

Central Adminsitrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 32/2008

This the 26 th day of April , 2009

Hon'ble Mr. M. Kanthaiah, Membe (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Dr. Rama Kant Singh
S/o Sri R.B. Singh, Scientist 'C'
Toxicology, Central Drug Research Institute,
Aged about 49 years ,
R/o Gayatri Puram, Sardar Patel Marg,
Kursi Road, Lucknow.

Applicant.

By Advocate Sri H.N.Tewari

Versus

1. Director , Central Drug Research Institute, Chhatar Manzil Palance, Lucknow.
2. Controller of Administration, Central Drug Research Institute, Chhatar Manzil Palace, Lucknow.
3. Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi though its Director General.

Respondents.

By Advocate: Sri A.K.Chaturvedi.

ORDER

By Hon'ble Dr. A.K. Mishra, Member (A)

The short point in this application is whether a fresh charge sheet can be issued against the applicant after lapse of many long years. The applicant has cited a number of cases to support his contention that a fresh charge sheet in respect of matters relating to 1992 cannot be issued in the year 2007 after lapse of 15 years.

2. The respondents have submitted that the facts of this case are distinguishable and not covered by the Supreme Court decisions cited by the applicant. It is not as if a stale case has been dusted up and brought to life after many years. On the other hand, the applicant is involved in disciplinary proceedings for a very long time in respect of matters which are covered by the charge sheet relating to misconduct, involving misappropriation of money, committed by the applicant in the year 1992. Originally a charge sheet was issued to him on 13.10.92. He was also punished by an order dated 29.3.97 of the

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disciplinary authority, which was confirmed by the appellate authority through his order dated 9.3.2000 as well as by the reviewing authority through his order dated 15.7.2002. The applicant had filed O.A. No. 87/2004 which was decided, without going into the merits of the case, giving liberty to the disciplinary authority to pass appropriate order afresh on the basis of inquiry report dated 28.5.2006 after giving due opportunity of hearing to the applicant. Accordingly, he was punished afresh through another order dated 5.11.2006 after rendering compliance to the direction of the Tribunal. Against this order, an appeal was filed which was decided on 4.1.2007 and the appellate authority found technical infirmity in the punishment order in that the charge sheet was issued to the applicant when he was working as Scientist 'B' Group IV (1), whereas the punishment order has been passed against him when he was working as Scientist 'B' Group IV (2). The appellate authority thought that the punishment order was not appropriate for the aforesaid reason and suffered from an infirmity. Hence, the case was remitted to the disciplinary authority to remove the infirmity. The applicant's appeal dated 5.11.2005 had neither been allowed nor rejected by the appellate authority on merits.

3. There were two options available to the appointing authority :
 - i) The infirmity could have been removed by withdrawing the O.M. dated 10.12.2007 giving effect to his promotion as Scientist Group 'IV' (2) w.e.f. 29.3.2000; or
 - ii) By dropping the charge sheet dated 13.10.92 and proceeding against him afresh on the promotional post.

4. The disciplinary authority has taken a lenient view and allowed the promotion to the applicant and issued a fresh charge sheet by following the second option. It is not as if the disciplinary authority was sleeping over the matter for all these years and suddenly has woken up to his responsibility of filing a charge sheet against the applicant on the basis of a stale matter. A fresh charge sheet has

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been issued on 8.6.2007 on the basis of an appellate order and it is not correct to say that this charge sheet has been issued on a dead case after a lapse of more than 14 years. On the other hand, the fact remains that the matter was subjected to a number of litigations at the end of which, this step has been taken to remove the infirmity in the punishment order pointed out in the appellate order. The applicant has filed the explanation against the charge sheet and the matter is under examination of the appropriate authority. The learned counsel for the respondents submit that the applicant is not permitted to approach this Tribunal pre-maturely against this charge sheet when the matter is under consideration of the departmental authority and he has not exhausted the statutory reliefs available to him under rules. Earlier, the applicant had filed O.A. No. 293/2007 which was dismissed on the ground of non-joinder of appropriate parties and the applicant had not taken this ground in that application. Now, when the applicant has not admitted the charges in his explanation, and an inquiry authority has been appointed who will consider the truth, or otherwise of the charges keeping in view the objections filed by the applicant, it is premature to give any direction in the matter.

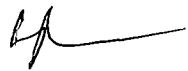
5. We find that this charge sheet has been issued pursuant to the orders of the appellate authority. Earlier, the applicant had filed two OAs and the direction of this Tribunal had to be complied with. Therefore, it can not be described as relating to a stale matter which has been dusted up and prosecuted against the applicant as a fresh case. Nor can it be said that the respondents were sleeping over the matter all these years. Therefore, the citations made by the applicant will not cover the facts of this case.

6. The other ground taken by the applicant is that the disciplinary authority has no jurisdiction to issue a fresh charge sheet (dated 8.6.2006) on the basis of same facts for which a disciplinary proceeding had been initiated way back on 13.10.1992 following the first



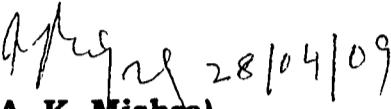
charge sheet and a penalty had been imposed upon him after conducting the relevant inquiry. Since the findings of the inquiry report have not been challenged, the disciplinary authority could not have issued a fresh charge sheet on the same facts. In this connection, he has cited the judgment of the Supreme Court of India in the case of K.K.Deb Vs. the Collector of Central Excise, Shillong, AIR 1971 page 1447, in which Hon'ble Supreme Court held that Rule 15 of CCS (CCA) Rules did not contemplate holding of successive inquiries, but the disciplinary authority instead of completely setting aside the previous inquiry can, with proper reasons, ask the inquiry officer to rectify the defects which might have crept into the inquiry, or reconsider the evidence itself and come to its own conclusion under Rule 9.

It is apparent that the facts of the present case are entirely different. It is not a continuation of the old proceeding. As has been observed by us in paragraph 3, the disciplinary authority had two alternatives; i) to remove the infirmity in the penalty order pointed out by the appellate authority by disallowing the promotion granted to the applicant to the grade of Scientist 'B' IV (2), or, alternatively, by dropping the charge sheet dated 13.10.1992 and proceeding afresh against him citing his pay scale on the promotional post held by him. In this case, a lenient view was taken and the promotion granted to him has not been interfered with and the second option of dropping the charge sheet and starting a new disciplinary proceeding afresh against him while he was allowed to hold the promotional post was adopted. Therefore, it is not correct to say that multiple inquiries have been held in one disciplinary proceeding. The legal result after dropping the original charge sheet is that the disciplinary proceeding which culminated in award of major penalty against him by the disciplinary authority is now completely set aside. Of course, a fresh proceeding has been initiated on the same set of facts after removing the technical problem relating to his pay scale. As such we hold that



the aforesaid judgment of Supreme Court is not applicable to the facts of this case.

7. It is appropriate that he should participate in the inquiry which has already been initiated in this case and seek statutory relief before the appellate authority against order of the disciplinary authority whenever it is made, if he is aggrieved with that order. The application is accordingly dismissed. No costs.

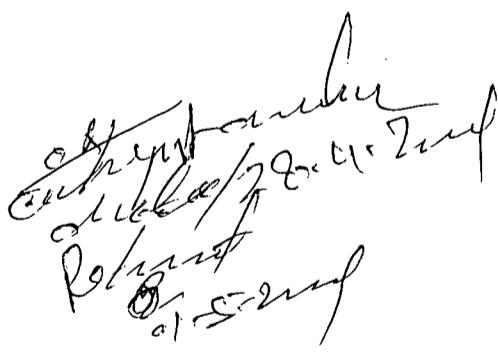
 28/04/09
(Dr. A. K. Mishra)

Member (A)

 28/04/09
(M. Kanthaiah)

Member (J)

(HLS)


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