

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 611/92

Date of Decision: 3.7.92

Shri S.S. Lakra Applicant

Shri P.P. Khurana Counsel for the applicant

Versus

Union of India & Anr. Respondents

Shri P.H. Ramchandani Counsel for respondents.

CORAM

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

The Hon'ble Mr. B.N. DHOUNDITYAL, MEMBER(A)

1. Whether Reporters of local papers
may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporters or not? *No*

JUDGEMENT

(delivered by Hon'ble Mr. B.N. DHOUNDITYAL)

This OA has been filed by Shri S.S. Lakra, officiating Deputy Superintendent of Police in the CBT, challenging the impugned charge memo dated 12.2.92, issued under rule 14 of the CCS(CCA) Rules, 1965, on the ground that an identical memo issued earlier on 5.8.91 was unconditionally withdrawn on 29.8.91.

2. The applicant has stated that he joined the CBT as Sub-Inspector on 16.12.69, was promoted as Inspector of Police on 30.6.77 and was *Bn*

considered for promotion to the rank of Deputy Superintendent of Police by the DPC, which was held on 13.03.90. The DPC kept their recommendations for the applicant in the Sealed Cover. This was challenged by him in OA No.1430/91. An interim order was passed by the Tribunal on 18.06.91, directing the respondents to open the Sealed Cover and give effect to the recommendations of the DPC. The applicant was promoted as officiating Deputy Superintendent of Police on 29.08.91, after he had filed a CCP for non-implementation of the Tribunal's order. The applicant had been served a charge sheet on 05.08.91 for bribery and misuse of his office. This charge sheet was unconditionally withdrawn at the time of his promotion by an order dated 29.08.91. However, the respondents again issued another charge sheet memo, identical to earlier one, on 12.02.92. While withdrawing the earlier charge memo, no stipulation was made that the proceedings were being dropped without prejudice to further action. The petitioner cannot be charge-sheeted twice for the same cause of action and the second charge memo dated 12.02.92 is and malafide arbitrary. The applicant has prayed for quashing the impugned charge memo.

3. When the case came up for hearing on 09.03.92, an interim order was issued by the Tribunal restraining the respondents from proceeding with the enquiry. This interim order was extended from hearing to hearing.

Bw

AA

4. The respondents have contended that no final order has been passed in the enquiry and the applicant has not submitted any representation to the authorities. They have also argued that the original memo for initiating disciplinary proceedings served on the applicant on 05.08.91 was different from that served on 12.02.92, in as much as, these two memo were issued under different sets of disciplinary rules, namely, Delhi Special Police Establishment (Subordinate Ranks) (Disciplinary Rules, 1961), applicable to the Inspectors of Police and Rule 14 of the CCS (CCA) Rules, applicable in case of Deputy Superintendent of Police. It was clearly stated in para 2 of the memo, dated 29.08.1991, that the disciplinary proceedings were being withdrawn because the applicant was being promoted after being reinstated on suspension. For issue of fresh charge memo, the concurrence of Central Vigilance Commission was necessary. Moreover, after promotion, his appointing authority had now become Director, CBT, instead of DTG, CBT.

5. We have gone through the records of the case and heard the learned counsel for both the parites. It is admitted that the charges contained in the charge memo dated 05.08.1991 and 12.02.1992 are identical. The main issue involved is whether after an unequivocal withdrawal of the earlier charge memo, it was open to the respondents to issue another memo containing the

BN

12

same charges. The learned counsel for the applicant has drawn our attention to the observations made by Privy Counsel in the case of Rangachari Vs. Secretary of State, ATR 1937-PC-27, which has been reiterated subsequently in a number of judgement given by this Tribunal and various courts i.e. it would be wrong if once Government officials 'duly competent and duly authorised arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.'

6. In Kartar Singh Vs. Union of India;

1987 (1988) ATC 545, the Tribunal held that the second enquiry on the same charges cannot be conducted. A reference was also made to Rule 9 below Rule 15 of Central Civil Services (CCS) Rules, 1965, which reads as follows:

(9) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet.— It is clarified that once the proceedings initiated under rule 14 or Rule 16 of the CCS (CCS) rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh inquiry against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are

BN

appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the other cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

7. A reading of the order dated 29.08.1991 shows that reason for withdrawal of earlier proceedings was reinstatement and promotion of the applicant (Annexure A3). It is not clear what prevented the authorities from reserving the right to continue with the enquiry or even initiating criminal proceedings under the Prevention of Corruption Act. In the memorandum dated 29.08.1991, relating to the withdrawal of disciplinary proceedings, it is clearly mentioned that the withdrawal has been approved by the Director, CBT. As mentioned by the respondent themselves, the Director CBT is the disciplinary authority in case of Deputy Superintendent of Police.

Bw.

(B)

8. Following the ratio of these judgements, we hold that once the respondents had withdrawn the charge sheet dated 18/02/1992 ^{5-8-91 Bw} ~~18/02/1992~~ ^{not by} unequivocally, it was open to them to issue fresh charge sheet containing the same charges after the applicant had been promoted. It is also not clear as whether any FIR was lodged, as the charge sheet ^{the alleged} relates to acceptance of bribes, which is a criminal offence. We therefore, hold that the applicant is entitled to succeed and hereby quash the charge memo dated 12.02.1992. No fresh enquiry can be held on the basis of these charges.

9. There will be no order as to costs.

B.N. Dhadtyat
(B.N. DHOUNDTYAT) 21/2/92

MEMBER(A)

T.S. Oberot
(T.S. OBEROT) 21/2/92

MEMBER(J)

(D)

kam

010792