

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 139 of 2002

Indore, this the 1st day of October, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

Manoj Kumar Godale, Age 33 years,
S/o. Shambulal Godale, R/o. H.No. 3,
Indira Gandhi Colony, A.B. Road, Mhow,
District - Indore (MP). ... Applicant

(By Advocate - Shri G.P. Kekre)

V e r s u s

1. Union of India, through
Secretary, Ministry of Defence,
North Block, New Delhi.
2. Director of Military Training,
Army Head quarter, New Delhi.
3. Commandant, College of Combat,
Mhow, District - Indore (MP). ... Respondents

(By Advocate - Shri S.P. Singh on behalf of Shri Om Namdeo)

O R D E R

By A.S. Sanghvi, Judicial Member -

The applicant has approached this Tribunal under Section 19 of the AT, Act, 1985 to quash and set aside the punishment of removal from service, ^{imposed on} ~~against~~ him vide order dated 2.12.2000, by the disciplinary authority and confirmed by the appellate authority vide order dated 16.1.2002. The applicant was served with a charge sheet on dated 24.7.98 levelling the imputations that while working as Civil Driver he was caught red handed on dated 16.4.1998 ~~for~~ ⁱⁿ siphoning out 120 litre of diesel from the Government vehicle. On denial of the charges levelled against him an enquiry ⁱⁿ ~~for~~ the charges was held. The enquiry officer after concluding the enquiry has submitted his report holding that the charges were proved. The disciplinary authority thereupon imposed the penalty of removal from service on the applicant vide order dated 6.3.1999. The applicant preferred an appeal against that order and the

appellate authority vide ~~his~~ order dated 18.8.1999 observed that the laid down procedure was not scrupulously adhered to and the enquiry was suffering from procedural infirmities, set aside the punishment order and remitted the matter to the disciplinary authority for de-novo proceedings from the stage of issue of the charge sheet. The disciplinary authority on remand of the matter, back to him, instead of proceeding further with the enquiry from the stage of service of the charges on the applicant, issued a fresh charge sheet vide memo dated 11.11.1999 incorporating four separate articles of charges in the charge sheet. Though the applicant objected to the procedure adopted by the disciplinary authority in issuing him the fresh charge sheet, the disciplinary authority proceeded further with the enquiry on the charges levelled against the applicant and an enquiry officer was appointed and he was directed to conclude the enquiry expeditiously. The applicant has alleged that the act of issuing a fresh charge sheet and proceeding with the enquiry thereafter was clearly illegal, arbitrary and against all the provisions of law. He has further alleged that he was not given any opportunity of cross-examining the witnesses and the enquiry officer had proceeded with the enquiry in the most biased and prejudiced manner. It is also alleged that the enquiry is proceeded in flagrant violation of principles of natural justice. The statements of three witnesses were recorded in the absence of the defence assistant. When the applicant applied for recall of the witnesses the same was denied. The enquiry officer had submitted his report after concluding the enquiry, holding that the charges levelled against the applicant were partially proved. The disciplinary authority thereupon passed the order of penalty on dated 2.12.2000 inflicting the penalty of removal from service on the

applicant. The appeal preferred by the applicant ~~have~~ come to be rejected by the appellate authority vide order dated 16.1.2002. According to the applicant the same has been rejected in a mechanical and arbitrary manner with a non-speaking order. ^{He} ~~has~~ thereupon approached this Tribunal and prayed for quashing and setting aside the punishment imposed on him and also for reinstatement in service with all consequential benefits.

2. The respondents in their written reply have contended inter alia that the applicant was caught red handed for siphoning 120 litres of Diesel from Government Vehicle 4 Ton BA Lorry No. 87D-74117 M on 16th April, 1998 by OC (Lt. Col) and staff of No. 6. Thereafter, he was served with a charge sheet and in the departmental enquiry the charges made ^{~ were found established ~} against him ~~sustained~~. The applicant was awarded major penalty of removal from service. The respondents also contended that the charge sheet was issued to the applicant correctly as per CCS Rules and the enquiry was also conducted as per the existing rules in vogue. However, due to some procedural infirmities in the enquiry report, the appellate authority has set aside the punishment and directed to hold denovo proceedings from the stage of issuance of charge sheet. Thereafter the applicant was reinstated in service vide order dated 31.8.1999 and the denovo proceedings were initiated afresh from the stage of issuance of charge sheet as directed. According to the respondents as per the orders issued by the appellate authority the applicant was again issued a charge sheet and after issuance of the modified charge sheet the enquiry was again conducted against the applicant. They have also denied ^{opportunity} the charges that the applicant was not accorded to defend himself in the subsequent enquiry and that he was denied the opportunity of cross-examining the witnesses. They have

contended that the applicant was given opportunity to bring his defence assistant but since the defence assistant of the applicant failed to ^{be} present ~~and~~ to avoid delay in completing the enquiry, the witnesses were examined in the absence of the defence assistant. They have submitted that the enquiry was conducted in a proper manner and as per the laid down rules and procedure. Since the enquiry officer had found the charges levelled against the applicant as proved on the basis of the evidence ^{recorded} ~~found~~ in the enquiry proceedings, the disciplinary authority has imposed the penalty of removal from service. They have prayed that the OA be dismissed with costs.

3. We have heard the learned counsel for both the parties at length and carefully considered the rival contentions.

4. So far the factual matrix of the case is concerned it is undisputed position that the applicant was served with a charge sheet in the first instance on dated 24.7.1998, levelling the following charge against him:

"That the said CC-768 Manoj Kumar while functioning as Civilian Driver Gde-II was caught red handed by 6 Det Central Command Liaison Unit on 16 Apr 98 at about 1315 h at Indira Colony, Mhow-Indore Road for siphoning out 120 ltrs of diesel from Govt veh Lorry 4 Ton BA No. 87D-74117M."

5. It is also undisputed position that after the charge sheet was served on the applicant and the applicant denied the charges an enquiry under Rule 14 of the CCS (CCA) Rules was conducted and on the conclusion of the enquiry, the enquiry officer submitted his report holding that the charge against the applicant ~~was~~ proved and pursuant to the enquiry officer's report the disciplinary authority after obtaining the representation of the applicant on that report imposed the penalty of removal from service vide order dated 6.3.1999. The applicant *thereupon preferred an*

appeal and admittedly the appellate authority i.e. Lt. Gen. Dy Chief of Army Staff (T&C) vide order dated 18th August, 1999 observed that, 'the laid down procedure has not been scrupulously adhered to in this case and the enquiry suffers from some procedural infirmities. Hence, in the interest of natural justice he was of the view that the enquiry be held again and set aside the punishment orders and remits the case for de-novo proceedings from the stage of issue of charge sheet and the period if any from the date of dismissal till the date the applicant rejoins duty will be treated as extra ordinary leave without pay and this period would not be treated as qualifying service for the purpose of grant of pension and gratuity.'

6. A bare reading of the order of the appellate authority suggests that the appellate authority had found some procedural infirmities in the enquiry conducted by the enquiry officer and as such directed for denovo proceedings from the stage of issue of charge sheet. The appellate authority has not observed that the charge levelled against the applicant was defective or that the same was vague or required modification. In other words it leaves no ~~matter~~ ^{manner} of doubt that he was not satisfied with the enquiry conducted and was of the opinion that there was procedural irregularity in the enquiry conducted by the enquiry officer. He therefore while quashing and setting aside the punishment orders remitted the case for denovo proceedings from the stage of issue of charge sheet, meaning thereby that the enquiry was to be conducted for the same charges from the stage of appointment of the enquiry officer. He has nowhere stated that the charges were defective and faulty which required to be reframed. The disciplinary authority therefore, could not have in any sense considered this

order as directing him to serve another charge sheet on the applicant. It is to be borne in mind that the appellate authority while remitting the matter back to the disciplinary authority has no where stated that he was quashing and setting aside the charge sheet itself or cancelling or withdrawing the charge sheet. When there was no order ~~for~~ ^{of} or dropping cancelling or withdrawing ^c the charge sheet given to the applicant, we are unable to understand ~~that~~ how the disciplinary authority construed the order of the appellate authority ^{as} asking him to issue a fresh charge sheet to the applicant. The disciplinary authority has not only issued a fresh charge sheet on 11th November, 1999, but incorporated fresh charges in that charge sheet which were not even levelled in the first charge sheet. When the first charge sheet was not cancelled or withdrawn or dropped the disciplinary authority ~~had~~ no jurisdiction to issue a fresh charge sheet to the delinquent and direct for a fresh enquiry ⁱⁿ ~~for~~ those fresh charges. None of the provisions in the CCS (CCA) Rules, provide for issuance of such fresh charge sheet when the first charge sheet is not cancelled, withdrawn or dropped. The disciplinary authority has jurisdiction to remit back the matter to the enquiry officer under Rule 15 of the CCS (CCA) Rules for further enquiry and report of the enquiring authority. But he has not been empowered even under this rule to issue a fresh charge sheet to the delinquent with the fresh charges incorporated in the same and directing the enquiry officer to hold a fresh enquiry in those fresh charges. We find that he ~~himself~~ construed the orders of the appellate authority and without understanding the order of the appellate authority ^{exceeded} ~~exceeded~~ his jurisdiction in issuing the fresh charge sheet to the applicant. Since the fresh charge sheet was issued not in compliance with the orders of the

appellate authority and in excess of the powers of the disciplinary authority the same becomes unauthorised and illegal and as such the second enquiry conducted in the fresh charges levelled against the applicant also becomes illegal and unauthorised. The subsequent proceedings of the enquiry therefore cannot be sustained and the punishment imposed on the applicant pursuant to this illegal enquiry deserves to be quashed and set aside.

7. The allegations of non-observance of principles of natural justice during the conduct of the second enquiry are made by the applicant and we find that to a greater extent the same also can be sustained and on that ground also the enquiry is vitiated. The enquiry officer had examined three witnesses in the absence of the defence assistant of the applicant and even if we consider the action of the enquiry officer as, as per the rules, it cannot be denied that his subsequent conduct of refusing to recall the witnesses when the defence assistant was available and the applicants' ~~prayed~~ for recall of the witnesses was ~~rejected~~ stating that it is not in accordance with the norms of the enquiry to be conducted. This would clearly suggest that the enquiry officer had not accorded sufficient opportunity to the delinquent to defend himself and as such also the whole enquiry can be said to be ^{have been} vitiated.

8. However, since we have found that the enquiry against the applicant is proceeded on the basis of an illegal charge sheet given to him and that the whole enquiry proceedings ab initio become void the punishment imposed on the applicant by the disciplinary authority pursuant to the finding of the enquiry officer on the basis of such illegal charge sheet and the enquiry therein deserves to be quashed and set aside.

9. For these reasons, we allow this Original Application and quash and set aside the charge sheet dated 11.11.1999 as well as the subsequent enquiry conducted in the charges levelled in that charge sheet. We also quash and set aside the order of the disciplinary authority dated 2.12.2000 as well as the order of the appellate authority i.e. 16th January, 2002 confirming the punishment imposed on the applicant and direct that the applicant shall be reinstated in service within a month of the receipt of a copy of this order. The applicant shall be entitled to 50% backwages for the period from the date of his removal pursuant to the order dated 2.12.2000 and reinstatement in the service. We however, give liberty to the disciplinary authority to proceed with the enquiry against the applicant as per the directions of the appellate authority dated 18th August, 1999 ~~after~~ ^{if he} ~~it~~ ^{if} deems fit to proceed in the charges against the applicant, and if the enquiry is proceeded further it shall be completed expeditiously but not later than four months from the date of receipt of the copy of this order.

10. With these directions the Original Application stands disposed of with no order as to costs.

A. S. Sanghvi
(A.S. Sanghvi)
Judicial Member

M. P. Singh
(M.P. Singh)
Vice Chairman

"SA" पृष्ठांकन सं ओ/व्या..... जबलपुर, दि.....
प्रतिलिपि अवृत्तिरिक्त:—
(1) सचिव, उच्च व्यायालय कार उच्चायोगिता, जबलपुर
(2) अधेक्षक श्री/महिला/मु. के काउसल
(3) प्रत्यवी श्री/महिला/कु. के काउसल
(4) चारपाल, केप्राइ. जबलपुर व्यायामीठ
सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

10/10/04
Om Namah Om Namah