

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-499/92

Date of decision: 7.8.1992

Shri Chain Sukh Applicant

Versus

Union of India through
Secretary, Ministry of
Finance & Another Respondents

For the Applicant Shri M.K. Gupta, Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate.

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The question whether on the same facts and the same allegations of misconduct the disciplinary authority can issue two charge-sheets under Rule 14 of the C.C.S. (CCA) Rules, 1965, one after the other, after a gap of some time without formally dropping or withdrawing or superseding the earlier charge-sheet, has been raised in this application. The issue raised is not covered

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by any precedent and has to be considered on first principles. The admitted factual position is that the respondents issued to the applicant a memorandum dated 1.10.1991 under Rule 14 of the C.C.S. (CCA) Rules, 1965 and without dropping, withdrawing or superseding it, they issued another memorandum to him on 14.2.1992 under Rule 14 of the C.C.S. (CCA) Rules, 1965. The alleged misconduct on the part of the applicant was that he submitted a bogus certificate and mark-sheet of having passed the Higher Secondary Examination in the year 1982 from the Board of Secondary Education, Madhya Pradesh (Bhopal) and on the basis of the educational qualification shown in the said certificate, he managed to obtain a promotion as ad hoc L.D.C. w.e.f. 1.10.1983 and as regular L.D.C. in the Department of Revenue w.e.f. 3.2.89. The only difference between the two memoranda mentioned above is that in the first memorandum, the applicant has been described as 'LDC' and the memorandum^{was} issued by the Director (Administration) in his capacity as the disciplinary authority, whereas in the second memorandum, he has been described as 'Daftry' (lower post) and it was issued by the Under Secretary to the Govt. of India. In all other respects, the two memoranda are word by word identical.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The

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applicant belongs to the Scheduled Caste community.

He was appointed on daily wages from 1971 to 1973 and was regularised in the post of Peon (Class IV post) by order dated 21.12.1973.

3. On 21.7.1982, he was promoted to the post of Daftry. In the meanwhile, he requested the respondents to consider him for the post of Lower Division Clerk. By order dated 1.10.1983, he was promoted/appointed as L.D.C. on ad hoc basis. He was regularised in the said post on 3.2.1989.

4. The appointment of the applicant as L.D.C. was on the basis of the certificate given by him to the effect that he had passed the Higher Secondary Examination in 1982 from the Board of Secondary Education, Madhya Pradesh. He had produced the migration certificate in which it has been stated that he had passed the Higher Secondary Examination in 1982. He had also produced the mark-sheet issued in 1982.

5. The respondents have stated in their counter-affidavit that on 30.11.1988, the Superintendent of Police, C.B.I., forwarded an anonymous complaint to them against the applicant in which it was alleged that he was having a bogus Higher Secondary certificate issued by the Board of Secondary Education, Madhya Pradesh.

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Thereafter, the respondents made enquiry from the Secretary, Board of Secondary Education, Madhya Pradesh, who informed them that one, Shri Ashok Kumar Gupta, had appeared in the H.S.S.C. Examination, 1982 and that he had failed in the said examination. On 9.8.1991, the applicant was directed to submit his original Higher Secondary certificate. On 6.9.1991, he replied that his original certificate had been mixed up with some other papers and the same will be submitted as and when traced out. On 1.10.1991, the applicant was once again directed to submit his original certificate, but he did not do so. He was also informed that if he did not produce the same within 15 days, he would be reverted to the post of Group 'D' staff in the absence of proof of his having the minimum educational qualification for the post of L.D.C. Since the applicant did not submit the requisite certificate, he was reverted to the post of Daftry on 27.11.1991.

6. The first charge-sheet dated 1.10.1991 was issued before the applicant had been reverted from the post of L.D.C. to that of Daftry. The Director(Admn.) is the disciplinary authority in the case of L.D.C. After the applicant was reverted to the post of Daftry, the second charge-sheet was issued to him by the Under

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Secretary to the Government of India, who is the competent authority in the case of a Daftry.

7. In the instant case, the applicant has not challenged his reversion from the post of L.D.C. to that of Daftry. He has only challenged the validity of the two memoranda dated 1.10.1991 and 14.2.1992. The learned counsel for the applicant relied upon numerous ^{*} rulings in support of his contention that the two memoranda mentioned above, cannot exist side by side and that the first memorandum issued on 1.10.1991 was not expressly superseded or withdrawn or dropped before the issuance of the memorandum dated 14.2.1992. We have duly considered the rulings cited by the learned counsel for the applicant. The learned counsel for the respondents argued with the case law relied upon by the opposite side is clearly distinguishable.

8. The factual situation before us is unique and we are in a grey area. In our opinion, the disciplinary authority has the inherent right to amend, substitute or drop a charge at any time. Where the charge-sheet is

* Case law relied upon by the learned counsel for the Applicant:

AIR 1966 S.C. 641; 1976 (1) SCC 234; 1974 (4) SCC 3; 1989 (19) A.T.C. 209; 1985 (3) SLR 781; 1984 (2) SLR 230; 1990 (2) S.C.C. 48; 1992 (19) A.T.C. 659; and 1979 (2) S.C.C. 407.

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issued by an authority not competent to do so, it may be withdrawn and a fresh charge-sheet may be issued in substitution under the signature of the proper authority. However, this should be done either before the enquiry begins or evidence is recorded under the first charge-sheet. In the instant case, at the time of serving of the first charge-sheet, the applicant was holding the post of L.D.C. and his disciplinary authority was the Director (Administration). After the applicant was reverted, the Director (Administration) became the appellate authority and the Under Secretary to the Govt. of India became the disciplinary authority in respect of the post of Daftry, to which the applicant was reverted. The facts and circumstances clearly indicate that the first charge-sheet dated 1.10.1991 was substituted by the second charge-sheet though there is no formal order in this regard. It is a case of implied withdrawal of the earlier charge-sheet and its substitution by the latter charge-sheet. It is also relevant to note that after the service of the first charge-sheet on the applicant, the respondents have not conducted any disciplinary proceedings as contemplated under the C.C.S. (CCA) Rules, 1965, though the applicant had acknowledged the receipt of the memorandum and sought for the inspection of the documents. Nothing further was

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done under the first memorandum such as appointment of an Enquiry Officer, holding of an enquiry, and the like.

9. There is also another aspect of the matter. The disciplinary proceedings for a major penalty is to be initiated by the disciplinary authority in terms of Rule 14 of the C.C.S. (CCA) Rules, 1965. As already stated, the disciplinary authority in the case of a Daftry is the Under Secretary to the Govt. of India and as such, the second charge-sheet issued on 14.2.1992, is legal and valid. The first charge-sheet issued on 1.10.1991 is not legal and valid after the applicant was reverted to the post of Daftry as the Director (Admn.) has ceased to be his disciplinary authority.

10. In the light of the foregoing, we are of the opinion that the applicant is not entitled to the relief sought by him. The application is, therefore, dismissed, leaving the parties to bear their respective costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal) 7/8/92
Administrative Member

P. K. Kartha
7/8/92
(P.K. Kartha)
Vice-Chairman (Judl.)