

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 262/2002
TUESDAY. THIS THE 24TH DAY OF SEPTEMBER, 2002

HON'BLE MR. S. DAYAL, A.M.
HON'BLE MR. A.K. BHATNAGAR, J.M.

Jagdish Chand
S/o Shri Binda Singh,
R/o Q. No. Kendriya Vidhyalaya No.1
District : Agra. Applicant

(By Advocate Shri Ajay Rajendra)

Versus

1. The Commissioner,
Kendriya Vidhyalaya Sangathan,
18, Institutional area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Principal,
Kendriya Vidhyalaya No. 1
Air Force Station, Arga. Respondents

(By Advocate Shri N.P. Singh)

O R D E R

HON'BLE MR. S. DAYAL, MEMBER-A

This application has been filed for getting the order dated 11.01.02 by which revised chargesheet has been issued, to be set aside. A prayer has also been made to set aside the pending enquiry proceedings against the applicant.

2. The applicant has stated that he was appointed as a peon which is a permanent Group 'D' post in 2000. He was required to do the duty of Chawkidar on account of illness of the regular incumbent of Shri Kundan Lal. The applicant's claims to have made oral and written requests regarding repair of boundary wall of school, grills, doors and proper arrangement of lights night in the school premises. The applicant also represented against duty of 16 hours service as a chawkidar in a day of 24 hours which starts from 4 P.M. to 9 A.M.

of the next day in that three chowkidar should be posted instead of one. The applicant claims that he was on duty on 29.01.00 and 30.01.00 between 4 P.M. on the day and 9 A.M. on the next day and, thereafter Shri Jawali Ram Chowkidar took charge. It is claimed that a theft took place on 30.01.2000 at about 1.30 P.M. in the day during the duty period of Shri Jawali Ram. An F.I.R. was registered and the applicant was handed over to Civil Police on 30.01.2000 and the applicant left on 04.02.2000. The applicant was suspended on 31.01.00. The applicant was issued a chargesheet on 29.03.00 under Rule 14 of CCS (CCA) Rules 1965. On 30.03.00, an Enquiry Officer Shri D.K. Kulshrestha was appointed. Presenting Officer was also appointed on the same day. On 18.09.00 another Enquiry Officer was appointed and on 27.12.00 another presenting officer was appointed. Vide letter dated 11.01.02, the earlier chargesheet was cancelled and a revised chargesheet dated 11.01.02 containing revised charges was issued. The applicant has challenged the issuance of revised chargesheet on the ground that Shri Jawali Ram had not been proceeded against the second chargesheet cannot be issued to fill up gaps and lacunas and also on account of the fact that the Disciplinary Authority becomes functus officio after issuance of the first chargesheet. The chargesheet has also been challenged on the ground that the work of chowkidar is 8 hours in a day and the applicant was made to work 16 hours in a day.

3. The arguments of Shri A. Rajendra, learned counsel for the applicant and Shri N.P. Singh, learned counsel for the respondents have been heard.

4. Apart from reiterating the first three grounds

mentioned earlier, the learned counsel for the applicant has placed before us the Judgement of Administrative Tribunal Patna in case of Paras Nath Versus Union of India and others 1991 15 ATC 187. The learned counsel for the applicant has claimed that second chargesheet could not be issued on account of the law laid down in this case. The reasons why a second chargesheet was not considered proper has been stated in paragraph 6 and 7.:-

"6.....The applicant has specifically alleged in paragraph 6(xxiv) that the enquiry commenced on 6.2.1984 and it was concluded on 5.12.1984. This averment is not denied in the reply filed by the respondents. In the meanwhile, on 31.7.1986 the applicant was allowed to retire from service on superannuation. As such, the fresh memorandum of charges issued on 22.7.1987 on the identical charge cannot be sustained in law.

7. In this case, the impugned proceedings cannot be said to be a continuation of the of the proceedings which were initiated while the applicant was in service, but it relates to the issuance of a fresh memorandum of charges containing an imputation which is the same as the one that was levelled against the applicant by the memorandum of charges that was issued while he was in service and on which an enquiry was conducted and completed."

5. It is clear that the facts of the case in the Judgement sited are different in the case before us and this law is not applicable to the case before us.

6. The learned counsel for the applicant has also relied upon the Judgement of the Apex Court in State of Punjab Versus V.K. Khanna AIR 2001 SC 343. This Judgement mainly deals with the issue of bias. However in paragraph 21 it has been laid down that a press statement of Chief Minister appeared in which it has been mentioned that a Judge of the High Court would look into the charges against Shri V.K. Khanna, even prior to the period pertaining to the submission of reply to the chargesheet, which amounted to malice and mandate. Learned counsel for the applicant mentioned

that the appointment of Enquiry Officer before the period of furnishing reply to the chargesheet had expired vitiating the enquiry. This contention of learned counsel for the applicant is not tenable because this relates to the appointment of Enquiry Officer on 30.03.00 pursuant to issuance of chargesheet on 29.03.2000. This chargesheet has been cancelled and a second chargesheet has been issued, ^{the argument of} hence, the ^{accepted.} vitiation of Enquiry is not ~~acceptable~~.

7. The real issue is whether a second chargesheet against the applicant could have been issued. We find from the first chargesheet that Annexure-1 did not contain the statement of Article of charge framed against the applicant. It merely showed what should be contained in Annexure-1. Annexure-2, which is a statement of imputation, also does not give the articles of charge but states against the article 1 of First Information Report in Police Station Shahganj, Agra, against article 2 suspension on account of persons on duty on 29.01.00 from 4 P.M. in the evening to 8 A.M. on the morning of 31.01.00. Article 3 mentions First Information Report and the order of suspension and preliminary enquiry report but does not give any statement of imputation. List of documents only contains First Information Report. Learned counsel for the respondents has drawn our attention to note 9 Under Rule 15 of CCA (CCS) Rules of Swami's Compilation of 1995 in which reasons for cancellation of Original Chargesheet are given and it is stated that proceedings has been ^{dropped} ~~drop~~ without prejudice to further action, second chargesheet can be issued. The respondents have issued second chargesheet stating that the first chargesheet was cancelled due to the reasons that the annexures 1, 2, 3, and 4 of the original charge-

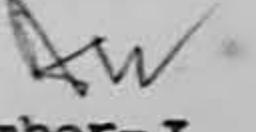
sheet were incomplete and vague. It has also been stated that the cancellation of the chargesheet was done on the said ground which may be considered under the circumstances of the case.

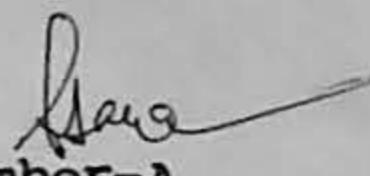
8. We are of the view that the first chargesheet was issued without application of mind and the annexures, as given, would not have furnished the information required by the applicant to defend himself. We are, therefore, find that there is no infirmity in issuing the second chargesheet.

9. Lastly, the issue of pick and choose on the ground that the applicant has been proceeded against while the other chowkidar Shri Jawali Ram, who took over charge on 30.01.2000, was let off by the respondents. The learned counsel for the applicant has relied upon the report of the Enquiry Committee in which it has been stated that the theft was discovered after 4 and 1/2 hours of Shri Jawali Ram coming on duty which showed that Shri Jawali Ram was not properly performing his duty. It has also been stated that Shri Jawali Ram had not checked up lock and sky light at the time of taking over charge, shows that he was careless. It has also been mentioned that since Shri Jawali Ram, as per statement, had taken the key from the resident [✓] of Shri Jagdish Chandra, the applicant, ^{leads ✓} it also ^{leads} _{needs} to the conclusion that the applicant was careless in his duties. It has been stated that the theft was discovered at 11.30 A.M. and the Chowkidar, who was on duty at that time, ^{and} _{had} not inspected the entire building. Therefore, the responsibility lay upon the chowkidar, who was on night duty and the chowkidar, who was on duty in the morning. This is the preliminary Enquiry Report and the Disciplinary Authority had to take a view about

the main person responsible for carelessness leading to theft. The view of the Disciplinary Authority that the applicant was responsible cannot be faulted. In any case, since the enquiry is yet to be conducted, the applicant will have opportunity of proving himself of innocent in case he was not responsible. He would also have the opportunity to examine Shri Jawali Ram, who is witness no.6 in Annexure-4. We, therefore, see no reason as to why the prayer made in this O.A. be allowed. Therefore, the O.A. is dismissed lacking ~~merit~~ in merit.

10. There shall be no order as to costs.


Member-J


Member-A

/ Neelam/