

35

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

OA.1759/97

dt.12-8-98

Between

Smt. PVS Kameswari

: Applicant

and

Dy. Director Medical Services
HQ, ATNEK &G Area
Island Ground, Madras-9

2. Registrar
Sr. Military Hospital
Golconda, Hyderabad-8

3. T. Ravi Prasad
Lt. Colonel and Inquiry Officer
MH, Golconda, Hyderabad-8

4. Director General of
Medical Services/Army/Adjutant General
Army HQ, L-Block, New Delhi 110001 : Respondents

Counsel for the applicants : P. Naveen Rao
Advocate

Counsel for the respondents : N.R. Devaraj
OGSC

Ceram

Hon. Mr. R. RANGARAJAN, MEMBER (ADMN.)

HON. MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

34

Order

Oral order (per Hon. Mr. B.S. Jai Parameshwar, Member (Judl))

Heard Sri P. Naveen Rao for the applicant and Sri N.R. Devaraj for the respondents.

1. The applicant has been working as L.D.C. in the Military Hospital in Golconda under the administrative control of Respondent-2. For certain financial irregularities and deriliction of duties the applicant was served with memorandum of charges under proceedings No.B/74035/DGMS-3(B) dated 6-1-1996. An inquiry was conducted into the said charge and the Inquiry Officer submitted his report.

2. After considering the report of the inquiry officer, the disciplinary authority by proceedings of even number dated 9-5-97, which readas as follows, dropped the proceedings.

"Whereas an inquiry was held against Smt. PVS Kameshwari, LDC, MH Golconda, Hyderabad, based on Memorandum No.B/74035/DGMS-3(B) dated 3-1-96 alongwith its enclosures.

2. And whereas the inquiry officer has mentioned three articles of charges at para 3.1 and 7.0 in his Inquiry Report as against one article of charge which was to be inquired into as spelt out in the chargesheet vide the Memorandum under reference. There being discrepancy in the number of article of charges framed against the above named individual, the said inquiry proceedings are dropped without prejudice to further action as deemed necessary in the circumstances of the case for which de-nova inquiry will be held based on the original charge sheet. "

3/

..2.

3. The applicant has filed this OA to call for records relating to the impugned order dated 9-5-97 and 14-11-1997 vide No.B/74035/DGMS-3(B) of the Respondent-4, and to quash or set aside the decision to hold a de novo inquiry holding it as illegal, arbitrary, without jurisdiction and to grant consequential reliefs.

4. The respondents have filed a counter explaining the circumstances that led the Disciplinary authority to pass ~~the~~ impugned orders.

5. The main contention of the applicant is that the order passed by the Disciplinary authority to conduct de-novo inquiry on the basis of the charges is not correct and that the Disciplinary authority has not considered the report of the Inquiry Officer before taking the decision in the impugned order dated 9-5-97.

6. The learned counsel for the applicant brought to our notice a letter bearing No.114/324/78-Discipline-II dated 5-7-79. The said letter indicates the reasons for cancellation of original charge sheet has to be mentioned ~~if~~ for issuing a fresh charge sheet. That letter reads as follows :

"(9) REASONS FOR CANCELLATION OF ORIGINAL CHARGE-SHEET TO BE MENTIONED IF FOR ISSUING A FRESH CHARGE-SHEET. -

It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is,

Jr

..3.

therefore, important that when the intention is to issue a subsequent fresh chargesheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

7. Further the learned counsel for the applicant contends that the Disciplinary Authority has no power to order de-novo inquiry and further submits that the Disciplinary authority was authorised to accept the report of the Inquiry or ^{to} reject the same or ^{to} disagree with the same and would conclude the disciplinary proceedings, by recording his own reasons.

8. The learned counsel for the respondents strenuously argued that ordering de-novo inquiry without cancellation of the initial charges is permitted by ~~para~~-9 under Rule 15 of CCS (CCA) Rules. The said letter under ~~para~~-9 has already been reproduced. The learned counsel for the respondents submitted that the Inquiry Officer had split the charges into three thereby the chargesheet was deemed to have been issued for three charges which the Disciplinary Authority did not accept. Hence, he cancelled that chargesheet as made out by the Inquiry Officer and also the proceedings thereon. Thus, he fully complied with the instructions given in ~~para~~-9 under Rule 15 of CCS (CCA) Rules. Non-cancellation of initial chargesheet is not contemplated as per ^{order} ~~para~~-9 referred to above. Further cancellation of original chargesheet will be of no use as even if a fresh chargesheet is issued it will be on the same lines on the same charges. Further by issuing a charge sheet ^{it} fresh charge will only delay the process and hence it is not called for under the present circumstances.

Pr

9. ^{order} para-9 under Rule 15 does not indicate that if any chargesheet is made out by the inquiry officer and that is cancelled that will meet the requirement for contemplating a fresh inquiry. But that interpretation may not satisfy the rule position. When the rule says that a fresh charge-sheet can be issued for reasons to be recorded ^{for} cancelling the original one and dropping the original one it would mean that the whole proceedings right from the stage of issuing the chargesheet has to be cancelled. Further while doing so the proceedings which cancels the earlier proceedings should be carefully worded showing ^{the} reasons for such wording and indicating intention for issuing subsequent charge memo.

From the above even ^{if} a fresh charge is made the same should be on the basis of the documents available.

10. The above view of ours is strengthened by the case reported in 1988(6) ATC 143 (R.L. Kapil vs. Union of India and others) where in was held that "Disciplinary authority has no power to initiate de-novo inquiry unless so directed by the Appellate authority under Rule 27(2)(ii) of CCS(CCA) Rules.

11. The learned counsel for the respondents submitted that in this judgement ^{only} para-9 under Rule 15 of the CCS(CCA) Rules was not considered and hence such an observation was made in that case. However, Rule 27(2)(ii) of the CCS(CCA) Rules is a statutory one whereas ^{only} para-9 under Rule 15 is only a departmental instructions. Hence, going by the statutory rule is more appropriate than going by a departmental instructions issued by the P&T Department.

12. In the reported case 1991(15) ATC 603 (K. Ravikumar Vs. Inspector of RMS, RMS 'TV' 2nd Sub Division, Kettayam and 6 others) it has been observed that cancellation of the

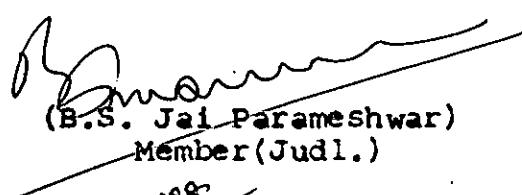
chargesheet without proper reasons is irregular and if such action has been taken the cancellation proceedings should be set aside. In this judgement ^{order} para-9 under Rule 15 has been examined. Though it is stated that the case decided in the reported case of Ravikumar may not be appropriate the very fact that ^{order} para-9 under Rules 15 has been considered leads us to believe that the Disciplinary authority has no right to issue a *denovo* inquiry except cancellation of the whole proceedings, right from the issue of charge sheet.

13. No doubt there will be some delay if the proceedings are cancelled from the beginning but ordering *denovo* inquiry is not going to cut short the delay. The respondents being experienced administrators will ensure that the proceedings are completed in time and take a final decision in this case.

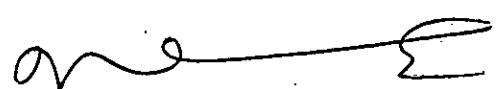
14. Hence, the impugned order of the disciplinary authority dated 9-5-97 is hereby set aside. Likewise the issue of charge memo dated 14-11-1997 is also set aside. The Disciplinary authority may take such a decision as he deems fit.

15. The respondents are at liberty to issue a fresh chargesheet for the same alleged mis-conduct/offence following the extant rules and proceed with the inquiry in accordance with law.

16. The OA is disposed of. No costs.


(B.S. Jai Parameshwar)
Member (Judl.)

12/9/98


(R. Rangarajan)
Member (Admn.)

Dated : August 12, 98
Dictated in Open Court


DR

sk

Copy to:

1. Deputy Director, Medical Services, HQ, ATNEK & G-Area, Island Ground, Madras.
2. Registrar, Senior Military Hospital, Golkonda, Hyderabad.
3. T. Ravi Prasad, Lt. Colonel and Inquiry Officer, MH Golkonda, Hyderabad.
4. Director General of Medical Services/Army/Adjutant General, Army HQ, L-Block, New Delhi.
5. One copy to Mr. P. Naveen Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
7. One copy to HBSJP, M(J), CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

YLKR

278/82 (9)

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 12/8/88

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in
C.A.NO. 1758/82

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPENSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

24 AUG 1998

हैदराबाद न्यायालय
HYDERABAD BENCH