

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 12.01.2015.

Pronounced on 20th January 2015

Original Application No.466/2011

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Neelima Gupta aged about 41 years D/o Sri R.S. Gupta, R/o C-99, Sector A, Mahanagar, Lucknow.

-Applicant.

By Advocate: Sri A. Moin.

Versus.

Union of India through

1. Secretary, Ministry of Communication and IT, Department of Post, Dak Bhawan, New Delhi.
2. Director Postal Services (Headquarter) Lucknow Region, Office of CPMG, UP, Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.
4. Asstt. Superintendent of Post Office (East), Lucknow.
5. P.L. Rathore, the then Asstt. Superintendent of Post Offices (East) Lucknow Sector 18, Indira Nagar, Lucknow.

-Respondents.

By Advocate: Sri S.P. Singh.

O R D E R

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

"(a) To quash the impugned order dated 13.09.2011 passed by Respondent No.4 as contained in Annexure A-1 to the OA with all consequential benefits.

(b). To quash the impugned charge sheet dated 29.02.2000 issued by the Respondent No.4/5 as

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contained in Annexure A-2 to the O.A. with all consequential benefits.

- (c). *To direct the respondents to allow the applicant to discharge her duties of the post of Extra Departmental Stamp Vendor, Ismailganj, Post Office and pay her the entire back wages w.e.f. 5.10.1999 with all consequential benefits and interest @ 18% p.a. on the arrears of pay.*
- (d). *To direct the respondents to sanction 20 days leave with allowances for the year 1998-99 to the applicant.*
- (e). *Any other order which this Hon'ble Court deems just and proper."*

2. The applicant's case is that she was appointed as Extra Departmental Stamp Vendor (EDSV) at Ismailganj Post Office, Lucknow by order dated 25.10.1994. She went on leave on account of illness w.e.f. 01.09.1998 and thereafter extended the same periodically and finally she resumed her duties on 27.02.1999. She had sent leave applications for the periods concerned accompanied by medical certificates. During this period, she had assigned Smt. Sangeeta Gupta as substitute in her place. She fell ill for second time on 08.03.1999 (Annexure A-6) and remained on leave continuously for different spells upto October, 1999. She sent leave applications dated 08.5.1999, 08.06.1999, 17.07.1999, 07.08.1999 and 22.09.1999 alongwith medical certificates. She once again assigned Smt. Sangeeta Gupta as substitute. However, her applications for medical leave were not sanctioned by the Respondent No.5. Moreover, after expiry of her leave on 05.10.1999, she was not allowed to join. Rather, a charge-sheet dated 29.02.2000 issued by Respondent No.5 on the charges of violating the provisions of Rule 5 (b) of the ED Conduct Rules for remaining absent for more than 180 days read with Rule 17 of the ED Conduct Rules. She submitted her reply on

J. Chandra

15.03.2000 (Annexure A-9) denying the charges put against her. Thereafter, the respondents did not proceed any further with the enquiry. She submitted a detailed representation to Respondent No.3 dated 12.08.2000 (Annexure A-10) praying therein to be allowed to join her duties and also to change the Inquiry Officer. Once again the respondents did not take any action on that. Now, after a gap of nearly eleven years, she has served with the impugned order dated 13.09.2011 by which the charge-sheet dated 29.02.2000 is sought to be amended. She also received a letter dated 07.09.2011 by which she was informed that one Sri H.N. Mani Tripathi had been appointed as an Inquiry Officer to enquire into the charges against the applicant in the charge-sheet now amended as being issued under Rule 10 of GDS Conduct Rules, 2011. She was asked to appear before the inquiry officer on 19.09.2011 (Annexure A-11). The applicant has basically sought quashing of order dated 13.09.2011 on the ground that the charge sheet issued on 29.02.2000 under ED Conduct Rule cannot now be sought to be revised as the amendment dated 2011 cannot be validated with retrospective effect. Further, she has also stated that there is catena of decisions by which it has been held that if the department if it not proceeded with the inquiry for long time in a disciplinary action the same cannot be revived.

3. The Respondent Nos.1 to 4 have filed their Counter Reply stating therein that the applicant had absented herself from duty w.e.f. 01.09.1998. The Sub Postmaster Ismailganj P.O. Lucknow requested for regular substitute vice the applicant as her absence was nearing the maximum limit of being away from duties, 180 days and

one Smt. Sangeeta Gutpa was provided as substitute. She further absented herself from duty w.e.f. 08.03.1999 without any application for sanction of leave. She provided substitute Smt. Sangeeta Gutpa to work vice her on the said post. Thereafter, the applicant was served with the charge sheet dated 29.02.2000 under Rule 8 of EDAs (Conduct and Service) Rules, 1964 for violating provisions of Rule 5 (6) and the orders of DGP&T circular dated 24.02.1970 and alleging not to observed provisions of Rule 17 of EDAs (Conduct and Service) Rules, 1964 by not maintain absolute devotion to duty. The charge sheet was received by her on 08.03.2000. The applicant was asked to submit her written statement of defence within 10 days but she has not submitted the same after expiry of a period of three month. Thereafter, Shri R.S.S. Yadav, was appointed as inquiry officer vide Memo dated 29.05.2000. Due to administrative reasons the enquiry was next entrusted to Shri Ram Deo and thereafter to Shri Baij Nath and several dates were fixed but the applicant remained absent by submitting medical certificates for the dates of enquiry proceedings. Thereafter, Shri H.N.M. Tripathi was appointed as inquiry officer vide memo dated 02.09.2011 and again the applicant make an allegation of being biased against Shri Tripathi for delaying the enquiry proceedings.

4. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

5. At the time of final hearing, the learned counsel for the applicant made a statement that notices may not be issued to Respondent No.5 hence, any averments against

Private Respondent No.5 have not taken into cognizance. The learned counsel for the respondents have also raised an objection against the maintainability of the OA in so far as any relief against the charge sheet dated 29.02.2000 which is barred by Section 21 of the Administrative Tribunal Act, 1985.

6. We have heard the learned counsel for both the parties and perused the entire material available on record.

7. The present OA has been filed against the charge sheet dated 29.02.2000. A charge-sheet can be assailed and subjected to judicial review and is liable to be declared as invalid on any one of the following grounds:-

- (1). *If it is not in conformity with law.*
- (2). *If it is disclosed bias or pre-judgment of the guilt of the charged employee.*
- (3). *There is non-application of mind in issuing the charge-sheet.*
- (4). *If it does not disclose any misconduct.*
- (5). *If it is vague.*
- (6). *If it is based on stale allegations.*
- (7). *If it is issued mala fide.*
- (8). *If it is issued by an incompetent authority.*

8. The applicant has not raised any of the legal objections to the original charge sheet dated 29.02.2000. It is seen from Annexure A-2 that the respondents had issued the charge sheet dated 29.02.2000 to the applicant for violating Rule 17 of ED Conduct Rule, 1964 for remaining absent for more than 180 days. It is clear from the rival submission that the respondents have not concluded the disciplinary proceedings consequent upon issue of charge-sheet even after a lapse of 10 years. It is also seen from the record that the applicant did not make any efforts to pursue her case either with the

respondents or by way of seeking judicial intervention till the respondents issued letter dated 13.09.2011. Normally, the issuance of a charge-sheet is an intermediately stage of the disciplinary proceedings against which judicial intervention lies only on some legal grounds as mentioned in para above. The applicant did not seek any such legal intervention against the charge sheet dated 29.02.2000. The applicant too has averred nothing about the illegality of the charge sheet so issued expect the ground of delay. Hence, we are not inclined to intervene in this matter.

9. Coming to the issue of impugned order dated 13.09.2011 it is The cardinal Principle of law that every statute/amendment/rules has *prima facie* a prospective applicability "unless it is expressly made retrospective in its application". In this case the charge sheet dated 29.02.2000 was issued under ED Conduct Rules of 1964. But, by issuing the impugned order dated 13.09.2011 the respondents have demonstrated that as far as they are concerned, the issue is still alive. After the lapse of 11 long years the respondents have sought certain amendments as per ED Conduct Rules of 2011 on the plea that there is no material change in the charge-sheet. We are inclined to ask, if there is no material change why at all they passed the order dated 13.09.2011? The order dated 13.09.2011, in our view, deserves to be quashed as the respondents have failed to cite any provision in the amended Rules of 2011 whereby a charge-sheet issued under an earlier valid Rule can be so amended.

J. Chandrasekhar

10. In view of the above, the O.A. is partly allowed. The order dated 13.9.2011 is quashed. We direct the respondents to conclude the disciplinary proceedings against the applicant so initiated pursuant to the charged-sheet dated 29.02.2000 within a period of two months from the date of receipt of the copy of this order is produced. The applicant is also directed to cooperative with the same. The interim order, if any, passed earlier in this case stands vacated.

11. With the above observations, the O.A. is disposed of. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

VR. Agrawal
(Navneet Kumar)
Member (A)

Amit/-