

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 482/96

Transfer Application No.

Date of Decision 26.6.96

D.R.Joshi

Petitioner/s

Shri C.Nathan

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar.

Advocate for  
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. (P.P.Srivastava), Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. HEGDE)  
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 482 / 1996

Pronounced this 28<sup>th</sup> day of June 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

D.R.Joshi. ... Applicant.  
(By Advocate Shri C.Nathan)  
V/s.

Union of India & Ors. ... Respondents.  
(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri B.S.Hegde, Member(J))

Heard the arguments of Shri C.Nathan, counsel for the applicant and Shri V.S.Masurkar, counsel for the Respondents and perused the pleadings. Since the counsel for the applicant Shri Nathan vehemently urged for the interim relief staying the prosecution of the departmental inquiry proceedings initiated against the applicant, the Tribunal was not inclined to consider the same without the reply of the Respondents. Accordingly, the respondents were directed to file their reply. The respondents have filed their reply and on perusal of the pleadings we are inclined to dispose of the O.A. at the admission stage itself.

2. In this O.A. the applicant has prayed for quashing and setting aside of the Memorandum of Charges issued by the Respondents dt. 27.11.1995 (Ex. 'A'), Ex. 'B' dt.12.12.1995 alleged to be the second charge sheet issued by the respondents on the same set of facts and 9.1.1996 page '24' Ex. 'C'. The main thrust of the argument of the learned counsel for the applicant in this O.A. is that having cancelled the first charge sheet issued by the respondents ~~as~~ <sup>the</sup> issued on 12.10.1992, respondent is not justified in issuing a second charge sheet on the same set of

Articles vide Memorandum dt. 12.12.1995. He further contended that on the basis of the first charge sheet the Enquiry Officer had inquired into the charges and submitted his report and exonerated the applicant. Having received the Report of the Enquiry Officer the only course open to the Disciplinary Authority is either to agree with the findings of the Enquiry Officer or to disagree. In that event, he shall have to record his reasons in writing and remit back to the Enquiry Officer for further inquiry under Rule 15(1) of the C.C.S. (CGA) Rules, 1965, instead he ordered for a de-novo inquiry which is not permissible under the Rules. In support of his contention, the learned counsel for the applicant relied upon the decision of the Madras Tribunal in Romeo Charley V/s. Director General, CSIR, New Delhi and Another (1989) 9 ATC 141) wherein it was held that under Rule 15 the power of the Disciplinary Authority is only to remit the case to the inquiring authority for further inquiry and report. It implies that whatever is there already is to be there, and having regard to it to have something more in addition; going beyond what exists. On the other hand, re-inquiry has the effect of treating what is actually there as non-existent and substituting it by something entirely different. Accordingly the second charge sheet issued by the respondents has been quashed. He also relied upon another decision of the Tribunal in Chandra Shekar Seth V/s. Union of India & Others. (1990) 12 ATC 868), wherein the Hon'ble Tribunal has held that where the first charge sheet has been replied to by delinquent, issuing of second charge sheet on the same charge sheet is held impermissible. Therefore, he contended that the second charge sheet issued by the Respondents

dt. 12.12.1995 requires to be quashed and the inquiry initiated against the applicant could not be allowed to go on.

3. As against this, the learned counsel for the Respondents Shri V.S.Masurkar denied the various contentions raised by the counsel for the applicant and urged that it is a misnomer on the part of the applicant to state that second charge sheet is issued on the same set of facts against the applicant. In this connection he states that it is relevant to quote the impugned order dt. 27.11.1995 which reads as follows :

" MEMORANDUM

Memo No.DMLN/X-3/1992/93/5 dt. 28.10.92 for conducting disciplinary proceedings under the provisions of Rule 14 read with Rule 18(1) ibid of CCS(CCA) Rules, 1965 for common proceedings against Shri D.R.Joshi. P.I, Staff No.34071 was issued alleging gross irregularity and negligence in discharge of official duties with ulterior motive and specific consideration. These charges were set out in the said memorandum. The official denied the charges levelled against him and as such a formal inquiry was ordered to be held by appointing Inquiry Officer and Presenting Officer. The oral inquiry was completed on 29.12.1994 and the inquiry officer submitted its report on 17.07.1995.

Shri D.R.Joshi, P.I. Staff No.34071 is deemed to have been transferred on deputation to the M T N Ltd , Bombay w.e.f. 1.4.1986. As such the MTN Ltd Officers are not empowered to order disciplinary cases in common proceedings.

In view of what has been clarified above the Memo No.D M L N/X-3/1992-93/5 dt. 28.10.1992 initiating disciplinary proceedings under Rule 14 of CCS(CCA) Rules, 1965 against Shri D.R.Joshi, P.I. is hereby cancelled with the intention of issuance of fresh charge sheet. This would however be without prejudice to take further disciplinary action afresh against the official by the competent disciplinary authority.".

He also draws our attention to Rule 14(5)(a) under C.C.S. (CCA) Rules, 1965 and states that it gives inherent powers to respondents to proceed in accordance

with the rules because after considering the preliminary inquiry report of the Enquiry Officer, the competent authority decided that a common inquiry initiated earlier was not called for, thereby the earlier charge sheet was cancelled with the intention of issuing a fresh charge sheet to proceed in accordance with the law. He further submitted that if we have to analyse the impugned order dt. 27.11.1995 it is made amply clear that the first charge sheet was withdrawn due to technical reasons empowering the authorities to issue a fresh charge sheet. Accordingly, a fresh charge sheet was issued vide order dt. 12.12.1995. Therefore, under any circumstances, that letter of the respondents dt. 27.11.1995 cannot be construed as being cancelled. Further the charges levelled against the applicant relates to bribe, fraudulent acts, forgery etc. which are being looked into through the inquiry, therefore it is in the public interest to find out the truth in the charges levelled against the public servant. Therefore, not participating in the inquiry and challenging the inquiry proceedings without being completed, it is nothing but a pre-mature application and the same deserves to be dismissed with costs. In support of his submission the learned counsel for the respondents draws our attention to the Apex Court's decision in (1) Transport Commissioner V/s. A.Radhakrishna Murthy (1995(1)S.C.S.L.J. 147) (2) Union of India V/s. Upendra Singh (JT 1994(1) SC 658, wherein the Apex Court has clearly held that the Tribunal should not interfere in the disciplinary proceedings prior to finalisation of the disciplinary

proceedings. It was further contended by the respondents that due to technical snags, in common proceedings against the applicant, the first charge sheet was withdrawn and accordingly a separate charge sheet was issued against the applicant. The reasons are elucidated in the reply at para 15 of the same. Unless the Disciplinary Authority passes an order, the applicant has no right to make representation to the higher authority, nevertheless, the General Manager, on the basis of his representation, he changed the inquiry officer and he ought to have participated in the inquiry instead he approached this Tribunal for relief and stay of the disciplinary proceedings which is not warranted. Since no punishment is imposed on the applicant there is no question of appreciation of Article 20 or 21 of the Constitution. Even assuming without admitting, even if any punishment is imposed on the applicant, still there lies statutory remedy of appeal or review as per rules. Therefore, all these pleas raised in this O.A. can be agitated before the competent authority, in case punishment is imposed after inquiry. Therefore, the application is premature and the same is required to be dismissed. In this connection he draws our attention to Ex. R-1 which letter from is a C.B.I. to the Dy. General Manager(V), MTNL, Telephone House regarding the action to be taken by the Respondents. Whereas, <sup>a</sup> prima facie case has been made out against the applicant and pursuant thereto a Regular departmental action for imposition of Major Penalty has been initiated. In his representation the applicant had asked for a change of Enquiry Officer on the ground of bias which has been agreed to by the competent authority vide letter dt. 5.6.1996.

*AB*

...6.

The position in the present case is that the first inquiry is over by the exhortation of the applicant stating that it is dropped with a view to hold a fresh inquiry. In these circumstances, the case of K.R.Deb V/s. The Collector of Central Excise Shillong, (1971 SLJ 301) of the Apex Court would not be of any assistance to the applicant. Therefore, in the present case there was no question of holding a de-novo inquiry while cancelling the earlier charge sheet with the intention of issuing a fresh charge sheet the word cancellation cannot be construed as a cancellation in the normal sense. It is only a withdrawal of the first charge sheet and issuing of fresh charge sheet. Therefore, the contention raised by the applicant is not tenable and the same is rejected.

4. In the light of the above, on perusal of the pleadings, we are satisfied that there is no justification on the part of the applicant not to participate in the inquiry proceedings. However, on a perusal of the Respondents order dt. 27.11.1995 though the word is used as cancelled, it is made specific that the earlier charge sheet was cancelled or withdrawn with the intention of issuing a fresh charge sheet whereby he has not been exonerated of his charges levelled against him. Therefore, it cannot be construed that the first charge sheet has been cancelled, is only withdrawn with a view to issue a fresh charge sheet maybe on the same charges. Therefore, the question of competent authority resorting to Rule 15(1) of the C.C.S. (CCA) Rules does not arise in this case.

The procedure adopted by the respondents is in

accordance with the rules and the applicant is directed to participate in the inquiry and await the out-come of the punishment, if any, to be imposed by the respondents. In that event he is at liberty to challenge the same as and when it is passed. In the result, we are of the view, that the O.A. is pre-mature and the same is dismissed at the admission stage. No order as to costs.



(P.P.SRIVASTAVA)  
MEMBER(A)

  
(B.S.HEGDE)  
MEMBER (J)

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, GULESTAN BUILDING NO. 6  
PRESCOT ROAD, FORT, MUMBAI 400001.

R.P. No. 82/96 in O.A. 482/96.

Dated this 29 L day of August 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)  
2) Hon'ble Shri P.P. Srivastava, Member (A).

Shri D.R. Joshi ... Applicant  
v/s

The Divisional Engineer ... Respondents  
(External-I), Mulund  
Telephone Exchange,  
Mulund (W), Mumbai-80  
and Others

Tribunal's Orders (By circulation).

Per: Shri B.S. Hegde, Member (J).

The applicant has filed this application seeking review of judgement dated 28-6-1996. We have perused the R.P. and are satisfied that the R.P. can be disposed of by circulation under Rule 17 (iii) of the CAT (Procedure) Rules 1987.

2. The applicant sought review of the judgement on the following grounds, that the Disciplinary Authority cannot remit the case of the petitioner to the Enquiry Officer under Rule 15(1) of the CCS (CCA) Rules which is a patent error on the face of the records and also an apparent error of rule or law. Secondly, a fresh charge sheet cannot be issued on the same charge if the earlier charge is cancelled without giving any reason;

lastly, the Tribunal had acted without jurisdiction when it overruled or ignored its Coordinate Bench decision etc.

3. In the O.A. also, the main ground of argument of the Petitioner was that having cancelled the first charge sheet issued by the Respondents, they are not justified in issuing a charge sheet on the same set of facts. The actual facts are that after considering the preliminary enquiry report of the Enquiry Officer, the competent authority decided that due to technical reasons, the earlier charge sheet was withdrawn with the intention of issuing a fresh charge sheet and the word 'cancellation' cannot be construed as cancellation in the notional sense.

4. In the R.P. the applicant has raised the very same plea raised in the O.A. It is well settled that an R.P. is maintainable where some mistake or error apparent on the face of the record is found and it may be exercised on any analogous ground but it cannot be exercised on the ground that the decision was erroneous on merits. No such ground is made in this R.P. and therefore the R.P. cannot be utilised for re-arguing the case on the same ground. A mere repetition through different counsel of old and overruled arguments is not permissible.

5. In our view, neither any error apparent on the face of the record has been pointed nor any new fact has been brought to our notice calling for a review of the original

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judgement. The grounds stated in the Review Application are more germane for an appeal against our judgement and not for review. The Review Petition is, therefore, dismissed by circulation.



(P.P. Srivastava)  
Member (A)



(B.S. Hegde)  
Member (J)

ssp.

dt 29/8/96  
order/Judgement despatched  
to Applica [redacted] respondent(s)  
on 5/9/96

(C)  
10/9/96