

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :PRINCIPAL BENCH
NEW DELHI.

D.A. 376 of 1986.

B. N. Sarma Applicant.
versus
Ministry of Health and others... Respondents.

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A)

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicant- Mr Mukesh Gupta, Advocate.

For the respondents- Mrs Raj Kumari Chopra, Advocate.

Date of hearing - 19.7.90 and 20.7.90

Date of Judgment and Order - 17.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman (J) :-

When two separate Memoranda of Charges in respect of different imputations of misconduct are issued on the same day against a Government servant, one proposing to hold an enquiry under Rule 14 of the CCS(CC&A) Rules, 1964, for short, the Rules, and the other proposing to take action under Rule 16 of the Rules, if the Inquiry Officer appointed to enquire into the charges under Rule 14 of the Rules proceeds to conduct enquiry in respect of the charges under Rule 16 also and submits a report holding that all the items of charges are established, pursuant to which the Disciplinary Authority imposes the extreme penalty of removal from service, can it be sustained is the question that is posed in this application.

2. On 21.6.1973, the third respondent, the Deputy Director, Central Government Health Scheme, issued a Memorandum of Charges against the applicant, a Pharmacist, under Rule 14 of the Rules. The imputation was that in issuing restricted items of medicines to the beneficiaries, he failed to maintain absolute integrity and devotion to duty inasmuch as 6(six) items

of such medicines under his charge were found short on 21.3.1972 and they were recovered from his house. On the same day, the 3rd respondent issued another Memorandum of Charges under Rule 16 of the Rules. It contained two imputations. One was that while the applicant was required to keep the chits of the restricted items of medicines in their respective pigeon holes of the counter, 47 such slips were found in his house. The other allegation was that on 10.3.1972, he purchased 100 square yards of land for Rs. 1,000/- and another 18 square yard of land for Rs. 500.00 without obtaining permission of the competent authority.

3. The third respondent appointed Dr J.M.Sachdeva as the Inquiry Officer to conduct an enquiry with respect to the Memorandum of Charges under Rule 14 of the Rules. Later, Dr C.R.Bhattacharjee was appointed in his place to conduct the enquiry. The enquiry was conducted not only with respect to the charge issued under Rule 14, but also with respect to the charges issued under Rule 16 of the Rules. The Inquiry Officer reported that all the three charges have been established. The third respondent accepted the report of the Inquiry Officer, and holding that all the charges are proved, by the order dated 18.12.1973 imposed upon the applicant the penalty of removal from service. The appeal as well as the review petition submitted by the applicant were of no avail.

4. The applicant prays for quashing the order imposing the penalty and for reinstatement in service. It is urged that clubbing together of the two Memoranda of Charges and passing of the impugned order is in violation of the Rules and is also violative of the principles of natural justice. There is also the plea that the penalty awarded is disproportionate to the charges.

5. In the reply filed on behalf of the respondents, it is contended that the Inquiry Officer investigated the charges levelled against the applicant under both the Memoranda of Charges and gave his finding on each each Memorandum of Charges separately, and, as such, the objection of the applicant against clubbing of the two is irrelevant and has no force at all.

6. No order imposing major penalty shall be made except after an enquiry is held in the manner provided in Rule 14 of the Rules. However, as regards the imposition of a minor penalty the holding of such an enquiry is required only in a case in which the Disciplinary Authority is of the opinion that such an enquiry is necessary. Otherwise, what is ordained is only informing the Government servant of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him reasonable opportunity of making such representations as he may wish to make against the proposal.

7. In the instant case, both the Memoranda of Charges were issued against the applicant on the same day. One of them was for the imposition of a major penalty and the other only for a minor penalty. The applicant submitted his written statement of defence in respect of the former and his representation regarding the latter. The Disciplinary Authority in exercise of his power conferred under Clause (a) sub-rule(5) of Rule 14 of the Rules appointed an Inquiry Officer to conduct the enquiry, evidently, in respect of the Memorandum of Charges with respect to the major penalty. However, it is seen from the record that a copy of the other Memorandum of Charges was forwarded to the Inquiry Officer. There is nothing on record to indicate that the Disciplinary Authority arrived at the opinion that in respect of the latter ~~an~~ enquiry is necessary. Nor is there any material to show that the Inquiry Officer was appointed

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for holding enquiry in respect of the same. Yet the Inquiry Officer proceeded to conduct the enquiry with respect to both the Memoranda of Charges, to find out the truth of the imputations contained in the Memorandum of Charges proposing the major ~~penalties~~^{and} and of the two imputations contained in the other. He recorded findings in respect of the three imputations holding that they are established and forwarded his report to the Disciplinary Authority, who accepted the report and held that all the three imputations are established and thereupon imposed the major ~~penalties~~^{of removal from service.}

8. The procedure that has been followed has no sanction under the Rules. Indeed, there has been infraction of the Rules. It cannot be disputed that prejudice has been caused to the applicant on that account, as the extreme penalty of removal from service has been imposed by the Disciplinary Authority taking into account the consolidated report that all the three imputations are true.

9. It is seen from the petition for review filed by the applicant that he had specifically raised this ground pointing out that there is no order appointing the Inquiry Officer under Rule 16 of the Rules, and, as such, the Inquiry Officer by enquiring into the imputations which were not assigned to him, has exceeded his jurisdiction and as such the whole proceedings are void and bad in law. This is seen to have been ~~seen~~^{wel} by the Reviewing Authority by stating that the papers connected with the charges in the minor penalty proceedings were also forwarded to the Inquiry Officer and at the stage of the enquiry the two proceedings got clubbed together and the report was submitted accordingly which was considered by the Disciplinary Authority who passed the order imposing the penalty. It is manifest that the Reviewing Authority did not consider the point in its proper perspective.

10. It follows that the proceedings are vitiated and unsustainable and as such the order imposing the penalty is bad in law.

11. In the result, we quash the order of the Disciplinary Authority dated 18.12.1978 imposing upon the applicant the penalty of removal from service, as confirmed by the order of the Appellate Authority dated 28.5.1979 and of the Reviewing Authority dated 10.5.1985. The applicant shall be reinstated in service forthwith and shall be allowed consequential benefits.

12. The application is allowed as above.

G. Sreedharan Nair
16.8.90.

(G. Sreedharan Nair)
Vice Chairman(J)

B.C. Mathur
16.8.90
(B.C. Mathur)
Vice Chairman(A).

S.P.Singh/
13.8.90.

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