

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/021/00316/2015 & MA/021/00681/2019

Reserved on: 30.03.2021

Pronounced on: 12.04.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

S.S.R.A.Prasad, S/o. Late Laxminarayana,
Aged about 52 years, Occ: Sub Postmaster,
Boduppal Sub Post Office, Hyderabad-92,
Working as Divisional Secretary,
AIPEU Group 'C', Hyderabad South East Division,
R/o HNo.8-43/50/3, East Balaji Hills, Uppal,
Hyderabad – 500039.

...Applicant

(By Advocate : Dr. A. Raghu Kumar)

Vs.

1. The Union of India rep by Director General,
Department of Posts, Dak Bhavan, Sansad Marg,
New Delhi – 1.

2. The Chief Postmaster General,
A.P Circle, Dak Sadan, Hyderabad-1.

3. The Director of Postal Services,
O/o Postmaster General,
Hyderabad City Region, Hyderabad-1.

4. The Superintendent of Post Offices,
Hyderabad South East Division,
Hyderabad – 500002.Respondents

(By Advocate : Mr. Paravastu Krishna, Addl. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the Charge Memo dt. 06.06.2014 issued by the 4th respondent.

3. Brief facts of the case are that the applicant who belongs to the Postal Assistant cadre issued pamphlets bearing the numbers 13 & 14 on 21.9.2014/ 10.10.2013 in the capacity of Divisional Secretary of AIPEU Group C union and for doing so Rule 16 charge sheet was issued under CCS (CCA) Rules 1965 (**1965 Rules**, for short) on 25.2.2014 and when requested to conduct the inquiry under Rule 16 (1-A) of the 1965 Rules respondents dropped the charge sheet on 2.6.2014. Thereafter a fresh charge sheet was issued under Rule 14 of 1965 Rules on 6.6.2014 and when the applicant represented against the same, I.O/P.O were appointed on 21.7.2014 to take forward the inquiry. Aggrieved over the same, the OA is filed.

4. The contentions of the applicant are that the pamphlets were issued for internal circulation amongst the members of the Union and their content was about the 7th CPC issues and some local ones. The pamphlet was issued as Divisional Secretary of the union and not as Postal Assistant and there is nothing offending nor is it against the policies of the respondents organisation. Sections 17 & 18 of the Trade Union Act provide certain immunities to the office bearers of the union. The union is the bargaining agent under the CCS (Recognition of Service Association) Rules 1993. The charge sheet was issued to victimise the applicant. The applicant has





exercised the power under Article 19 of the constitution which provides for freedom of expression. For the initial Rule 16 charge sheet when additional documents were sought and inquiry to be conducted, respondents transferred the applicant to Bodduppal on 28.5.2014 in public interest and dropped the rule 16 charge memo on 2.6.2014 due to certain deficiencies noticed in the charge sheet and issued a fresh charge sheet under rule 14 on 6.6.2014. Respondents issued two corrigenda dt.20.06.2014 & 04.12.2014, which shows that the respondents did not exercise their mind properly. In such eventualities the judicial fora usually quashes the fresh charge sheet. The applicant represented against the charge sheet issued by relying on OM dated 7.6.1978. The Estimates committee in its 93rd report on Public Services has given certain freedom to the office bearers for expressing their views. Rule 9 of CCS (Conduct) Rules permits criticism of the Govt. policies and bars only adverse criticism of them. The 4th article of charge is ambiguous. The pamphlets were issued along with Sri Ramchander, the Divisional President who was let off by issuing the charge sheet under Rule 16 and imposing the penalty of stoppage of increment for 3 months. The applicant should have been equally treated. The issue of the charge sheets is without application of mind and hence is arbitrary and contrary to law. The disciplinary authority is material witness and therefore, cannot issue the charge sheet as per DOPT OM dated 27.1.1965. As per Rule 12(2) of CCS (CCA) Rules 1965 an adhoc disciplinary authority has to be appointed. Without considering the representations appointing the I.O/P.O, changing the I.Os and issuing notice for hearing on 10.12.2014 without giving time sought, is to fix the applicant. When the applicant could not attend the inquiry for not being relieved in time by the respondents, the I.O found

fault with the applicant and therefore the hope that the inquiry would be conducted in an unbiased manner was lost and hence the approach to the Tribunal. Articles 14, 16 and 311 of the Constitution have been violated.

5. Respondents per contra state in the reply statement state that as a matter of policy it was decided to conduct a drive to enhance the Savings bank revenue by opening of new SB accounts, cash certificates etc after discussing the matter in the Regional Joint Consultative meeting on 30.8.2013, which comprises of members from the union and the administration. Criticizing the policy of opening of new accounts the applicant issued pamphlet number 13 using intemperate and objectionable language which on circulation among the staff member has lead to a severe fall in the revenue. For contravening Rule 9 of CCS (Conduct) Rules 1964 and instructions issued vide postal directorate letters dated 12.2.1954, 19.2.1958 25.6.2004 as well as CCS (Recognition of Service Association) Rules 1993/ DOPT OM dated 5.11.1993, a charge sheet was issued. The applicant instigated the employees to revolt in para number 9 (c) of the pamphlet numbered as 13 and oppose the policies of the respondents. The applicant as a Govt. employee holding the position of Divisional Secretary should have motivated the staff to open more accounts. The Rule 16 charge sheet was issued based on the pamphlets issued and hence there was no need to go in for inquiry. The transfer of the applicant to Boduppal was in public interest and later the applicant represented vide his letter dated 17.7.2014 to retain him in the transferred post. The Rule 16 charge sheet was dropped as some wrong rules were quoted and since there was severe drop in the revenue coupled with tarnishing the image of the organisation



by the issue of the pamphlets, had grave implications, Rule 14 charge sheet was issued. The disciplinary authority is competent to drop the charge sheet and issue a fresh one under Rule 15 of 1965 Rules and as per DGP&T memo dated 5.7.1979. Besides, he can modify the charges too as per Rule 14 of 1965 Rules. The union should protest when their interest are affected and not for improving revenue. Sri B.Ramchander was let off with a minor penalty because he disowned the pamphlet No.13 issued appending his name without his knowledge whereas applicant has issued 2 pamphlets 13 & 14 and therefore, the difference in the treatment. In the charge memo dated 6.6.2014 the disciplinary authority is not listed as a witness and the articles are based on documents issued. The inquiry officers had to be changed since they were transferred and when the I.O finally appointed gave notice for inspection of documents after being relieved from duty, applicant did not attend the inquiry on 29.12.2014. Therefore, applicant was informed vide letter dt. 29.12.2014 that the preliminary hearing would be on 08.01.2015 and that if he does not attend the inquiry, the same will be held ex parte as provided under 1965 Rules. The applicant did not move any bias against the I.O. Articles 14, 16 & 311 of the Constitution were followed and the action was as per departmental rules and regulations. Applicant has misused the freedom of expression. Respondents cited the Hon'ble Apex Court judgment in U.O.I v Govind Manish in Civil Appeal No. 1442 of 2011 to support their contentions.

6. Heard the learned counsel for the applicant and perused the pleadings on record.

7. I. The issue is about publishing pamphlets by the applicant in the capacity as Divisional Secretary of a union criticising the policies of the respondents organisation in garnering revenue resulting in finally issuing a Rule 14 charge sheet under 1965 Rules. The applicant claims that under Article 19 of the constitution he has the freedom of expression and therefore he has expressed the views as Divisional Secretary. Under Sections 17 & 18 of the Trade Union Act, certain immunities are enjoyed by the office bearers of the Union. The union is the bargaining agent under the CCS (Recognition of Service Association) Rules 1993 and its role is to ventilate the grievances of the employees. For discharging his responsibility as a Divisional Secretary, Rule 14 charge sheet was issued containing the following articles of charge:



Article-I

That the said Sri SSRA Prasad, while working as PA Amberpet SO during the period from 17.06.2013 onwards issued a bulletin No.14 dated 10.10.2013, in his name with designation as Divl. Secretary AIPEU Group-C Hyderabad South East Division criticizing adversely the current and recent policy of the Central Govt. to get more number of savings accounts opened, violating the instructions contained in Rule-9 of CCS (Conduct) Rules 1964. He also instigated the other employees / members of his union to revolt and to oppose the policies of the Govt. using intemperate and objectionable language, violating the instructions contained in Lr.No.SPA-78-4/54 dated 12.02.1954 and SPA-70-69/57 dated 19.02.1958 communicated in page no.30 of compilation of instructions on matter concerning Service Association, Department of Posts communicated vide Dte, Lr.No.10-1/2004-SR dtd. 25.06.2004 and also instructions contained in notification No.2/10/80-JCA CCS (Reorganization of Service Association) Rules 1993 dated 05.11.1993 of Min. of Personnel PG & Pension, Dept. of personnel and Trg. and thereby acted in a manner unbecoming of a Govt. Servant contravening the Rules 3(1)/(iii) of CCS (Conduct) Rules 1964.

Article-II

That he said Sri SSRA Prasad while working in the aforesaid office, during the aforesaid period issued a bulletin No.13 dated 21.09.2013 in his name and also in the name of Sri B. Ramchander with designation Divl. Secretary and Divl. President respectively AIPEU Group-C of Hyderabad South East Division, wherein he criticized the administration and functioning of Divl. Head of Hyderabad South East Division, using intemperate and objectionable language contravening the Rule-9 of CCS (Conduct) Rules 1964 and also violating the instructions contained in Lr.No.SPA-78-4/54 dated 12.02.1954 and SPA-70-

69/57 dated 19.02.1958 communicated in page No.30 of compilation of instructions on matter concerning Service Association, Department of Posts communicated vide Dte. Lr.No.10-1/2004-SR dtd. 25.06.2004 and also instructions contained in notification No.2/10/80-JCA CCS (Recognition of Service Association) Rules 1993 dtd. 05.11.1993 of Min. of Personnel PG & Pension, Dept. of Personnel and Trg and thereby acted in a manner of unbecoming of Govt. Servant contravening the Rules 3(1)(iii) of CCS (Conduct) Rules 1964.



Article-III

That the said Sri SSRA Prasad while working in the aforesaid office, during the aforesaid period sought relief to Sri S. Venkat Reddy, P.A. Rajendernagar SO., who is a non member of his union, to attend union meeting on behalf of his union, scheduled to be held on 03.10.2013, and participated in the union meeting held on 03.10.2013 with the said Sri S Venkat Reddy contravening the instructions contained in Lr.No.SP-2/81-SR dated 5.6.81 and No.33-4/6-7 SR dtd. 4.7.62 & No.16-3/63-SR dated 6.7.63 communicated in page No.17 of compilation of instructions on matter concerning Service Association, Department of Posts communicated vide Dte, Lr.No.10-1/2004-SR dtd. 25.6.2004 and thereby acted in a manner of unbecoming of Govt. Servant contravening the Rules 3(1) (iii) of CCS (Conduct) Rules 1964.

Article-IV

That the said Sri SSRA Prasad while working in the aforesaid office, during the aforesaid period failed to maintain devotion duty as reported by the SPM, Amberpet SO vide her letter No.Amb/Misc/corr/2014 dated 14.2.2014 and thereby violated Rule 3(1) (ii) of CCS (Conduct) Rules 1964.

Respondents also issued two corrigenda on 20.06.2014 and 04.12.2014.

II. It is understood from the facts of the case that the applicant has issued 2 pamphlets bearing the numbers 13/14 on 21.09.2013/ 10.10.2013 respectively. The pamphlets were issued opposing the policy of the respondents in earning revenue for the organisation which is pivotal to its survival. The Trade Unions are meant for channelizing the grievances of the employees in matters which affect them and not for obstructing the growth of the organisation. Earning revenue is the core duty of the employees. For not being able to earn revenue for years, the Branch Post offices are closed or merged with the neighbouring post offices. Similar is

the case in respect of the Sub Post Offices/ Head Post Offices since when the revenue falls, correspondingly work reduces and as a result, the posts are abolished for lack of work and therefore, the very survival of the organisation is at stake.



III. In fact, the matter of earning revenue by opening new accounts/ issuing certificates etc was discussed in the Regional Joint Consultative meeting held on 30.8.2013 wherein the top leadership of the Unions at the Circle level participated and therefore, it was not an exclusive administrative decision but a joint decision of the administration as well as the Unions. Therefore, it is unusual for the lower Union formation to oppose the decisions of their Circle Unions. That apart, Rule 9 of CCS (Conduct) Rules permits criticism of the administrative decisions, but not adverse criticism. The rule is extracted here under:

“No Government servant shall, in any radio broadcast, telecast through any electronic media or any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion –

(i) which has the effect of an adverse criticism of any current and or recent policy or action of Central Government or a state Government”

The very existence of the respondents organisation is based on garnering revenue. The pamphlets circulated dissuading its members not to promote the policy of opening new accounts to earn revenue is definitely adverse criticism which is grave and not permitted as per the above rule. Para 9 (c) of the pamphlet numbered as 13, justifies the observation made above.

IV. The impact of issue of the pamphlets was marked fall in revenue generation. Applicant claims that the disciplinary authority is the

material witness and therefore, he cannot issue the charge sheet nor can he decide the case. The pamphlet was issued by the applicant as a Divisional Secretary and the contents of the pamphlet are decrying the policy of the respondents to open new accounts for the purpose of generation of revenue.



The charge sheet was, thus, issued mostly for questioning the policy of the respondents *per se* and not that of the disciplinary authority. Hence, it is incorrect to state that the disciplinary authority is a material witness. Therefore, Rule 12(2) of CCS (CCA) Rules 1965, as claimed by the applicant does not come into play.

V. In respect of Sri B. Ramchander Rao, President of the Union, he has admitted that the pamphlet no 13 was issued without his knowledge and he has expressed regrets for the same. Therefore, respondents took a lenient view and let him off with a minor penalty. Whereas the applicant is the author of 2 pamphlets and has claimed that he has a right to criticize policies under Article 19 of the Constitution. Expressing different opinions is permitted and there are also certain restraints to be followed in exercising the freedom of expression. The union can ventilate grievances of the employees and definitely not instigate the employees not to promote the generation of income which is in Organizational interests. It is this act which is grave and hence, the issue of Rule 14 charge sheet.

VI. The respondents issued a Rule 16 charge sheet earlier and finding that it was not properly framed it was dropped and a fresh charge sheet was issued since the disciplinary authority is empowered to drop the charge sheet and issue a fresh one under 1965 Rules / DGP&T memo dated 5.7.1979. The issue of corrigendum/modification to a charge sheet is

permitted vide GOI, MHA OM dt.12.03.1981 & 08.12.1982, appended under Rule 14 of 1965 Rules and therefore, one cannot find fault in doing so in respect of rule 14 charge sheet issued to the applicant. The very fact that the respondents have dropped the Rule 16 charge sheet and issued corrigenda to Rule 14 charge sheet issued, would reveal that lot of thought has gone into in finalising the Rule 14 charge sheet. Therefore, it is not a case of lack of application of mind to the issue on hand as contended by the applicant.

VII. The applicant is first a Govt. Servant and then the Secretary of a union. If he were not to be a Postal Assistant, the question of being a Divisional Secretary would not arise. It is essential that the primary responsibility of a Govt. Servant should not be lost sight of. The role of Divisional Secretary comes later and it has to be in congruence with the vision and aspirations of the Organisation. Therefore, though the Trade Union Act does provide immunity to certain extent but it does not provide immunity for acting in a manner, which is detrimental to the survival of the organisation by issuing the pamphlets in question. The relevant sections of the Trade Union Act cited by the applicant are extracted here under:

Section 17 of the Act states that no member of a trade union can be held liable for criminal conspiracy mentioned under sub Section 2 of Section 120B regarding any agreement made between the members of the union in order to promote lawful interests of the trade union

Section 18 --(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

The lawful interests of the Trade Union is the interests of its Union and such interests are better served by improving the revenue of the organisation which is duty of the members of Union and not by scuttling such efforts. There is no trade union dispute but the question of hurting the interests of the organisation is the subject matter of the charge sheet. Therefore, the provisions of the Trade Union Act cited by the applicant are not of any assistance to him. The issue of the pamphlets as Divisional Secretary has to be educative to promote the interests of the Organisation as a whole and not to harm its interests by using the designation of the Divisional Secretary in a manner not permitted as per CCS (Recognition of service Association) Rules 1993. Further, the action of the applicant was against the instructions issued by the respondents vide letters dated 12.2.1954, 19.2.1958, 25.6.2004 and DOPT dtd. 5.11.1993.

VIII. Besides, the transfer of the applicant to Boduppal was incidental and nothing to do with the disciplinary action initiated. In fact, the applicant has himself later sought retention in the transferred post vide his letter dated 17.7.2014. More over transfer is an incidence of service.

The other contentions that the I.Os were changed will not hold good since they had to be changed when they were transferred. The I.O gave notices for conducting the inquiry and the applicant instead of availing the opportunity to defend himself has not attended the inquiry and therefore the I.O has intimated that the inquiry has to be held ex-parte as provided for under 1965 Rules. The applicant claims that the I.O is biased and if so, he has not explained as to why he has not moved any bias petition against the



I.O. Without doing so, he has rushed to the Tribunal. The action of the respondents is as per Rules and we do not find any infirmity in initiating the Rule 14 charge sheet on 6.6.2014 against the applicant. The inquiry is ordered as per Article 311 of the Constitution and therefore, we do not understand as to how the applicant claims that it has been violated.



IX. More importantly, it is to be observed that there is no cause of action for the Tribunal to intervene since the respondents have only issued the charge sheet. The applicant can defend himself in the inquiry since rule 14 has many stages where the applicant is provided opportunities to do so. As for example, the recommendations of the Estimates Committee's 93rd Report on Public Services and that the 4th Article of Charge is ambiguous, can all be presented in the inquiry to press home the point of view of the applicant. There is no penalty imposed on the applicant pursuant to the issue of the charge sheet. Hence, no prejudice is caused to the applicant. Therefore, the question of victimisation of the applicant would not arise. It is possible that based on the inquiry findings the disciplinary authority may drop the charge sheet, if the applicant is found to be innocent and it is otherwise, the consequences thereof, have to be faced. Hence, it is premature to intervene on behalf of the applicant at the stage of charge sheet and the commencement of inquiry. Our remarks are based on the observations of the Hon'ble Madras High Court in *A. Ananthakumar vs The Registrar General* on 20 December, 2019 in W.P.No.30961 of 2019, relying on the verdicts of the Hon'ble Supreme Court, as under:

7. The law regarding the power of a Writ Court to interfere at the stage of charge memo while exercising its jurisdiction under Article 226 of the Constitution of India is well settled. The Hon'ble Supreme Court in the case

of Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, has observed as under:-



"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh[(1996) 1 SCC 327 : JT (1995) 8 SC 331] ,Special Director v. Mohd. Ghulam Ghouse[(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] ,Ulagaappa v. Divisional Commr., Mysore[(2001) 10 SCC 639] ,State of U.P. v. Brahm Datt Sharma[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause <http://www.judis.nic.in> W.P.No.30961 of 2019 notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

In view of the said judgment, this Court at this juncture is not inclined to go into the correctness or otherwise of the charge memo.

Therefore, the action of the respondents is as per rules and law.

Hence, we do not find any merit in the OA. Consequently, we dismiss the OA with no order to costs. The interim order passed on 11.03.2015 is vacated and MA 681/2019 is accordingly disposed.

(B.V.SUDHAKAR)

ADMINISTRATIVE MEMBER

(ASHISH KALIA)

JUDICIAL MEMBER

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