsequently, the authorities initiated proceedings on the same charge against a civil servant. These proceedings were set-aside by the High Court in exercise of Constitutional jurisdiction under Article 199 of the Constitution. The Hon'ble Supreme Court held *inter alia* that once the Service Tribunal had set-aside the proceedings against the civil servant and the judgment of the Service Tribunal had not been interfered with by the Hon'ble' Supreme Court, there was no occasion to proceed against him once again on the same charges. For the purpose of clarity, paragraph 7 of the report is reproduced herein below:-

> ***"7. As it is admitted by the learned counsel appearing for the petitioner that the respondent was being proceeded against on the basis of same charges, which were the subject-matter of the earlier proceeding; we have no reason to differ with the findings recorded by the High Court. In the first round of litigation the Service Tribunal had examined in depth the charges on the basis of which he was terminated and concluded that lapses being alleged against him were of the minor nature therefore, were not sufficient for imposing major penalty of dismissal from service. The conduct of the petitioner seems to be not free from mala fide because once the Service Tribunal set aside the proceedings***

against him and that judgment was not interfered with by this Court on facts, there was no occasion to again proceed against him for the same charges, which is against the natural principle of justice. As far as observations of initiating fresh proceedings are concerned, it does not mean that the petitioner should be proceeded again on the same charges, which have not been found correct in the earlier proceedings. The same were given only to be used for the purpose of conducting inquiry if there are the charges other than the earlier charges on which his service was terminated. The High Court had exercised jurisdiction, under the circumstances, in proper manner, therefore, no interference is called for."

22. Furthermore, in the case of <u>The Director General (Field), Agricultural Department, Lahore Vs. Haji Abdul Rehman (1989 SCMR 1224)</u>, the Hon'ble Supreme Court refused to grant leave to appeal against the judgment of the Punjab Service Tribunal whereby a subsequent order passed by an authority to terminate the respondent was declared unlawful and void *ab initio* since earlier he had been given warning on the same charges. In that case, the services of the respondent were terminated on account of willful absence from duty. The appellate authority set-aside the order for the termination of his services. The period of absence from duty was treated as leave without pay and a warning was given to him. After this, his services were again terminated on the same charges. The Punjab Service Tribunal held that the subsequent order for the termination of his services was unlawful and void *ab initio* and that the respondent could not be vexed twice on the same charges.

23. In the 1992 Regulations, there is no provision that empowers the authorized officer or the authority to order a *de-novo* inquiry against officers who had already been exonerated. Even if it is assumed, for the sake of argument, that Regulation 08.09 of the 1992 Regulations authorized the authority to order a *de-novo* inquiry after the authorized officer had exonerated an officer, such power cannot be exercised at the mere discretion of the authority in an arbitrary manner or without plausible reasons. The Office Orders dated 25.01.2016 and 10.02.2016 whereby the earlier order for the petitioner's exoneration was withdrawn and a de-novo inquiry was ordered are totally devoid of reasons. Such orders,

being in violation of Section 24-A of the General Clauses Act, 1897, cannot be sustained. Additionally, there was no discovery of any fresh material warranting a *de-novo* inquiry. The *de-novo* inquiry against the petitioner was to be on the same very charges which were levelled against him in the earlier inquiry, which had culminated in findings that the charges against him had not been proved. It would be most unfair and iniquitous that where a charged officer succeeds before an inquiry committee and the authorized officer exonerates him and such exoneration is approved by the authority, for such an officer to be subjected to a *de-novo* inquiry on the very same charges.

24. In view of the foregoing, the instant petition is allowed and the impugned order dated 25.01.2016, to the extent of recalling the petitioner's exoneration and conducting a *de-novo* inquiry against him, is set aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 03/11/2021

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**