

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 99 of 2004

Monday, this the 9th day of February, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. Satheesh Kumar Unnithan,
S/o Janardhanan Pillai,
Senior Auditor, Office of the Audit Officer,
Navy, Naval Base, Kochi-4
Residing at No.A-15, Type III,
Defence R&D Quarters, Pallichal Road,
Palluruthy, Kochi-6Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Comptroller & Auditor General of India,
New Delhi.
2. Director of Audit (Navy),
Admiral's House, No.1 Cooperage Road,
Mumbai - 400 039
3. Senior Audit Officer (Navy),
Office of the Director of Audit (Navy),
Admiral's House, No.1 Cooperage Road,
Mumbai - 400 039Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil]

The application having been heard on 9-2-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

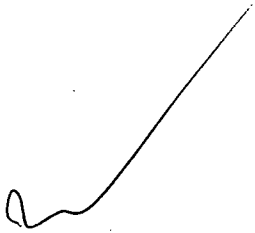
The applicant, who is working as a Senior Auditor in the Office of the Audit Officer (Navy), Naval Base, Kochi, has filed this application challenging the legality, propriety and correctness of the memorandum of charges Annexure A1 dated 3-12-2003 issued by the 2nd respondent. Annexure A1 memorandum of charges is for initiation of a major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant. The applicant states that the 2nd respondent had earlier issued Annexure A2 memorandum of charges for the self same alleged misconduct, that the applicant had submitted

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detailed representations Annexure A3 and A4, that a preliminary enquiry was held by the Enquiry Officer by verifying the documents and that thereafter dropping the disciplinary proceedings and simultaneously issuing a fresh memorandum of charges without stating the reason/grounds for doing so is unsustainable, being against the rules and would result in undue hardship to the applicant.

2. Shri Thomas Mathew Nellimoottil took notice on behalf of the respondents. Counsel of the respondents opposed admission of the application on the ground that there is no cause of action for the applicant to invoke the jurisdiction of this Tribunal at this point of time.

3. We have carefully gone through the application and all the annexures appended thereto and have heard at length Shri T.C.Govindaswamy, learned counsel of the applicant. Shri T.C.Govindasway, inviting our attention to the ruling of the Apex Court in K.R.Deb vs. Collector, Central Excise (AIR 1971 SC 1447], submitted that the Apex Court has held that no power is vested with the disciplinary authority to issue successive memorandum of charges. He further argued that, according to Rule 14 of the CCS (CCA) Rules, once an enquiry officer has been appointed the disciplinary authority has to act on the basis of the report submitted and he has no authority in the meanwhile to drop the proceedings and issue a fresh memorandum of charges. We have gone through the above cited ruling of the Apex Court. What is observed by the Apex Court in that case is that once an enquiry has been held and the enquiry officer has submitted its report, it is not open to the disciplinary authority to cancel the whole enquiry finding that the finding is in favour of the delinquent government servant and order a fresh enquiry. Such a situation has not happened in this case.



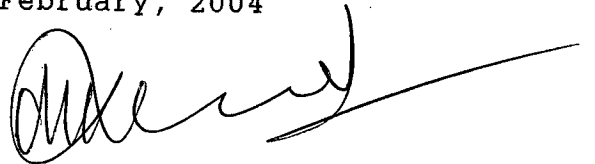
In this case, no enquiry at all has been held. Only a memorandum of charges has been issued. Enquiry officer appointed has only verified the documents. No witness has been examined. No prejudice at all has been caused to the applicant by dropping the proceedings and issuing a fresh charge sheet. On perusal of the memorandum of charges Annexure A2 issued earlier and the impugned memorandum of charges, we find that in the impugned memorandum of charges the imputation in respect of Article II of the charges has been made a little more clear and explicit. Such a change in the memorandum of charges was found necessary by the disciplinary authority for making the applicant understand the gist of the accusation correctly and for holding a proper enquiry. We do not find any infirmity with that process. We could not find any provision under Rule 14 of the CCS (CCA) Rules or in any other rule which prohibits the disciplinary authority from dropping the memorandum of charges for want of material particulars and issuing a fresh memorandum of charges curing the defect. Under these circumstances, we do not find that the applicant has got any cause of action to invoke the jurisdiction of this Tribunal at this juncture.

4. In the light of what is stated above, the Original Application is rejected under Section 19(3) of the Administrative Tribunals Act, 1985. There is no order as to costs.

Monday, this the 9th day of February, 2004

H. P. DAS

H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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