

A

## STATE OF ASSAM &amp; ANR.

v.

J. N. ROY BISWAS

October 6, 1975

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

B

*Service—Government servant exonerated and reinstated after enquiry—Reopening of enquiry—If competent.*

C

The respondent, a Government servant, was suspended from service in 1960. On receipt of the findings of the Inquiry Officer, a show cause notice was issued. The appointing authority exonerated the respondent but did not make a reasoned order. Later, however, the case was reopened. As the *de novo* recording of evidence progressed the respondent moved the High Court contending that there was no power in the Government to re-open a case which had already been concluded by exoneration and re-instatement. The High Court granted the relief.

Dismissing the appeal of the State,

D

HELD: Had the Government servant misappropriated government money he should have been punished expeditiously. But having been exculpated after enquiry, the State could go at him by re-opening the proceedings *only if the rules vested some such revisory power*. No rule of double jeopardy bars the reopening of the case. But once a disciplinary case has closed and the official re-instated the government cannot restart 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 a legal provision or other vitiating factor invalidating earlier enquiry.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 899 of 1968.

E

Appeal by special leave from the judgment and order dated the 15th February, 1967 of the Assam and Nagaland High Court in C. Rule No. 231 of 1965.

*Naunit Lal*, for the appellants.

*Sukumar Ghose*, for the respondent.

F

The Judgment of the Court was delivered by

G

KRISHNA IYER, J.—Was this virtually valstudinarian appeal by the Sate against an old and perhaps, by now, superannuated employee necessary? Litigation by the State means laying out public resources, in a country of much poverty and scarce resources, and only if the demanding justice of a case calls for it should an appeal, otherwise of inconsequence, be carried to the highest Court. In the present instance, a veterinary assistant; the respondent herein, was suspended in 1960 followed by disciplinary proceedings. An enquiry officer, appointed by the Director of Animal Husbandry and Veterinary Department, conducted the proceedings, submitted his report of findings adverse to the respondent, whereupon a show cause notice indicating the penalty of dismissal was issued. The 'delinquent' pleaded innocence by his explanatory statement and the Director, on a study of the case in the

H

light of the explanation offered, directed reinstatement in a cryptic order which runs thus :

## "OFFICE ORDER NO. 81 DATED 11-12-62

Shri J. N. Roy Biswas, Manager, East Harinagar Livestock Farm (Cachar) who was placed under suspension vide this office order No. 42 dated 23-12-60, is re-instated in the same post of Manager, at East Harinagar Livestock Farm with effect from the date he reports for duty.

Sd/- G. K. Mehra,

Director of Animal Husbandry & Vety.  
Department, Assam, Gauhati."

Memo No. PI-918/26822 Dated Gauhati, the 13th Dec. '62. Copy forwarded to :—

1. Shri J. N. Roy Biswas, Manager, East Harinagar Livestock Farm (under suspension) C/o Brahmachari Maharaj Shri Dawarikanath, Ramkrishna Seva Samity, Chatribari, Gauhati, for information and necessary action. The findings and orders of the proceeding will follow.

2. ....

3. ....

The findings and orders together with the regularisation of the period of suspension of Shri J. N. Roy Biswas, with effect from 5-1-61 to the date of his reporting for duty at East Harinagar Livestock Farm will be communicated separately. The date of joining of Shri Biswas may be informed to this office separately.

Sd/- B. K. Das

for Director of Animal Hy. & Vety.

It is noteworthy that no reasoned findings were recorded. That particular officer retired and his successor wrote to the Joint Secretary to Government that from the materials of the case the 'delinquent' merited punishment and the proceedings be re-opened. This was done and as the *de novo* recording of evidence progressed the respondent moved the High Court under Art. 226 for a writ of prohibition as, in his submission, there was no power to re-open a case concluded by exoneration and reinstatement and the illegal vexation of a second enquiry should be arrested. This grievance was held good by the High Court which granted the relief sought.

What is the conspectus of circumstances? A small veterinary official, a long enquiry for mis-conduct, a final direction cancelling suspension and reinstating him, the likelihood of the man having retired (15 years have gone by) and nothing on record to substantiate any fatal infirmity in the earlier enquiry or dereliction of duty by the disciplinary authority except that a reasoned record of findings was to be forthcoming, but did not, because he had retired in the meanwhile! No action against the retired Director for this alleged omission was felt justified and perhaps was not warranted but with persistent.

- A** litigative zeal Government has come in appeal to this Court against the petty official. Had he misappropriated Government money he should have been punished expeditiously. But having been exculpated after enquiry, the State could go at him by re-opening the proceedings only if the rules vested some such revisory power. None such has been shown to exist although one wonders why a rule vesting such a residuary power of a supervisory nature to be exercised in the event
- B** of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of Government has not been made. No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the Disciplinary authority after the delinquent had once been absolved. The appeal must fail and is dismissed with costs.
- C** We may however make it clear that 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
- D** in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the record.

P.B.R.

*Appeal dismissed.*