

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.No.933/99

Date of order: 04-4-2000

Between:

M.Tiruvengalam

...Applicant

and

1. Union of India rep. by
The Chief General Manager,
Telecommunications, AP Circle,
Nampally Station Road,
Hyderabad-500 001.
2. The Deputy General Manager-1,
% General Manager, Telecom District,
Visakhapatnam-530050.
3. The Divisional Engineer(SBP),
% General Manager, Telecom District,
Visakhapatnam-530050.

...Respondents

Counsel for the Applicant - Mr. N.R. Srinivasan, Advocate

Counsel for the Respondents - Mr. B. Narasimha Sharma, Sr. CGSC

CORAM:

THE HON'BLE MR. R. RANGARAJAN : MEMBER (ADMN.)
AND

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

...

Order

(per Hon'ble Mr. B. S. Jai Parameshwar M(J))

Mr. N.R. Srinivasan, learned counsel for the applicant
and Mr. B. N. Sharma, learned standing counsel for the Respondents.

2. The point that arises for our consideration in this
application is whether the cancellation of the earlier charge
memo without disclosing the reasons or by merely stating
"Cancelled without any prejudice ^{to} initiate action under Rule 14
of the CCS (CCA) Rules". debars the disciplinary authority
from issuing a fresh charge memo.

3. The above point arises in the following circumstances:-

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The applicant while working as Sub Divisional Engineer at Nalgonda was issued with a letter dt.2.7.97 (A-2) stating that certain alleged irregularities were found in the cable work at Anakapalle during the year 1996 and therefore the lapses on the part of the applicant in not carrying out the acceptance test properly had resulted not only loss of revenue to the Government but also in non detection of the substandard work done by the executive team which ultimately led to unsatisfactory subscriber service. To that letter the applicant submitted his explanation dated 14.7.97. However, the second respondent while considering the explanation offered by the applicant, appears to have directed the Respondent-3 to initiate disciplinary action against the applicant under Rule 16 of the CCS (CCA) Rules 1965. Accordingly, the 3rd respondent issued a charge memo under Rule 16 of the CCS (CCA) Rules by his proceedings Disc/R16/MT 97-98-1, dated 20/21.3.98 (A-4). The applicant submitted his reply to the charge memo vide letter dated 30.3.98 (A-5). As there was no response he submitted a representation dated 20.11.98 (A-7) reiterating the facts. But however by the letter dated 27.1.99 (A-8) the respondent no.3, ^{Cancelled the charge memo dated 20/21.3.1998.} without any prejudice to initiate action under Rule 14 of the CCS (CCA) Rules.

4. Thereafter the R-2 issued a charge memo dated 29.4.99 (A-9) under Rule 14 of the CCS (CCA) Rules.

5. The applicant has filed this application to quash and set aside the second respondent charge memo dt.29.4.99 (A-9) as arbitrary, illegal in view of the failure of the 3rd respondent to follow the procedure prescribed under DG P&T New Delhi letter No.114/324/78-Eisc. dated 5.7.79 when he cancelled the earlier charge sheet under Memo No.Disc.R-16/MT/97-98/1, dated 20/21.3.98.

6. Annexure-1 is the copy of the letter of the DG P&T letter dated 5.7.79. The DG P&T issued clarification regarding reasons for cancellation of original charge memo to be mentioned if for issuing a fresh charge sheet. The letter reads as under:-

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" It is clarified that once the proceedings initiated under Rule 14 of 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, therefore, important that when the intention is to issue a subsequent charge 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. "

(Extracted from Swamy's Compilation of CCS (CCA) Rules, 1965 20th Edition 1994 Reprint Page 73)

7. The applicant has relied upon the order dated 12.8.98 passed in OA.138/96 on the file of this Bench (L.Pushpa Rao V. Divisional Engineer, Telecom, Shimavaram).

8. The respondents have filed a reply. In para-4 of the reply they submit that before cancelling the charge memo vide letter dated 27.1.99 the matter was referred to the department of Telecom, New Delhi as it was found that the action of the applicant was not in isolation and some more officers were also involved in it. The DOT in turn referred the matter for first stage advice of the Central & Vigilance Commission as one Group-A officer was also involved in the case. The Central Vigilance Commission advised the department to initiate major penalty proceedings against the applicant.

9. Thus they submit that the above reasons compelled the Respondent-3 to cancel the charge memo dated 20/21.3.98 by proceedings dated 27.1.99 (A-8). Further they submit it was only a technical error in not disclosing reasons in A-8. If these were the actual reasons that compelled the respondent authorities to cancel the charge memo dated 20/21.3.98, then

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the Respondent no.3 should have clearly indicated the said reasons in the order dated 27.1.89 by which the earlier minor penalty charge memo was cancelled.

10. The learned counsel for the applicant relied on the decision of the Madras Bench of this Tribunal in the case of P.Dasarathan Vs.Sub-Divisional Inspector (Postal) Karikal & Others (reported in 1989 (II) ATC 676). In that case, charge sheet was withdrawn after commencement of enquiry. In para 5 the Madras Bench has observed as under:-

" The main ground urged by the counsel of the applicant was that when the memorandum of charges dated 22.3.1985, which itself was issued more than seven months after putting the applicant off duty in contemplation of the disciplinary proceedings, was withdrawn by the proceedings dt.28.8.95, the issue of the subsequent memorandum of charges dt.20.12.1985 on the same set of facts is illegal. In the said proceedings, there is absolutely no indication of any reason for the withdrawal of the earlier charge-memo. In the reply filed by the respondents as well there is no explanation offered for the withdrawal of the earlier charge memo and the issue of the second memorandum of charges. It is admitted in paragraph 12 of the reply that ' in this case the earlier charge-sheet was withdrawn and a fresh charge sheet has been laid by the first respondent'. At the time of hearing, the counsel of respondents was not in a position to place any material before us to satisfy us that it was necessary to make a modification of the earlier memorandum of charges by amending the same. Moreover, as is admitted in the reply, it was a withdrawal of the earlier charge-sheet and the issue of 'a fresh charge-sheet' on the same set of facts. When a memorandum of charge is issued, on which the employee is called upon to submit his defence, it will not be proper to withdraw the same after the commencement of the enquiry and to issue a fresh memorandum of charges, again calling upon the employees to submit his defence. It is seen from a perusal of the subsequent memorandum of charges that after the issue of the earlier memo investigation was being conducted by the department and materials were being collected, which have also been added on. No doubt it is open to the disciplinary authority to conduct a preliminary enquiry before the issue of a memorandum of charges. Actually, the memorandum of charges can be issued only if on such investigation

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it is found that there is a prima facie case for proceeding against the employee. After the issue of the charge-memo the disciplinary authority is not empowered to conduct an enquiry relating to the imputations made therein, behind the back of the employee and collect material to be used against him in the disciplinary proceedings. "

11. As regards obtaining the first advise from the Central Vigilance Commission, the learned counsel for the applicant relied upon the decision in the case of Anil Goel Vs U.O.I. And Another (reported in 1994 V(28) ATC 646 to contend that it is for the disciplinary authority to take a proper decision. In para 5.2. it is observed as under:-

" This opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceeding which he himself is not willing to initiate."

12. From the DG P&T letter dated 5.7.79 it is abundantly clear that the authority while cancelling the earlier charge memo must disclose the reasons for doing so and further it is stated that in case no reasons are disclosed the disciplinary authority is debarred from issuing the charge memo. The respondent authorities have not produced any instructions issued amending or varying the instructions issued by the DG P&T by his letter dated 5.7.79. That instructions clearly debar the disciplinary authority from issuing the fresh charge memo when the earlier charge memo was cancelled without disclosing the reasons.

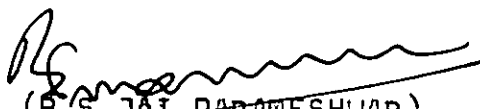
13. The learned counsel for the respondents submitted that since the matter has caused pecuniary loss to the Government, they may be given liberty to proceed against the applicant in accordance with the rules.


[Signature]

14. The charge memo dated 29.4.99 (A-9) issued by R-2 on the same set of circumstances detailed in his earlier charge memo dt.20/21.3.98 which was cancelled by the R-3 without disclosing the reasons for cancellation of the earlier charge memo dt.20/21.3.98. The said charge memo dated 29.4.99 is issued contrary to the DG P&T instructions contained in his letter dated 5.7.79. In that view of the matter the charge memo dated 29.4.99 is not sustainable in law.

15. Hence we issue the following directions:-

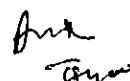
- (a) The application is hereby allowed.
- (b) The charge memo dated 29.4.99 (A-9) is hereby set aside as the same was issued without disclosing the reasons for cancelling the earlier charge memo dated 20/21.3.99 (A-4).
- (c) The respondents are at liberty to proceed against the applicant in accordance with the rules.
- (d) No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)
u. u. s.


(R. R. NGARAJAN)
Member (Admn.)

Date: 4th April, 2000

(
'SD/SA'
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD

1ST AND IIND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO:

1. HDHNS

2. HRRN(ADMN) MEMBER

3. HBSJP(JUDL)MEMBER

4. D.R. (ADMN)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

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

DATE OF ORDER 14/4/00

MA/RA/CP.NO.

IN

DA.NO.

935/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED ✓

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(8 copies)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

28 APR 2000

Despatch only

मुख्य न्यायाधीश/मुख्य न्यायाधीश