

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
T.A. 49 OF 1997 (CR 5808-E/79)

Present : Hon'ble Mr. D. Purakayastha, Judicial Member

Hon'ble Mr. M. P. Singh, Administrative Member

Joy Nath Sen,
Upper Division Assistant,
Central Govt. Industrial Tribunal-
cum- Labour Court, Calcutta

VS

1. Union of India through the
Secretary, M/o Labour & Rehabilitation
(Deptt. of Labour & Employment)
Govt. of India, New Delhi
2. The Secretary, Govt. of India,
Ministry of Labour & Rehabilitation,
(Deptt. of labour & Employment)
New Delhi
3. The Presiding Officer, Central Govt.
Industrial Tribunal-cum-Labour Court
Calcutta, 20, Abdul Hamid Street,
1st Floor, Calcutta-20
4. Shri K.K.Sharma, Enquiry Officer,
Joint Manager (Industrial Relations),
Food Corporation of India,
10, Middleton Row, Calcutta-16
..... Respondents

For the applicant : Mr. Samir Ghose, Counsel

For the respondents : Mr. S.B.Mukherjee, Counsel

Heard on : 16.1.2001 & 17.1.2001

Order on : 17/1/2001

ORDER

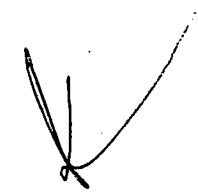
D.Purakayastha, J.M.:

In the application, which was initially filed as a writ petition before the Hon'ble High Court at Calcutta, the applicant has challenged the order of his suspension dt. 24.1.74, the charge-sheet dt. 18.4.74, the enquiry report dt. 17.2.77, the show cause notice dt. 19.3.77, the order of dismissal passed by the disciplinary authority dt. 14.4.77 and the appellate order dt. 13.5.79 rejecting his appeal against the order of dismissal, as arbitrary and illegal:

2. The facts of the case may be stated briefly at the outset.

At the relevant time, the applicant was working as an Upper Division Assistant and was assigned the additional charge of Cashier under respondent No. 3. While working as such, he also prayed for permission from the higher authorities to prosecute studies in Labour Welfare Training course and also in social work. According to the applicant, since no written order was passed either permitting or denying his joining such training, he went to the training course presuming that permission was not declined to him and successfully completed the training. According to the applicant, the authorities started taking vindictive actions against him on every pretexts.

3. On 24.1.1974 a charge-sheet was issued against him under Rule 16 of CCS(CCA) Rules which contained three articles of charge as per annexure-B. By a separate order issued on the same date, the applicant, who was on leave at that time, was placed under suspension as per annexure-C. The applicant gave a reply to the charge-sheet vide Annexure-D on 8.2.74 denying all the charges. Thereafter, another charge-sheet was issued to him on 18/4/74 in supersession of the charges already framed and this charge-sheet was issued under rules 11, 14 and 15 of the CCS(CCA) Rules i.e. major penalty charge-sheet whereas the earlier charge-sheet was for imposition of minor penalty (vide annexure-E). In this charge-sheet there were five articles of charge relating to the same alleged misconduct for which the earlier charge-sheet was issued. The additional charges were relating to his alleged absence from duty during office hours for attending Labour Welfare training course and Social Welfare Training course. The applicant gave a detailed reply to the said charge-sheet raising certain legal questions. Thereafter, an enquiry officer was appointed and the enquiry report was submitted on 17.2.77 in which all the charges levelled against the applicant were stated to have been established (vide Annexure-I). Thereafter, the applicant gave a reply to the enquiry report and finally, the disciplinary authority by his order dt. 14.4.77 (annexure-K) passed the final order dismissing the



applicant from service w.e.f. 14.4.77. Against the said order, the applicant preferred an appeal on 26.5.77. Ultimately, the appellate authority by his order dt. 13.5.79 rejected the appeal as per annexure-M.

4. Being aggrieved, the applicant moved the Calcutta High Court by filing a writ petition challenging the aforesaid orders and praying for his reinstatement in service. The said writ petition was transferred to this Tribunal under operation of Sec. 29 of the A.T. Act and has been renumbered as TA 49 of 1997.

5. We have heard the learned counsel for the applicant and the respondents at length and have gone through the documents produced before us.

6. It is contended by the ld. counsel for the applicant that the first charge-memo issued against the applicant on 24.1.74 was under rule 16 of the CCS(CCA) Rules for imposition of minor penalty by the disciplinary authority. But subsequently, the disciplinary authority superseded the said charge-sheet and issued a fresh charge-sheet dt. 18.4.74 under rule 14 of the CCS(CCA) Rules i.e. for imposition of ~~major~~ penalty. But in both the charge-sheets, the basic allegations against the applicant remained the same. He contends that such action of the respondents is arbitrary, illegal and in violation of the principles of natural justice. According to him, if the second charge-sheet is void ab initio, all actions taken on its basis i.e. the conduct of enquiry proceeding, the dismissal order and the appellate order are also bad in law and cannot be sustained in law. He has also contended that the appellate order is very cryptic and no reason was assigned for rejecting the applicant's appeal.

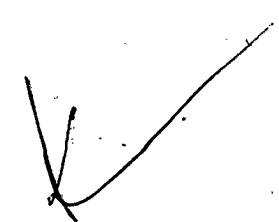
7. No reply was filed by the respondents contesting the application either in the High Court or before this Tribunal. In spite of several directions from this Tribunal, the respondents have also not been able to produce the relevant records including the record dealing with the appeal of the applicant. It is submitted by the ld. counsel for the respondents by producing a copy of letter dt.

8.1.2001. that the relevant records are not traceable in the office. He has, however, produced certain part record in this connection which we have perused.

8. It is the main contention of the ld. counsel for the applicant that the disciplinary authority had no jurisdiction to issue a fresh charge-memo by cancelling the earlier charge-sheet as it has been done in this case. Therefore, all subsequent actions taken by the respondents based on the second charge-sheet for holding the enquiry are bad in law and not legally sustainable and violative of the procedure laid down in the relevant rules. Therefore, the dismissal order passed by the disciplinary authority or the appellate order rejecting the appeal preferred by the applicant should be quashed. Ld. counsel for the respondents, on the other hand, has contended that the second charge-sheet dt. 18.4.74 has been issued in supersession of the earlier charge-sheet dt. 24.1.74. He stressed on the expression "supersession" and contended that this means that the earlier charge-sheet was modified or amended by the second charge-sheet which is admissible under the rules. Therefore, there was no illegality or irregularity in the conduct of the disciplinary proceeding against the applicant or in the orders of the disciplinary authority and the appellate authority.

9. In view of this divergent contentions raised by the parties, we directed the respondents to produce the relevant records. As already pointed out, the respondents could not produce the record in connection with the passing of the appellate order. The ground assigned for non-production of the records is that the same are not traceable in the Department. But the ld. counsel for the respondents has produced only a part of the records available with the Deptt.

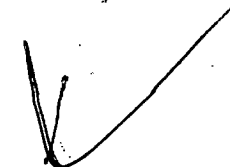
10. We have gone through the records. It relates to disciplinary proceeding No. 2 of 1974. But no record is available prior to 18/4/74. On a perusal of the order dt. 18.4.74 passed by the disciplinary authority i.e. the Presiding Officer we find that the following order was recorded by him :-



" In supersession of the disciplinary order No. 1/1974, a fresh charge sheet has been issued against Shri Joy Nath Sen, UDC, now under suspension in Proceeding No. 2/1974 dt. 18.4.74.

Interlocutory orders passed by my predecessor-in-office will stand valid and enforceable."

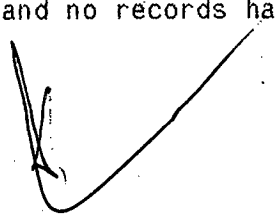
11. Ld. counsel for the applicant has pointed out that even though the earlier order was superseded, certain interlocutory orders were passed on the basis of the said order pending finalisation of the said proceeding based on the first charge-sheet. He contends that this is not permissible under the rules. On a perusal of the departmental file produced before us, we find that actually two departmental proceedings were initiated against the applicant i.e. Departmental Proceeding No. 1 of 1974 was initiated earlier and almost on the same allegations, a second proceeding i.e. Proceeding No. 2 of 1974 was initiated. The only difference is that the first proceeding was for imposition of minor penalty and the second one was for imposition of major penalty. There was also some difference in the articles of charge though the main allegations were the same. It is contended by the ld. counsel for the respondents that the earlier proceeding was superseded by the issue of the second charge-sheet as according to him, the first charge-sheet was only modified by the second charge-sheet and nothing else. He has contended that the expression "supersession" in this context would mean only "modification" or "amendment" of the first charge-sheet. We are unable to accept this contention of the ld. counsel. According the dictionary meaning of the expression "supersession" it connotes "setting aside". That means, the earlier charge-sheet was set aside by the issue of second charge-sheet. The ld. counsel for the respondents has submitted that the second charge-sheet included additional charge that the applicant without taking any permission from the higher authorities attended training course of Labour Welfare and Social Welfare. But we do not find any such allegation made by



the disciplinary authority in his order dt. 18.1.74 quoted above. Only in the charge-memo, additional two charges were inserted in this regard. But there is no record to show that such action was taken on the basis of valid orders from the competent authority. The ld. advocate appearing for the respondents cannot improve the reason of supersession of the earlier order. A party also cannot improve the statement recorded in the order-sheet by making an affidavit before a court or Tribunal.

12. In view of the aforesaid reasons, we are unable to accept the contentions of the ld. counsel for the respondents to the effect that the second charge-memo dt. 18.4.74 superseding the earlier charge-memo dt. 24.1.74 has been issued with reasons. The file produced by him does not contain any such reason. In view of the aforesaid circumstances, we are of the view that the Presiding Officer, who acted as the disciplinary authority w.e.f. 18.4.74, had no jurisdiction to issue a fresh charge-sheet in the name of supersession of the earlier charge-sheet dt. 24.1.74 issued in connection with Proceeding NO.1 of 1974. Ld. counsel for the respondents has failed to establish that the second charge-sheet was cancelled before issuing the fresh charge-sheet, particularly when actions and interlocutory orders passed on the basis of the first charge-sheet continued to remain valid. We are, therefore, unable to sustain the second charge-sheet dt. 18.4.74 and it has to be quashed as ab initio void.

13. So far as the appellate order is concerned, it is a very cryptic order and no reason was assigned for rejecting the appeal of the applicant. The respondents have also not been able to produce the original record in which the appellate authority passed his order on file to show that in fact the appellate authority assigned appropriate reasons for rejecting the appeal of the applicant after considering the materials points raised by him. Passing of reasoned and speaking order is part of the principles of natural justice. Since the appellate order is not a reasoned order and no records have also been



produced, adverse inference has to be taken in this case and accordingly, we also reject the appellate order.

14. In view of quashing of the second and fresh charge-memo dt. 18.4.74 by us, all actions taken on its basis, that is to say, conduct of the enquiry proceeding, passing of the disciplinary order and the appellate order are bad in law and have to be quashed. Accordingly, we also quash the dismissal order dt. 14.4.77 and the appellate order dt. 13.5.77.

15. It is brought to our notice that the applicant has, in the meanwhile, attained the age of superannuation. Therefore, he should be deemed to have continued in service from the date of his dismissal by the order dt. 14.4.77 till he attained the age of superannuation with all consequential benefits.

16. It has also been pointed out by the ld. counsel for the applicant that although the applicant was placed under suspension with the issue of the first charge-sheet dt. 24.1.74, he has not been paid any subsistence allowance. It is submitted by the ld. counsel for the respondents, on instruction, that since the applicant did not produce non-employment certificate, no subsistence allowance could be paid to him. We need not pass any specific order on this point and it is left to the respondents to decide this question appropriately as per rules in view of our orders passed above.

17. For the reasons stated above, we allow this application. The charge-sheet dt. 18.4.74, the enquiry report dt. 17.2.77, the dismissal order dt. 14.4.77 and the appellate order dt. 13.5.79 are hereby quashed and set aside. The applicant shall be reinstated in his former post and shall be deemed to have continued in service with effect from the date of his dismissal from service till he attained the age of normal superannuation. The applicant is held to be entitled to all back salary and allowances during the period he was kept out of employment including all consequential benefits. The period of his suspension and the payment of subsistence allowance as admissible shall be decided by the competent authority as per law.

