

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 873/95

New Delhi, this the 4th day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri M.P. Singh,
Son of Late Shri Kundan Singh,
R/o 1266, Gulabi Bagh,
Delhi-110007. Applicant
(By Advocate: Sh. G.D. Gupta)

Vs.

1. Government of National Capital Territory of Delhi through its Chief Secretary, 5, Shamnath Marg, Delhi-110054.
2. The Director of Vigilance, Government of National Capital Territory of Delhi, Old Secretariat, Delhi-110054.
3. The Commissioner for Departmental Inquiries, Central Vigilance Commission, Jamnagar House, New Delhi. Respondents
(By Advocate: Sh. Vijay Pandita)

ORDER

delivered by Hon'ble Shri T.N. Bhat, Member (J)

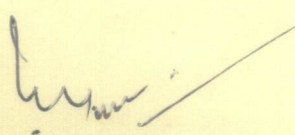
The applicant in this OA challenges the validity of the chargesheet dated 1.9.92 served on the applicant vide memorandum dated 24.5.93, as at Annexure A-1, on the ground that the chargesheet is wholly illegal in as much as in an earlier enquiry on the self-same charges the applicant had been awarded punishment of recordable warning. The applicant has annexed to the OA the copy of a memorandum dated 23.2.89 in which it was alleged that the applicant had assisted and abetted one Om Parkash, the Proprietor of M/s. Om Prakash Provision Stores, Yamuna Bazar, Delhi in paying bribe to an official

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in the Prevention of Food Adulteration Department though he had later got the bribe money returned to the said person. It was further alleged that the sample of red chilli powder (Lal Mirchi) had been lifted from the above said provision store and the owner thereof had sought a favourable report in that case. (15)

2. We further notice that in reply to the aforesaid memorandum which is a show cause notice as to why disciplinary proceedings should not be initiated against the applicant, the applicant submitted his reply, as at Annexure A-3, and after considering the reply the competent authority, namely, the Administrative Officer in the Office of Chief Engineer by the memorandum dated 7.6.89 held that the allegations levelled against the applicant have not been substantiated. However, it was further held that the applicant had committed a mistake in accompanying an outsider during office hours despite the fact that he had no official dealings with him and leading him to some other office "resulting in a departure in office decorum". It was accordingly communicated to the applicant that for the aforesaid mistake the Chief Engineer had warned the applicant to be more careful in future so as to not involve himself in such matters and to observe office decorum. It was further directed that the copy of this warning shall be "endorsed to be placed" in the applicant's ACR file.

3. On a comparative reading of the memorandum dated 23.2.89 as well as the statement of articles of charge and the list of documents annexed thereto with the chargesheet (memorandum) dated 1.9.92 and the statement of



articles of charge and the statement of imputations or misconduct annexed thereto we find that it is on the same set of facts that the fresh memorandum of charges has been issued to the applicant. This time the memorandum has been served by the Chief Secretary while the earlier chargesheet had been issued by the Administrative Officer on behalf of the Chief Engineer in whose office the applicant was working at the relevant time.

4. The respondents have in their counter taken the plea that the earlier memorandum of February 1989 was not a chargesheet, properly so called and that it was only a show cause notice and that, therefore, there was no bar for issuance of a regular chargesheet on the same set of facts subsequently.

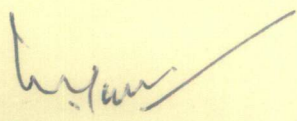
5. We have heard the learned counsel for the parties and have perused the material on record. Apart from raising the question of double jeopardy the learned counsel for the applicant has also taken the plea that after issuance of the earlier memorandum of 1989 the applicant was granted promotion even though he had been awarded a punishment of recordable warning and that therefore it should be presumed that the alleged misconduct of the applicant had been condoned. In reply, the learned counsel for the respondents reiterates the contention that since no regular enquiry under Rule 14 of the CCS (CCA) Rules 1965 had been held earlier, the respondents could validly issue a chargesheet and that is what has been done by serving the memorandum dated 1.9.92 on the applicant. On the question of alleged condonation of the misconduct the learned counsel for the respondents

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(17)

states that merely by granting promotion to the applicant it could not be implied that the misconduct had been condoned. In this regard it is further contended that promotion is granted after considering the ACRs for several years and that even if there is some adverse remark or punishment awarded in a particular year that by itself would not debar the official from seeking promotion if the ACRs of the other years are good.

6. After giving our careful consideration to the matter at hand we are of the view that the memorandum dated 1.9.92 is liable to be quashed for the simple reason that the respondents had on the same set of facts earlier awarded punishment of recordable warning against the applicant. It would hardly make any difference that a regular chargesheet had not been issued on the earlier occasion. As already indicated the memorandum dated 23.2.89 was a show cause notice and when the applicant submitted his detailed reply to the same the Chief Engineer passed an order exonerating the applicant on the main charge but at the same time held him guilty of committing a mistake resulting in "departure from office decorum". The applicant was accordingly warned to be careful in future and it was further directed that this warning shall be recorded in his ACR. It is well-settled that although warning is not a punishment but if there is a direction that the same should be recorded in the service records it assumes the colour of punishment. In other words, such a punishment could be considered to be equivalent to censure which is one of the punishments that can be awarded under the provisions of the CCS (CCA) Rules. The applicant already having been awarded



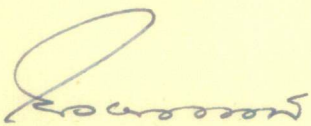
punishment and that too after being exonerated of the main charge the Chief Secretary could not initiate disciplinary proceedings once again on the self-same allegations. This action of the Chief Secretary is clearly hit by the principle of double jeopardy.

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7. However, the same cannot be said about the second contention raised by the learned counsel for the applicant. The mere fact that after the issuance of the memorandum dated 23.2.89 the applicant got promotion to the higher post would not amount to condonation of the misconduct. In support of this view the judgment of the Apex Court in **State of M.P. and Others vs. R.N.Mishra**, reported in JT 1997 (8) SC 162 may be referred to. In that case the employee had been promoted while the disciplinary enquiry against him was still pending. It was held that grant of promotion to the official would not result in washing out the disciplinary proceedings on the ground of condonation of the alleged misconduct.

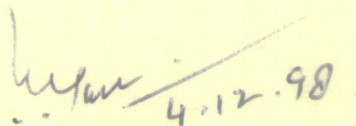
8. In view of what has been mentioned above this OA has to be allowed. We, accordingly, allow this OA and quash the memorandum dated 1.9.92 conveyed to the applicant by the letter dated 24.5.93.

9. There shall be no order as to cost.



(S.P. BISWAS)
Member (A)

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(T.N. BHAT)
Member (J)