

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 695/92

~~Transfer Application No.~~

Date of decision 16.7.1993

Shri K.Ramankutty Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioner

versus

Union of India & Ors. Respondent

Shri J.G.Sawant Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri M.Y.Priolkar, Member (A)

1. Whether the Reporters of local papers may be allowed to see the Judgement ? y/n

2. To be referred to the Reporter or not ? —

3. Whether their Lordships wish to see the fair copy of the Judgement ? { n

4. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.Y.PRIOLKAR)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(5)

OA. NO. 695/92

Shri K.Ramankutty ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri M.S.Ramamurthy
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 16.7.1993

(PER: M.S.Deshpande, Vice Chairman)

The question which arises for consideration is whether after the charge-sheet was withdrawn it was open to the respondents to issue a fresh charge-sheet. The applicant was appointed as a Depot Store Keeper, Gr.I. There was an incident of loss of goods in 1984 and the charge-sheet was given to him in February, 1990. It was withdrawn on 30.5.1991. The applicant was due to retire on 1.6.1991. A second charge-sheet was given to him on 30.5.1991. The contention of the learned counsel for the applicant is that (a) fresh charge-sheet could not be given after the original charge-sheet was withdrawn. Under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, no order imposing any of the penalties specified in clauses (v) to (ix) of rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) which such inquiry is held under that Act. It is apparent that in the present case a notice to show cause was issued to the applicant but he did

not file any reply. The applicant appeared before the Enquiry Officer and asked for inspection of certain documents and some correspondence passed between the applicant and the Enquiry Officer which has been filed with the present application. It is clear that the order unconditionally withdrawing the charge-sheet was made on 30.5.1991. No reasons were given in that order for withdrawing the charge-sheet. The effect of the withdrawal of the charge-sheet would be to put an end to the enquiry which was in progress and would result in discharging the applicant of the charges mentioned in the charge-sheet. Our attention was not drawn to any of the rules or administrative instructions which clothe the disciplinary authority with the power to give another charge-sheet after the first charge-sheet was withdrawn on identical facts. In the present case, there is no dispute that the first and the second charge-sheet were identical.

2. Shri Sawant for the respondents pointed out that it was necessary under the rules to have the facts ascertained by Fact Finding Committee and this had not been done before the charge-sheet was given to the applicant in 1990. That exercise was done during the pendency of enquiry on the basis of the first charge-sheet. That would clearly show that the first charge-sheet was given ^{- without -} ascertaining the facts. The Fact Finding Committee gave its report on 30.5.1991 and immediately after that report was given, the second charge-sheet was given. Shri Ramamurthy stated that the second charge-sheet was also the result of the non-application of mind and was given in a great hurry because the applicant was due to retire on 1.6.1991. The applicant had in fact retired on that date. Unless there is a power in the disciplinary authority by virtue of the rules or administrative instructions to give another charge-sheet on the same facts after withdrawing the first one, the second charge sheet will be entirely without authority. Having regard to this



position and the fact that the applicant had retired on 1.6.1990, we do not think that it is permissible to the respondents to proceed with the enquiry on the basis of the second charge-sheet. Though we are also addressed on the ground of the delay by the counsel for the applicant, ~~but we are not impressed by the counsel for the respondents~~ that ~~there is no~~ ^{some} delay ^{a)} the incident occurred in 1984 and the first charge-sheet was given in 1990. ^{but} We would not have been inclined to quash the first enquiry ⁱⁿ the circumstances. ~~on the ground of delay alone.~~

3. The application is allowed. The second charge-sheet and the enquiry based upon the second charge-sheet are quashed.

4. We further direct the respondents to pay to the applicant the ~~retiral~~ dues such as DCRG, etc. together with interest at 12% from the date these dues should have been given within two months.


(M.Y.PRIOLKAR)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.