

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALIAHABAD

Original Application No. 232 of 1998

Allahabad this the 11th day of April 2002

Hon'ble Mr.Rafiquddin, Member (J)
Hon'ble Mr.C.S. Chadha, Member (A)

Jai Karan (17W/505) Watchman Son of Late Ram Kewal,
r/o Village Ram Nagar, P.O. Bishweswarganj, Basti
U.P.

By Advocate Shri M.K. Upadhyay

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Air Commandore, Air Officer Commanding, Air Force, Gorakhpur.
3. Air Vice Marshal, I.A.F., Central Command, Bamrauli, Allahabad.

By Advocate Shri Amit Sthalekar

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of respondent no.2 dated 5th February, 1997 whereby the applicant was dismissed from service and the order of the respondent no.3 dated 21st March, 1997, rejecting the appeal of the applicant.

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2. The brief facts of the case are that the applicant was working as a Watchman in the I.A.F. when he was chargesheeted on 29.02.96 and Sqn.Ldr.N.K. Anand was appointed as an Enquiry Officer by an order dated 20.03.96. The Enquiry Officer commenced the Enquiry on 06.05.96 and submitted the report on 13.05.96. However, the disciplinary authority did not pass any order under Rule 15(1) of the CCS(CCA)Rules, 1965, but instead issued another memo of chargesheet dated 25.6.96 Since the allegations relating to the charges mentioned in the chargesheet dated 29.02.96 were substantially the same as the ones contained in the second chargesheet, the applicant mentioned this aspect in his reply to the second chargesheet as a result of which the disciplinary authority, realising his lapse, vide letter dated 03.08.96, informed the applicant of the cancellation of the chargesheet dated 29.02.96. Despite his objection the applicant underwent the second enquiry which commenced on 19.08.96. Another pertinent fact is that when the first chargesheet was cancelled a de novo inquiry was ordered and even the Enquiry Officer was changed and Sqn.Ldr. V.K. Tiwari was appointed as the new Enquiry Officer. After the second enquiry, the applicant was dismissed and later, as mentioned above, his appeal was also dismissed.

3. The important point to be determined in this O.A. is whether the de novo inquiry was tenable under law or not. The learned counsel for

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the applicant argued that under Rule 15 of the CCS (CCA) Rules, there were only two options available to the disciplinary authority on the receipt of the report of the Enquiry Officer in the first Enquiry. He could send back the report to the Enquiry Officer pointing out certain shortcomings in the enquiry, such as the omission of taking the evidence of certain prosecution witnesses or the omission of taking into account certain important documents or other evidence and give directions to remove those defects. The second option available to the disciplinary authority under Rule 15 was that he could differ with the findings of the [redacted] Enquiry Officer, record his reasons for so differing with the Enquiry Officer and send a show cause notice to the applicant with a copy of the enquiry report and the reasons so recorded. The Disciplinary Authority could not cancel the entire enquiry and issue a fresh chargesheet on the same allegations. He went further to argue that the old chargesheet could be modified only at the initial stages, before the reply to the chargesheet was furnished by the delinquent official. In this case not only had he submitted his reply but the Enquiry Officer had completed the enquiry and sent his report to the disciplinary authority on 13.05.96 whereafter that authority instead of taking action under Rule 15 ordered a De Novo enquiry and also changed the Enquiry Officer. Further, even when such a change in the chargesheet could be made the change had to be accompanied with reasons in writing, for altering the chargesheet and also communicated to the delinquent official. It

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is obvious that such a provision of recording the reasons in writing, and communicating the same to the delinquent has been made with a view to afford the delinquent an opportunity to defend himself properly and not to be caught unawares. The learned counsel for the applicant stated that firstly the chargesheet issued in the first instance could not be cancelled at all, once the Enquiry Officer had submitted his report. Secondly in this case another serious lapse was committed by the disciplinary authority is that the decision to cancel the first chargesheet was taken on the file and a second chargesheet was issued on 25.06.96 but the reasons therefor and even the fact of cancellation was brought to the applicant's notice only on 03.08.96 after the applicant had brought the lapse to the notice of the disciplinary authority. Further the Enquiry Officer was also changed without any rhyme or reason.

4. The learned counsel for the applicant has placed reliance in this regard on the rulling of the Apex Court in K.R. Deb Vs. the Collector of Central Excise Shillong A.I.R. 1971 Supreme Court page 1447, wherein the Hon'ble Supreme Court held that if there is some defect in the enquiry conducted by the Enquiry Officer the disciplinary authority can direct the Enquiry Officer to conduct further enquiries in respect of that matter, but it cannot direct a fresh enquiry to be conducted by some other officer. The learned counsel for the applicant also placed reliance on two other rullings of the Central Administrative Tribunal, Madras and Jabalpur Benches. In P. Dasarathan Vs. Sub Divisional

Inspector (Postal) Karikal and Others (1989 11 A.T.C
page 676, it was held that a second chargesheet
issued on the same allegations, after further
investigations conducted, after the commencement
of the enquiry based on the first chargesheet was
illegal. In Chandrashekhar Seth Vs. Union of India
and Others 1990 12 A.T.C.868, the Jabalpur Bench of
C.A.T. held that where a first charge sheet had been
replied to by the delinquent issuing of a second charge
sheet on the same allegations after cancelling the
former one was impermissible.

5. The learned counsel for the respondents
merely stated that on finding defects on the first
charge sheet, reasons therefor were recorded by the
disciplinary authority on the file and also communi-
cated to the delinquent in writing though after a
little lapse of time. He, therefore, argued that
there was no infirmity in the order of cancellation
of the first charge sheet.

6. We are unable to agree with the learned
counsel of the respondent that there was no infirmity
in the order cancelling the first charge sheet because
reasons therefor had been recorded on the file. In
view of the clear rulings mentioned above, especially
of the Apex Court, we find that the ordering a de
novo inquiry after the report of the first enquiry
had already been sent by the Enquiry Officer was
totally illegal. In view of the two C.A.T. judgments
mentioned above also, the second charge sheet could
not be issued on the same allegations after cancelling

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the first charge sheet. The disciplinary authority, in terms of the judgment of the Apex Court, could have exercised only one of the two options available under Rule 15 of the CCS(CCA)Rules. Since the disciplinary authority did not do so the entire proceedings after 13.5.96 are held to be illegal.

7. In the circumstances mentioned above the order of respondent no.2 dated 5.2.97 dismissing the applicant and respondent no.3 dated 21.3.97 rejecting the appeal, both cannot be sustained and are therefore quashed. The applicant should be reinstated in service as if the order dated 5.2.97 was never passed. He should also be given his wages and other dues and other consequential benefits within a period of 3 months from the date of receiving this order. It is however clarified that it shall be open for the disciplinary authorities to take action under Rule 15 on the report received by them from the first Enquiry Officer on 13.05.96.

8. There shall be no order as to costs.

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Member (A)

R. A. M. M.
Member (J)

/M. M. /