

114

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 375 OF 1997

Dated, the 29th January, '98.

BETWEEN :

S. DAMODARAN SETTY

.... Applicant

A N D

1. Chief Post Master General,
Andhra Pradesh Postal Circle,
Hyderabad.
2. Director of Postal Services,
Office of Post Master General,
Kurnool,
Region Kurnool.
3. Superintendent of Post Offices,
Kurnool Division, Kurnool.

... Respondents

COUNSELS :

For the Applicant

: Mr. KSR Anjaneyulu

For the Respondents

: Mr. V. Bhimanna

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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

3v

O.A.375/97

-:2:-

O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. KSR Anjaneyulu, Learned Counsel for the applicant and Mr. V. Bhimanna, Learned Standing Counsel for the respondents.
2. This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 14.3.97.

3. Facts of the case are as under :

(a) The applicant was appointed as Branch Post Master, Nehrunagar B.O. A/W Konidala Sub Post Office in Kurnool Postal Division/the year 1984.

(b) The officiating Complaints Inspector, Office of the Superintendent of Post Offices, Kurnool visited, Konidala Sub Office during February, 1992, as part of vigilance check and during the said check, he was informed by the S.P.M., Konidala that the greetings and letters, covers received from Nehrunagar BO had postage stamps of Rs.5/- affixed thereon, while normal postage was Re.1/- only. The Complaints Inspector (Postal) visited Nehru Nagar B.O. immediately to get more details. On that day the applicant was not available in the Branch. On 7.2.92 the Complaints Inspector visited Nehru Nagar Branch Office and inspected the same. During the course of inspection, the applicant produced before the Complaints Inspector 5 sheets of stamps of denomination of Rs.5/- worth Rs.1,250/- on the pretext that these stamps were given to him by somebody and he had them himself without reporting to anybody. The Complaints Inspector seized the said 5 sheets of stamps of denomination of Rs.5/- worth Rs.1,250/- from the applicant. Further investigation in surrounding villages revealed and the Complaints Inspector recovered similar Postal Stamps of denomination of Rs.5/- worth Rs.1,36,415/-. These recovered Postal stamps and also the stamps produced by the

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O.A.375/97

-: 3 :-

by the applicant on 7.2.92 were found to be fake stamps.

Besides on 6.9.92, the Assistant Superintendent of Post Offices (R) Kurnool O/O S.P.Os., asked the applicant whether he had any stamps in his possession in the Branch Office. Then the applicant said to have produced cut fake stamps of Rs.5/- denomination worth Rs.420/- It is stated that the applicant was in possession of such fake stamps from November, 91 to April, 1992, and that the applicant had failed to bring it to the notice of his official superiors about his possessing the fake stamps.

(c) On account of the said incident the S.P.Os Kurnool by his Memo. No.F6-2/92 dt. 11.5.92 put off the applicant from duty pending disciplinary proceedings against him.

(d) A charge memo was issued to him by the S.P.Os Kurnool Division, Kurnool vide Memo. of even number dt. 22.6.92 (Annexure-4 to the O.A.) (Page 50).

(e) The applicant submitted his explanation on 29.6.92 . A copy of the explanation is at Annexure-5 page 51 to the O.A.

The (f)/S.P.Os. Kurnool Division, Kurnool after considering the explanation of the applicant concluded / charge memo on 22.6.92 by his proceedings of even number dt. 30.6.92. Copy of the order dated 30.6.92 passed by the S.P.Os Kurnool Division, Kurnool is at pages 53 to 54 of the O.A. The order passed by the Superintendent of Post Offices reads-as-under under :

"Shri S. Damodaram Setty failed miserably in not reporting the matter to the department promptly about the availability of these stamps with the villagers in huge quantities and this lapse has contributed considerably to the loss of the department. However, in view of the circumstances explained by the official and having agreed to make good the loss of Rs.140/-, I. D.V.Rama Murthy, SSPOs, Kurnool Division take a lenient view of the case and let him off in recovery of Rs.140/- (Rupees one hundred and forty) only in the next allowances payable.

I revoke the orders of put off issued in this office memo of even No. dt. 11.5.1992 and order reinstatement of Shri S. Damodaram Setty as E.D. Branch Postmaster, Nehrunagar, B.O. in account with Konidala S.O. with immediate effect.

(g) The applicant has not challenged the order dt. 30.6.92

R

O.A.375/97

-: 4 :-

(h) The order dt. 30.6.92 passed by the Senior Superintendent of Post Offices, Kurnool Division, Kurnool came to the notice of the Director of Postal Services O/o P.M.G., Kurnool Region, Kurnool. Then by his memo. No.ST/I/MR/5-6 dt. 22.10.92 issued a notice to the applicant informing him that he proposed to revise the punishment inflicted on him by the S.P.Os. vide his memo dt. 30.6.92.

(i) The applicant had not sent any reply to the said proposal.

(j) However, the Director of Postal Services by his order dt. 9.12.92 passed the order which reads as follows :

"In exercise of the powers conferred by Rule 29 of CCS (CC&A) Rules, 1965, the undersigned hereby remits the case of Sri S. Damodaram Setty, BPM, Nehru Nagar B.O in a/w Konidala SO to the Superintendent of POs, Kurnool division for initiation of disciplinary proceedings under Rule 8 from the stage of issue of charge sheet."

A copy of the order dt. 9.12.92 is at page 57 of the O.A.

(k) In accordance with the direction of the Director of Postal Services, the S.P.Os issued a fresh charge memo vide his memo. of even number dt. 15.3.93. A copy of the charge memo is at Annexure 10 page 58 of the O.A. The applicant is charged as follows:-

"That the said Shri S.Damodaram Setty, BPM, Nehrunagar B.O. a/w Konidala S.O. while working as BPM during the period from 21.6.84 has received 5 sheets of fake stamps of Rs.5/- denomination worth Rs.1250/- on 16.11.1991 from Shri G.Venkataswamy of Nehrunagar village and retained these stamps with him till they were recovered by the IPO(C) O/O SPOs, Kurnool on 7.2.92. Shri S.Damodaram Setty further allowed greeting mails to be posted from Nehrunagar B.O. affixing Rs.5/- denomination stamps freely. Therefore, it is alleged by Shri S.Damodaram Setty while functioning as BPM, Nehrunagar B.O. has failed to maintain absolute integrity and devotion to duty as required by the provisions of Rule 17 of P&T EDAs (Conduct & Service) Rules, 1964."

(l) The applicant submitted his explanation to the charge memo. A copy of his explanation is at Annexure-II page 65 and 66 of the O.A.

(m) A detailed enquiry was conducted into the charges. The Inquiry Officer submitted his report. A copy of the report



O.A.375/97

-: 5 :-

of the Enquiry Officer is at pages 70 to 77. The Inquiry Officer recorded his findings as under :

"Thus after careful assessment of both oral and documentary evidence adduced on behalf of and against the charge during the enquiry I held that the charge levelled against Shri S. Damodaram Setty BPM Nehrunagar B.O. a/w Konidela S.O., is proved to the extent that the C.O., had kept fake stamps worth Rs.1,250/- with him and allowed letters to be posted with Rs.5/- denomination postage stamps from ~~the~~ Nehrunagar B.O."

(m) A copy of the report of the Inquiry Officer was furnished to the applicant, as per letter marked Annexure-14 dt. 29.9.95.

(n) The applicant submitted his representation dt. 30.10.95 against the findings of the Inquiry Officer.

(p) The Senior Superintendent of Post Offices, Kurnool Region, Kurnool vide his proceedings of even number dt. 25.10.95 considered the representation of the applicant against the findings of the Inquiry Officer, the inquiry records, agreed with the findings of the Inquiry Officer and imposed penalty of removal of the applicant from service with immediate effect. The order passed by the Disciplinary Authority is at Annexure-I page 40 to 44 of the O.A.

(q) Against the said order of removal passed by the Disciplinary Authority the applicant submitted an appeal to the Director of Postal Services. A copy of the the memo. is at Annexure 15 pages 78 to 83 of the O.A. It is dt. 16.11.95.

(r) The Appellate Authority considering the ~~appeal memo.~~ dt. 16.11.95 and enquiry records formed an opinion that the detailed enquiry was conducted by the Superintendent of Post ^{his} Offices in accordance with/earlier memo. dt. 9.12.92 (at page 57 of the O.A.) that while passing the order dt. 9.12.92, he had ~~had~~ ^{not} set aside the punishment imposed by the Disciplinary Authority on the applicant by his order dt. 30.6.92/ that therefore the Disciplinary Authority had no competency to impose the punishment of removal on the applicant by his order dt. 25.10.95 and having considered the report of the Inquiry Officer, he felt

Disputed

O.A. 385/97

-: 6 :-

it proper to revise the punishment imposed by the Superintendent of Post Offices by his earlier order dt. 30.6.92 and thus the Appellate authority set aside the order dt. 25.10.95 passed by the Disciplinary Authority and in exercise of the power under Rule 29 of the CCS (CCA) Rules revised/and modified the punishment imposed by the Superintendent of Post Offices dt. 30th June, 1992. to one of dismissal of the applicant from service.

(s) A copy of the order dt. 17.7.96 passed by the Appellate Authority is at Annexure-12 pages 45 to 50 of the O.A.

4. The applicant has filed this O.A. praying to call for the records relating to the 'Dismissal' of the applicant from the post of Branch Post Master, Nehrunagar, to set aside the order of the S.P.Os. Kurnool issued in Memo No.F6-2/92/3 dt. 25.10.95. (Annexure-I page 40) removing the applicant and the order of the Director of Postal Services dt. 17.7.96, enhancing the penalty to that of 'Dismissal' by holding them as arbitrary, illegal and inviolation of Rules, procedure and also in infringement of Constitutional provisions offending Article 14 and 16 of the Constitution of India and for a consequential direction to the respondents to reinstate the applicant into service giving him the full pay and allowances from the date of removal till reinstatement and to count the said period as on service.



O.A. 375/97

-: 7 :-

5. The respondents have filed a counter elaborating details of the disciplinary proceedings conducted by them subsequent to the order dt. 9.12.92 of the Appellate Authority and also justifying the final impugned order dt. 17.7.96 passed by the appellate authority dismissing the applicant from service.

6. After considering the various contentions of the applicant and after perusing the material on record the following points ^{arise for}_{our} consideration :

(a) Whether the Superintendent of Post Offices, Kurnool Division, Kurnool was justified in issuing the second charge memo dt. 15.3.93?

(b) Whether imposition of penalty of dismissal from service, by the appellate authority vide impugned order dt. 17.7.96 is proper and valid?

(c) To what order.

7. It is not in dispute that the Senior Superintendent of Post Offices issued the first charge memo dt. 22.6.92 a copy of which is at page 50 of the O.A. The said charge memo was concluded by the order dt. 30.6.92. The relevant portion of the order dt. 30.6.92 has been extracted above. The Senior Superintendent of Post Offices, Kurnool Division, Kurnool followed the procedure prescribed for imposing minor penalty in concluding the charge memo dt. 22.6.92.

8. The applicant had not challenged the punishment imposed by the Senior Superintendent of Post Offices by his order dt. 30.6.92.

9. The appellate authority in exercise of his power under Rule 29 of the CCS (CCA) Rules issued notice dt. 22.10.92 to the applicant, expressing his intention to revise the penalty imposed by the S.P.Os. by his order dt. 30.6.92. The said letter is at page 56 of the O.A. The applicant had not submitted any explanation to the show-cause notice dt. 22.10.92.

10. The appellate authority by his order dt. 29.12.92

Dr

O.A. 375/97

-: 8 :-

remanded the matter to the Disciplinary Authority for initiation of the disciplinary proceedings under Rule 8 from the stage of issue of charge sheet.

11. The applicant is governed by the P&T E.D. Agents(C&D) Rules 1964. It has been made clear in the instructions given by the Director General of P&T that in so far as the disciplinary proceedings are concerned by and large the procedure prescribed under the CCS (CCA) Rules 1965 should be followed. The instructions of the Director General P&T in regard to initiation of the disciplinary proceedings are also applicable to any departmental proceedings initiated against the extra departmental staff.

12. Therefore, the CCS CCA Rules are applicable to the proceedings initiated against the E.D. Staff.

13. As already observed the Appellate Authority while passing the order dt. 9.12.92 exercised the power under Rule 29 of the CCS CCA Rules. The sub rules (c) & (d) are very relevant for our purpose. We reproduce below the sub rules (c) and (d) of Rule 29 of the CCS(CCA) Rules:

"(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit."

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O.A.375/97

-:9:-

14. It is not in dispute that only on the basis of the order dt. 9.12.92, the disciplinary authority issued the second charge memo. dt. 15.3.93.

15. The learned counsel for the applicant contended that issuance of second charge sheet dt. 15.3.93 is without jurisdiction, as the appellate authority while passing the order dt. 9.12.92 had not indicated any reasons or given the applicant an opportunity.

16. The order dt. 9.12.92 of the appellate authority has been extracted above.

17. We feel it proper to reproduce herein the

Director General P&T letter No.114/324/78/Disc.II, dt. 5.7.1979:

" 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 reason for cancellation of the original charge-sheet or for dropping the proceedings are ~~xx~~ 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, therefore, important that when the intention is to issue a subsequent fresh charge sheet, 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 the charges the same was based on."

18. In the case of Birata Behara Vs. Union of India and Ors. (reported in ATC 1989 (11) page 99) issue of second charge sheet was considered by the Calcutta Bench of this Tribunal. In para 5 the Calcutta Bench of this Tribunal has observed as under :

"5. The position that emerges now is that after the penalty was imposed on the applicant, a fresh charge-sheet was served on him in respect of the same charges and there is no indication that this was done by an appellate authority or that when the fresh charge-sheet was issued, the original proceedings including the

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penalty order were quashed. In the absence of such evidence to show that the appellate authority had indeed quashed the original proceedings and ordered a fresh enquiry, we cannot but come to the conclusion that this a case of fresh charge-sheet being issued by the same disciplinary authority in respect of charges for which a penalty had already been imposed on him. We, have, therefore, no hesitation in quashing the impugned charge-sheet dated 10.9.1980 (Annexure D, pg.12 to the application)."

19. In the case of Bhupati Kumar Sardar Vs. Union of India and others (reported in ATC 1989(10) page 209 the Calcutta Bench of this Tribunal has observed as follows :

"4. Admittedly, the applicant is a Clerk, Gr.I in the office of the Divisional Electrical Engineer, Eastern Railway, Dhanbad. It stands admitted that on 16.7.1979 a minor penalty charge-sheet was issued against him on some allegations. Annexure 'A' is the copy of that charge-sheet. By that the applicant was directed to make a representation within 10 days from the date of receipt of that charge-sheet. Annexure 'B' is the copy of the explanation submitted by the applicant against that sheet-sheet on 26.7.1979. Now, it is the further admitted case of both sides that without taking any further steps on that charge-sheet a fresh minor penalty charge-sheet was issued against the applicant on 21.2.1981. Annexure 'E' is the copy of that second charge-sheet. It is curious indeed that when it is the specific direction of the Railway Board that a disciplinary proceedings started on a major penalty charge-sheet should be completed within 150 days, the minor penalty charge-sheet issued against the applicant was not disposed of within a period of one and a half years and instead thereof, a second charge-sheet was issued on the self-same allegations. It is quite well-settled that without dropping the earlier charge-sheet and without stating adequate reasons for starting a fresh disciplinary proceeding a fresh charge-sheet cannot be issued. In the reply the respondents have stated that before issuing the second charge-sheet the first charge-sheet was dropped. We must say that the respondents have not been able to produce a scrap of paper in support of this contention. On the other hand, we find it from Annexure 'C' that ifor not getting any information about the fate of the charge-sheet dt. 16.7.79 upto 8.6.80 the applicant wrote a letter to the Senior Divisional Electrical Engineer, Dhanbad requesting him to enlighten him in the matter. No reply was given to the applicant. Instead thereof, without passing any formal order dropping the earlier charge-sheet and stating the reasons therefor, a fresh charge-sheet was issued on 21.2.1981 on the same allegations. We are unable to approve of such action as taken by the concerned authority. Now, being asked by



O.A. 375/97

-: 11:-

the second charge-sheet the applicant again submitted an explanation. It is applicant's version that he was never communicated with the result of the second charge-sheet. It is respondents' version that after going through the explanation submitted by the applicant the Senior Divisional Electrical Engineer, Dhanbad imposed a penalty of censure on this applicant on 9.3.1981. It is nowhere the case of the respondents that the order imposing such penalty was ever served on the applicant. Under Rule 26 of the Railway Servants (Discipline & Appeal) Rules, 1968 every order made under the said rules shall be served in person on the railway servant concerned or communicated to him by registered post. As against the specific case of the applicant the respondents have failed to establish that the order imposing penalty of censure was personally served on the applicant or communicated to him by registered post. Such being the position we are bound to hold that such penalty could not have any legal force on this applicant."

20. The appellate authority ordered for issue of fresh charge memo by his order dt. 9.12.92. When he took a decision to revise the penalty and issued notice to the applicant dt. 29.10.92, he was not in possession of the inquiry records. This is evident from the said notice marked to the Superintendent of Post Offices, Kurnool. While marking the copy of the letter dt. 22.10.92, the appellate authority had directed the S.P.Os. Kurnool to submit the relevant inquiry records. This clearly indicates that when he took decision to revise the penalty imposed by the disciplinary authority by his order dt. 30.6.92 he was not in possession of the inquiry records. He tentatively took the decision to revise the penalty.
21. By his order dt. 9.12.92, he ordered the S.P.Os., Kurnool to proceed afresh from the stage of issue of charge memo. While attacking the action of the appellate authority the learned counsel for the applicant submitted that the order dt. 9.12.92 is bereft of reasons and that fresh enquiry could not have been initiated on the basis of the letter dt. 9.12.92.
22. In the case of R.L. Kapil Vs. Union of India and Others, the Principal Bench of this Tribunal, New Delhi, (reported in ATC 1988 (6) page 143) considered whether

O.A. 375/97

-: 12 :-

de novo enquiry ordered by the appellate authority without recording reasons was proper or not. In para 5 the Tribunal has observed as follows :

"5. The question of fresh enquiry is further vitiated by the fact that none of the three orders of the appellate authority i.e. Delhi Administration, dt. 20.7.92 10.5.76 and 23.5.80 had been communicated to the petitioner. On the other hand, the respondents specifically refused to communicate the orders of the Delhi Administration in this respect, by their letter dated 31.12.1983 (page 109 of the paper book). The Government of India's own instructions No.9 below Rule 15 of the CCS (CCA) Rules, 1965 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 enquiry 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, therefore, important that when the intention is to issue a subsequent fresh 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.

If communicating reasons for de novo enquiry to the charged officer has been found necessary by the Government of India even at the stage before the disciplinary authority passes the final orders of punishment; communication of the reasons for reviving the disciplinary proceedings is all the more necessary in the instant case where not only had the disciplinary authority passed the final orders on the basis of the enquiry report but also the appellate authority had set ~~the order~~ aside the order of punishment."

23. Further, after receipt of the inquiry records, the appellate authority has not given any opportunity to the applicant.

24. Between 22.10.92 and 9.12.92, the appellate authority has not informed the applicant that he was proposing to remand the matter to the Disciplinary Authority to proceed afresh from the stage of issue of charge memo. Even accepting for a

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O.A.375/97

-: 13 :-

moment that the appellate authority had exercised his power in accordance with the first proviso to Rule 29 of the CCS (CCA) Rules, 1965 he should have done only after giving a reasonable opportunity to the applicant. It is not the case of the respondents that the appellate authority before passing the order dt. 20.10.92 had given any opportunity to the applicant. His notice dt. 22.10.92 was only to revise the penalty.

25. As already observed, the disciplinary authority had followed the procedure prescribed for imposing minor penalty while concluding the charge memo dt. 22.6.92. Therefore, accepting for the moment that the appellate authority has the power to revise the penalty then in view of the procedure adopted by the Disciplinary Authority he should have enhanced to any of the punishments enumerated in 11(i) (iii) (a) and (iv) of the CCS (CCA) Rules; that is all.

26. But without recording any reasons, the appellate authority by his order dt. 9.12.92 remanded the matter to the Disciplinary Authority to proceed afresh from the stage of issuing a charge memo. The notice dt. 22.10.92 is altogether different from the decision taken by the appellate authority in his order dt. 9.12.92. The appellate authority should have given an opportunity to the applicant if he proposed to remit the matter back to the Disciplinary Authority to continue disciplinary proceedings from the stage of issue of fresh charge memo. This is so because of the first proviso to Rule 29 of the CCS (CCA) Rules. He has not done so. Further, he has failed to record the reasons as to why he was remitting the matter to the Disciplinary Authority. This is violation of the instructions dt. 5.7.79 extracted above.

27. Thus the order dt. 9.12.92 of the appellate authority is bereft of reasons. The said order impliedly amounted to cancelling the charge memo dt. 22.6.92. Having regard to the principles enunciated in the cases cited above, the appellate



O.A. 375/97

-: 14 :-

authority could not have remanded the matter to the Disciplinary Authority to proceed afresh without recording the reasons and without cancelling the charge memo dt. 22.6.92 and without setting aside the order dt. 30.6.92 passed by the Disciplinary Authority.

28. Only on the basis of the order dt. 9.12.92 of the appellate authority, the disciplinary authority issued the charge memo. dt. 15.3.93. The disciplinary authority concluded its charge memo dt. 15.3.93, by imposing punishment of removal of the applicant from service by his order dt. 25.10.95. Against the imposition of penalty of removal of the applicant from service, the applicant submitted an appeal dt. 16.11.95.

29. While considering the appeal dt. 16.11.95 the appellate authority, interpreted his earlier dt. 9.12.92 as the one only directing the disciplinary authority to conduct disciplinary proceedings from the stage of issue of charge memo and that he had not cancelled the charge memo or set aside the punishment imposed by the disciplinary authority earlier by his order dt. 30.6.92. Whether such a power could have been exercised by the appellate authority is to be considered.

30. As already extracted above, the appellate authority while exercising the power of review under Section 29 of the CCS (CCA) Rules could have remitted the case to the authority ~~in~~ which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case. There is distinction between "further enquiry" and the de novo enquiry". This situation came up for consideration before the Chandigarh Bench of this Tribunal in the case of



O.A.375/97.

-: 15 :-

S.N. Sharma Vs. Union of India and Others (reported in 1994(27) ATC 771. In para 4 the Chandigarh Bench of this has observed as under :

"4. The disciplinary authority if it is of opinion that the enquiry is complete or irregular in any respect, can while acting under sub-rule 1 of Rule 15 only remit the case for further enquiry and cannot order a de novo enquiry. There is a world of difference between de novo enquiry and further enquiry. In the further enquiry, whatever omission was there in the enquiry which can be supplied as per the rules, can be supplied by adducing further evidence. But if it is a de novo enquiry, whatever was recorded at the earlier enquiry would not form part of the enquiry file which is likely to prejudice the government servant facing the charge. If that is allowed, the disciplinary authority if he finds that the evidence at the enquiry is in favour of the charged officer, can wipe them off by ordering a de novo enquiry to be commenced with a clean slate. That is not the legislation intent in framing the rules. The position is very clear from the rule itself. The observations of the Hon'ble Supreme Court quoted above make it further clear. Therefore, we have no hesitation to hold that the impugned order (Annexure A-6) is unsustainable and is liable to be quashed."

31. Another illegality is committed by the appellate authority while passing the impugned order dt. 17.7.96. As already observed the appellate authority through its order dt. 9.12.92 remitted to the disciplinary authority without cancelling the charge memo dt. 22.6.92 or setting aside the punishment dt. 22.6.92. However, while deciding the appeal dt. 16.11.95 the appellate authority imposed the punishment of dismissal from service on the applicant.

32. Whether such a procedure is acceptable or not is to be considered. Admittedly, when the disciplinary authority concluded the charge memo dt. 22.6.92 by its order dt. 30.6.92 had followed the procedure prescribed for imposing the minor penalty. If the appellate authority was under the impression that he had not set aside the punishment order dt. 30.6.92 or had not cancelled the charge memo dt. 22.6.92 then imposing extreme

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penalty of dismissal of the applicant from service by the impugned order on the charge memo dt. 22.6.92 cannot be sustained in the eye of Law for the simple reason that extreme penalty of dismissal of the applicant from service can only be imposed after following the procedure prescribed under the Rule 14 of the CCS (CCA) Rules.

33. The appellate authority has not taken into consideration the enquiry report and their records even though it admitted that it was considering the appeal dt. 16.11.95. Virtually, the impugned order amounts to revising the earlier order dt. 30.6.92 passed by the Disciplinary Authority imposing the penalty of recovery of Rs.140/- on the charge memo dt. 22.6.92.

34. When the appellate authority had directed the disciplinary authority to proceed afresh from the stage of issue of charge memo then normally the earlier charge memo dt. 22.6.92 had to be cancelled and the punishment imposed by order dt. 30.6.92 therein also to be set aside. When that is so, the appellate authority could have considered the propriety or otherwise of the order dt. 25.10.95 passed by the Disciplinary Authority. The appellate authority could not have imposed the punishment of dismissal on the applicant on the basis of the charge memo dt. 22.6.92. Therefore, the appellate authority was not justified in imposing the penalty of dismissal while revising the earlier punishment order dt. 30.6.92 passed by the disciplinary authority.

35. In that view of the matter, we feel that the impugned orders are not sustainable in Law.

36. To sum up, the following are the irregularities noticed by us :

(a) The appellate authority had not given proper opportunity to the applicant before passing the order dt. 9.12.92.

(b) The order dt. 9.12.92 does not contain any reasons

O.A.375/97

and is contrary to the instructions of the Director General, P&T dt. 5.7.79 extracted above.

(c) Imposition of penalty of dismissal by the appellate authority in the impugned order dt. 17.7.96 amounts to imposing major penalty on the charge memo dt. 22.6.92. Such major penalty could not have been imposed on the charge memo dt. 22.6.92, since the disciplinary authority had followed the procedure prescribed for imposing the minor penalty while concluding the said charge memo dt. 22.6.92.

(d) The appellate authority itself has set aside the order dt. 25.10.95 passed by the disciplinary authority.

37. Having regard to the allegations levelled against the applicant, we cannot leave the matter there. We reserve liberty to the respondent authorities to proceed against the applicant for his alleged possession and production of the fake stamps worth Rs.1,250 + 420 on 7.2.92 and 6.4.92 respectively.

38. Hence, we pass the following

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(a) The application is hereby allowed.

(b) The impugned order dt. 17.7.96 passed by the appellate authority is hereby set aside.

(c) All the proceedings commenced on the basis of the second charge memo dt. 15.3.93 are hereby quashed.

(d) The applicant shall be reinstated into service forthwith. His period of absence from duty from the date of removal (25.10.93/from the date of dismissal 16.7.96) shall be regulated as per the rules.

(e) The respondents are at liberty to proceed against the

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O.A.375/97


applicant for his alleged possession and production of fake stamps on 7.2.92 and 6.4.92 respectively.

(f) The respondents shall take a decision on (e) above, within 3 months from the date of receipt of a copy of this order.

(g) No order as to costs.

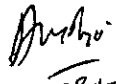

(B.S. JAI PARAMESHWAR)
MEMBER (J)

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(R. RANGARAJAN)
MEMBER (A)

Dated, the 29th January, '99

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MEMBER (A)

THE HON'BLE R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWAR:
MEMBER (J)

DATED: 29/1/99

ORDER/ JUDGMENT

M.A./R.A/C.P.

IN

O.A. NO. 315/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

- 3 FEB 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH