

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00819/2016

Dated this ~~Wednesday~~ the 23rd day of ~~September~~ 2020

**CORAM : DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

Smt. Nidhi Gupta, M.Tech, Scientific Officer – E, B.A.R.C.,
Trombay, Mumbai 400 085.

(R/o – A/1002, Arihant Sharan Bldg., Plot No.8,

Sector – 20, Roadpali, Kalamboli, Navi Mumbai 410 218. - **Applicant**

(By Advocate Shri A.I.Bhatkar)

Versus

1. Union of India through The Secretary,
Department of Atomic Energy, Anusakti Bhavan,
C.S.M Marg, Mumbai 400 001.
2. The Under Secretary, Department of Atomic Energy,
Anusakti Bhavan, C.S.M. Marg,
Mumbai 400 001.
3. Dr. (Mrs.) Umashankari, Inquiring Authority,
Scientific Officer (H+) Head, RPDD, B.A.R.C.
Mumbai 400 085.

- **Respondents**

(By Advocate Ms. Vaishali Choudhari)

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

Smt. Nidhi Gupta, Scientific Officer – E, BARC, Trombay, Mumbai filed this OA on 06.12.2016, seeking declaration that the charge-sheet dated 12.04.2016 issued to her has not been issued by the Competent Disciplinary Authority and hence, its setting aside with cost of this OA.

2. Summarized relevant facts :

2(a). The applicant is a civilian Scientific Officer – E with BARC, Mumbai. He joined Department of Atomic Energy as Scientific Officer

on 01.09.2005 (Group 'A' gazetted post) was posted at Kalpakkam, Tamil Nadu and on her request she was transferred in 2006 to BARC, Trombay. Subsequently she got promoted as Scientific Officer – D from 01.08.2008 and Scientific Officer – E from 01.07.2012. By Office Order dated 27.04.2015 she was posted with immediate effect at BARCF (V), Vishakhapatnam on redeployment basis and was relieved from BARC, Trombay on 28.04.2015. She applied for leave and challenged her above posting at Vishakhapatnam in OA No.519/2016 filed on 29.06.2016.

2(b). She was issued charge-sheet dated 12.04.2016 (Annex A-2) under Rule 14 of CCS (CCA) Rules, 1965. She replied to it contending that her Disciplinary Authority for her is the President of India, the charge-sheet has not been issued by the Disciplinary Authority and therefore, it is non-est in the eyes of law. It does not meet the essential requirement of law that the charge-sheet is to be issued with an endorsement – “for and on behalf of the President” and it has to be signed by the same authority to whom the President has delegated the powers to authenticate on his behalf. However, there is no such authentication of the charge-sheet.

2(c). After a charge-sheet is issued to an employee, time is given to the employee to submit his reply and only if the reply of the delinquent employee is not found satisfactory then the Disciplinary Authority appoints Inquiry Officer and Presenting Officer. She replied to the charge-sheet on 02.05.2016 (Annex A-5). The respondents appointed Dr. (Mrs.) Umashankari as Inquiry Officer and Shri N.V.Rao as

Presenting Officer and first date of the inquiry was fixed on 05.12.2016.

Therefore, this OA has been filed.

3. Contentions of the parties :

In the OA, rejoinder and during the arguments of her counsel on 26.11.2019, the applicant contends that -

3(a). she being as Group 'A' Civilian Officer, the President of India is the Appointing Authority and Disciplinary Authority for her. But the charge-sheet has been signed by Secretary to Government of India and there is no endorsement or authentication that it has been issued for and on behalf of the President or in his name. Absence of such authentication has made the charge-sheet as non-est as well invalid in law. In her reply to the charge-sheet dated 06.08.2016 by e-mail, she pointed out the above legal infirmity in the charge-sheet. In their reply dated 02.11.2016 to her e-mails (Annex A-1), the respondents stated that the charge-sheet is sustainable in law;

3(b). she has been posted at BARCF (V), Visakhapatnam on redeployment basis but redeployment of officers is governed by CCS (Redeployment of Surplus Staff) Rules, 1990 (Annex A-7) and posting/transfer on redeployment basis has many other adverse consequences. For redeployment of surplus employees, DOPT has issued guidelines in its OM dated 26.03.2002 (Annex A-9) but the respondents are unaware of such consequences, they did not follow any rules or instructions in picking her up for redeployment and posted her at Visakhapatnam;

3(c). she had come to Mumbai only in 2006 on transfer from Tamil Nadu, got married in 2012 and her husband is working in a Mumbai based Software Company. There are DOPT instructions for keeping husband and wife at a one place but by redeploying her at Visakhapatnam, her family life is disturbed. Therefore, the respondents ought not to have posted her there;

3(d). her posting to Visakhapatnam is with *mala fide* intention due to her complaint of misbehaviour against D. Das. The respondents did not consult and obtain her consent for posting there and on the next day of issuing the posting order, she was relieved in a hurry. She informed the respondents about her inability to join at Visakhapatnam for personal reasons and applied for leave but it was not considered/granted by BARCF Authorities, at Visakhapatnam;

3(e). the contention of the respondents in their reply that it is just an internal transfer from one (BARC unit, Mumbai) to another unit (BARCF, Visakhapatnam) is not correct. Her posting there was not in public interest and it was with a malice;

3(f). the charge-sheet issued is not sustainable in law as per Apex Court decision dated 16.08.2011 in Civil Appeal No.5374/2005 and other Apex Court judgments. The charge-sheet issued to her under Rule 14 of CCS (CCA) Rules, 1965 is a major penalty charge-sheet and therefore, it was necessary to be authenticated in the name of the President. Delegation of powers to impose minor penalty is a different issue and Secretary, Department of Atomic Energy has not been declared as Disciplinary Authority by an order of the President under CCS (CCA) Rules, 1965.

Under those rules a Disciplinary Authority means the authority competent to impose on the Government servant any of the penalties specified in Rule 11. Appointment of Inquiry Officer and the Presenting Officer can also be done only by the order of the Disciplinary Authority and in her case their appointment by the respondents is illegal. Therefore, this OA should be allowed;

3(g). the applicant has attempted to benefit from Apex Court decision dated 05.09.2013 in Civil Appeals No.7761-7767 of 2013 (**Union of India and others Vs. D.V.Gopinath and others**) which held that approval of the Competent Authority to initiation of disciplinary proceedings as well as charge-sheet is necessary. The applicant contends that the respondents have not complied with this requirement.

In their reply, sur-rejoinder and during the arguments of their counsel on 26.11.2019, the respondents contend that -

3(h). the applicant was appointed as Scientific Officer – C at Electronics and Instrumentation Division, Indira Gandhi Centre for Advanced Research, Kalpakkam, Tamil Nadu with effect from 01.09.2005. On her request she was transferred to Electronics Division, BARC, Trombay, Mumbai in October, 2006. Regional Director BARCF Visakhapatnam in his note dated 12.02.2015 (copy at Annex at R-1) issued a proposal for posting of an electronics engineer having experience in development of new devices/products in energetics and electromagnetic divisions (Annex R-2). Based on that requirement, a note was sent on 18.02.2015 to various heads of Departments requesting to nominate eligible officers for posting at BARCF Visakhapatnam. In

response three nominations (including that of the applicant) were received from Control Instrumentation Division, Reactor Control Division and Electronics Division. Biodata of the nominated candidates were sent to Regional Director BARCF, Visakhapatnam on 03.03.2015 requesting to recommend suitable candidate from among the nominees. In response the Regional Director, BARCF dated 13.03.2015 (Annex R-5) informed that in view of field work and experience, the present applicant was found a most suitable candidate to be posted at BARCF, Visakhapatnam. In view of that recommendation, the applicant was posted there by order dated 27.04.2015 (Annex A-4). That order was issued without any bias against the applicant and by following the proper procedure and in public interest. Accordingly, the applicant was relieved from BARC Mumbai on 28.04.2015 (Annex R-6) to report at BARCF, Visakhapatnam;

3(i). in her e-mail dated 29.04.2015 (Annex R-7), the applicant informed that she did not accept the above orders and her personal problems prohibited her from leaving Mumbai. Hence, it was not possible for her to report immediately at Visakhapatnam. By another e-mail on 13.05.2015 she reiterated her inability to join at BARCF, Visakhapatnam and requested to treat her e-mail as application for leave till 26.06.2015. By letter dated 14.05.2015 (Exhibit R-9) she was directed to report to Regional Director, BARCF, Visakhapatnam immediately and that her request for leave would be considered after joining there. On 19.06.2015 she was again directed to report on duty at BARCF, Visakhapatnam. But sent an e-mail on 29.06.2015 stating

that it was impossible for her to join duties at Visakhapatnam and requested for extension of leave;

3(j). in view of failure of the applicant to join at the new place of posting and remaining unauthorizedly absent, she was issued a memorandum dated 28.09.2015 (Exhibit R-12) by Controller, BARC informing her that by not reporting for duty at BARCF, Visakhapatnam she had shown lack of devotion to duty and acted in a manner unbecoming of a Government servant in violation of Rule 3(1)(ii)&(iii) of CCS (Conduct) Rules, 1964 and she was asked to join duty in her own interest by 07.10.2015, failing which action would be initiated against her. This memo was acknowledged by her on 28.09.2015 but even then he remained unauthorizedly absent. Therefore, because of failure of the applicant to join duty at BARCF, Visakhapatnam and remaining unauthorizedly absent in spite of repeated reminders and the memorandum, disciplinary action was initiated against her and charge-sheet dated 12.04.2016 was issued (Exhibit A-2);

3(k). transfer of the applicant from BARC, Mumbai to BARCF, Visakhapatnam is an internal transfer from one place to another within the same unit under the administrative control of Director, BARC. Her transfer to BARCF, Visakhapatnam is in public interest, based on request of Regional Director, BARCF, Visakhapatnam and by following proper procedure, she has challenged her transfer in another OA No.519/2016, which is being defended separately by the respondents;

3(l). the contention of the applicant that the charge-sheet issued to her has not been issued by the Disciplinary Authority is baseless. Vide

notification dated 24.09.1985 (copy Annex at R-13) Secretary, Department of Atomic Energy has been delegated powers for imposing minor penalty in respect of Group 'A' Officers. In terms of Rule 13(2) of CCS (CCA) Rules 1965, a Disciplinary Authority competent to impose minor penalties may initiate disciplinary proceedings against a Government servant for imposition of any of the major penalties also. Therefore, Secretary, DAE is competent to initiate disciplinary proceedings against Group 'A' Officers for imposing major penalties under Rule 14 of CCS (CCA) Rules, 1965. Hence, the charge-sheet issued to the applicant by Secretary, DAE is sustainable in law and is legal. These facts were communicated to the applicant in letter dated 02.11.2016 (Annex A-1) directing her to cooperate with the inquiring authority to complete the inquiry;

3(m). the applicant had submitted written statement of her defence on 02.05.2016 (Annex A-5). After considering her statement of defence, the Disciplinary Authority decided to hold oral inquiry against her under Rule 14(5)(k) of CCS (CCA) Rules, 1965 and by order dated 30.08.2016 (Annex A-6), inquiry officer and Presenting Officer were appointed, who fixed the first sitting of the inquiry proceedings on 05.12.2016 as acknowledged by the applicant in letter of the same date mentioning her inability to attend the inquiry proceedings on that day (Annex R-14). In view of these facts, the applicant has failed to make out any case which may merit intervention of the Tribunal. The respondents have complied with statutory procedural requirements and also followed the principles of natural justice. There is no bias against the applicant and therefore,

the OA is devoid of any merits. Hence, the OA should be dismissed;

3(n). provisions of Rule 3(1)(v) of CCS (Deployment of Surplus Staff) Rules, 1990 contain specific stipulations that the provisions of sub rule 1 shall not apply to the posts and services under the administrative control of Department of Atomic Energy. Therefore, the contention of the applicant about application of those rules to her case is baseless. The use of the word redeployment in her transfer order does not mean that she has been transferred under the provisions of CCS (Redeployment of Surplus Staff) Rules, 1990. She has been transferred by following the procedure of Department of Atomic Energy;

3(o). Department of Atomic Energy OM dated 18.04.2006 appointing the applicant specifically mentioned that she may be transferred to any part of India in any of the constituent units of DAE as per exigency of service. DOPT OM dated 30.09.2009 about posting of husband and wife at the same station has stipulated that when both spouses are in same Central Service or working with same Department and posts are available, they may be mandatory posted at the same station. Since the applicant's husband is not working in any Government or semi-Government organization, as informed by her on 29.04.2014 (Annex-SR-4), compliance with the stipulations of DOPT OM dated 30.09.2009 are not applicable to her case. Therefore, the action taken against the applicant is proper and fully justified;

3(p). the respondents also referred the applicant's case to UPSC for statutory advice pointing out the fact of pendency of this OA with the Tribunal. However, in reply dated 13.08.2019, the UPSC has informed

that Secretary, Department of Atomic Energy has been specified as the Disciplinary Authority to impose any of the minor penalties specified in clauses (i) to (iv) of Rule 11 of CCS (CCA) Rules, 1965 on persons appointed to Central Civil posts included in general Central Civil Group 'A' in or under Department of Atomic Energy in notification dated 29.04.1985 under the provisions of Rule 12(2)(b) of CCS (CCA) Rules, 1965. Therefore, consultation with the commission is not necessary in the present case. However, while deciding appeal prepared by the officers to President against the penalty imposed, consultation with the commission would be necessary as per the provisions of the Constitution read with UPSC (Exemption from Consultation) Regulations, 1958. As per the directions of the Tribunal dated 26.08.2019, the original case file of the departmental proceedings against the applicant has been submitted for perusal of the Tribunal.

4. Analysis and conclusions :

4(a). We have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents and considered the arguments advanced by their counsels on 26.11.2019. We have also perused the original case record of the applicant produced by the respondents. On our careful consideration, thus, the case is analyzed as follows :

4(b). The main issue for decision in this OA is whether Secretary, Department of Atomic Energy was competent to initiate disciplinary proceeding against the applicant, issue charge-sheet to her under Rule 14 of CCS (CCA) Rules, 1965 and appoint Inquiry Officer and Presenting

Officer for conducting the inquiry.

4(c). The admitted facts in the case are that on suitability of the applicant as assessed by Regional Director, BARCF, Visakhapatnam, she was transferred from BARC, Trombay Office with immediate effect, posted at BARCF, Visakhapatnam by order 27.04.2015, directing her to report to Regional Director, BARCF for further assignment (Annex A-4) and was relieved on 28.04.2015. But she did not accept the transfer orders and did not join at the new place of posting, inspite of many reminders including a memorandum dated 28.09.2015 (Annex R-12) by Controller, BARC, she did not comply with those repeated instructions and remained unauthorizedly absent. Therefore, the respondents issued charge-sheet to her under Rule 14 of CCS (CCA) Rules, 1965 dated 12.04.2016. She submitted her written statement of defence on 02.05.2016 and after considering it, the Secretary, Department of Atomic Energy decided to hold inquiry against her under Rule 14(5)(k) of CCA (CCS) Rules, 1965 and by order of 30.08.2016 appointed Inquiry Officer and Presenting Officer to conduct the inquiry.

4(d). The applicant's contention is not justified that she being a Group 'A' Civilian Officer, only the President of India is the appointing authority and disciplinary authority for her and the charge-sheet signed by the Secretary, Government of India, Department of Atomic Energy was not sustainable in law. Her further contentions are also not correct that powers for issuing such charge-sheet to her have not been delegated to Secretary, Department of Atomic Energy under CCS (CCA) Rules, 1965, she has been posted at BARCF, Visakhapatnam on redeployment

basis without following provisions of CCS (Redeployment of Surplus Staff) Rules, 1990 and guidelines in DOPT OM dated 30.09.2009, her transfer is not just an internal transfer from one unit of BARC to another.

4(e). Under Rule 13(2) of CCS (CCA) Rules, 1965, a Disciplinary Authority competent to impose minor penalties may also institute disciplinary proceedings against any Government servant for imposition of major penalties specified under Rule 11, notwithstanding that such disciplinary authority is not competent under these rules to impose any of the major penalties. Rule 13(2) of CCS (CCA) Rules, 1965 is as follows :

“13(2). A Disciplinary Authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties.”

4(f). In the present case although the applicant is a Group 'A' Civilian Officer but as per the notification dated 24.09.1985 (Annex R-13), Secretary, Department of Atomic Energy has been delegated the powers for imposing minor penalties on her but as per Rule 13(2), he is also competent to initiate disciplinary proceedings against her for imposition of major penalties. Therefore, in issuing of the charge-sheet to the applicant and appointing the Inquiry Officer and the Presenting Officer for conducting the inquiry, we find no infirmity or illegality in the orders of Secretary, Department of Atomic Energy in the present case. The contention of the applicant is not correct that only the President of India

under his signature can issue charge-sheet to her or it can be issued only with the mention (she terms it as authentication) that the orders has been issued in the name of and for the President of India. This phrase is used when the orders of the Government are issued by authorized officers in the concerned Ministries of Government of India. In the present case, the Secretary, Department of Atomic Energy being competent to do so has himself approved and issued the charge-sheet under his own signature. Therefore, such mention was not required in the order issued by him. The contentions of the respondents in this regard are correct and justified.

4(g). Although in the order dated 27.04.2015, the phrase 'on redeployment basis' has been mentioned by the respondents, her transfer order was not issued under the CCS (Redeployment of Surplus Staff) Rules, 1990. Those rules are meant only for redeploying surplus staff, once some staff are declared as surplus in a organization or on a establishment. The present applicant has never been declared as surplus by the respondents and in response to the requisition received from Regional Director, BARCF, Visakhapatnam, she was posted there on transfer from BARC, Mumbai i.e. she has been redeployed there. Therefore, the contention of the applicant in this regard is baseless. Since the applicant has challenged her transfer in another OA No.519/2016, we do not want to dwell more on this issue in this OA.

4(h). In view of the above facts, provisions under the relevant rules and analysis, we find no merit in the present OA and it deserves dismissal.

5. Decision :

The OA is dismissed. No costs.

(Ravinder Kaur)
Member (Judicial)
kmg/H

(Dr. Bhagwan Sahai)
Member (Administrative)

