

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

OA No. 175 of 2000

Jabalpur, this the 26th day of February, 2004

HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN
HON'BLE SHRI G. SHANTHAPPA, MEMBER (J)

Baban Gajbhiye aged 53 years
s/o Shri Lalman Ji,
Senior Auditor in the
Office of P&T Audit Office Bhopal
R/o 28-B, Dr. Ambedkar Colony,
Old Subhash Nagar, Bhopal.

...Applicant

(By Advocate: Shri R. Tiwari, Sr. Advocate with Sh. Deepak Panjwani)

-Versus-

1. Union of India through
Director General,
P&T Audit Office,
New Delhi.

2. Deputy Director,
P&T Audit Office,
Shahjahanbad, Bhopal.

...Respondents

(By Advocate: Shri P. Shankaran)

O R D E R

By G. Shanthappa, Member (J)-

By filing this O.A. the applicant has sought the following reliefs:

- 1) To quash the impugned chargesheet at Annexure A-4A, Annexure A-4B and Annexure A-4C.

2. The brief facts of the case are that the applicant was issued with a chargesheet dated 3.8.1989 as per Annexure A-1. Against the said chargesheet, the applicant submitted his representation denying the charges levelled against him. Enquiry officer was appointed. The enquiry officer after concluding the enquiry submitted his report dated 15.7.1991 and the disciplinary authority has passed the order of punishment on 13.12.1991 whereby the applicant was imposed with

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the punishment of being brought down to seven stages below in the pay scale for 3 years. Against the said order of the disciplinary authority, the applicant preferred an appeal to the Director General of P&T Audit, New Delhi and the punishment was reduced to bringing him down to 3 stages for a period of three years. Being aggrieved by this order, the applicant preferred an OA No. 597/2002 before this Tribunal. This Tribunal has allowed the said O.A. and the said chargesheet was declared as void ab-initio as the respondent no. 4 ceased to be his disciplinary authority on the material date i.e. on 3.8.1989. In the circumstances, the O.A. was allowed. The impugned order of punishment passed by the disciplinary authority and the appellate authority were quashed.

2.1 When the entire charges were quashed, the Deputy Director has issued fresh articles of charges. The said articles of charges are as under:-

"Article - 1 AS PER A-4/A

That said Shri B.L.Gajbhiye, Sr. Auditor presented a false L.T.C. claim of Rs. 336/- for the block year 1988-89 (home town) in respect of two members of his family and therefore failed to maintain absolute integrity as required under Rule 3(1)(i) of C.C.S.(Conduct) Rules, 1964.

Article -I as per A-4/B.

That Shri B.L.Gajbhiye, Sr. Auditor presented L.T.C. bills dated 29.04.1988 for an amount of Rs. 1692/- claiming train fare for journey from Bhopal to Nagpur on dated 11.2.1988 and 12.2.1988 and from Nagpur to Bhopal on 20.2.1988 in respect of himself and family members. The following train ticket numbers were quoted in the L.T.C. bills for return journey from Nagpur to Bhopal by first class accommodation.

10934, 10935, 10936, 10937 and 10938

A reference was made to the Railway Authorities to ascertain the genuineness of these ticket numbers quoted by him in his L.T.C. claim. The railway authorities while confirming the issue of these tickets stated that the ticket numbers 10936 & 10937 were cancelled subsequently after issue. This proves that the certificate furnished by Shri Gajbhiye about the journey having been performed by the class of accommodation/mode of conveyance for which the claim was preferred is false to the extent of 2 fares.



By presenting a false LTC claim for Rs. 336/- Shri B.L.Gajbhiye has failed to maintain absolute integrity and thus acted in contravention of Rule 3(1)(i) of CCS (Conduct) Rules, 1964.

2.2 The applicant has challenged the said chargesheet on the ground that since this Tribunal has already declared the entire charges as void and ab-initio, there is no question of further issuing the chargesheet. Hence the chargesheet is illegal, against law and contrary to rules and regulations and the same is liable to be quashed. In support of his submissions, the applicant has cited one judgement of the Hon'ble Supreme Court rendered in the matter of State of Madhya Pradesh vs. Bani Singh & Anr., reported in AIR 1990 SC 1308.

3. The respondents have filed their reply stating that though this Tribunal has quashed the earlier chargesheet issued by the 4th respondent on the ground that the 4th respondent was not competent to sign the same as he was not holding the charge of the disciplinary authority on the relevant date, he ceased to act so because of his transfer to Lucknow. If the chargesheet is quashed on the basis that the incompetent authority had issued the same, there is no bar in issuing the chargesheet by the competent authority at a later stage. The applicant had committed a gross misconduct by submitting false L.F.C. claim and the penalty imposed for such misconduct was not held valid before the judicial scrutiny on technical ground. For such misconduct, an employee should not be left free to ensure discipline and check on such fraudulent claim not only by the applicant but also by other employees. Therefore, a fresh chargesheet was served on the applicant on 14.2.2000 under Rule 16 directing him to file his written statement within ten days and also to state whether he desired to be heard in person. Hence, there is nothing wrong in issuing the fresh chargesheet. The applicant



has to face the departmental enquiry and if he is exonerated by the authorities only then he can be left free from all the charges. Now the chargesheet has been issued by the competent authority, hence this Tribunal shall not interfere with the impugned chargesheet. Since the enquiry has not been concluded, this Tribunal shall not interfere and direct the authorities to hold the enquiry against the applicant. Accordingly, the O.A. is liable to be dismissed. Learned counsel for the respondents has relied upon the judgement of the Hon'ble Supreme Court rendered in the matter of The State of Assam & Anr. vs. J.N.Roy Biswas, reported in AIR 1975 SC 2277.

4. We have heard the learned counsel for the parties and have perused the pleadings and other documents available on record apart from the judgements relied upon on either side.

5. The charges earlier issued on 3.8.1989 have been quashed by this Tribunal in OA No. 597/2002 on 24.08.1999. Since there were no charges against the applicant, the question of issuing fresh charges does not arise.

5.1 We have perused the fresh charges issued on 14.2.2000 (Signed on 19.2.2000) in which it is alleged that false LTC Claim of Rs. 336/- for the block year 1988-89(home town) has been filed by the applicant in respect of two members of his family/and, therefore, he failed to maintain absolute integrity as required under 3(1)(i) of CCS (Conduct) Rules, 1964 . The allegation is that the misconduct was committed in the year 1989 and fresh chargesheet has been issued in the month of Feb., 2000 which clearly shows that charges have been issued after a lapse of eleven years. Like that another charge has been issued against the applicant for claiming LTC bill dated 29.4.1988 for a sum of Rs. 1692/-. The said charge was also signed on 19.2.2000 with an allegation that the misconduct was committed on 10.2.1988. On the

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face of the charge, it is established beyond doubt that the same was levelled after a lapse of more than eleven years. In view of the Hon'ble Supreme Court's judgement in State of Madhya Pradesh vs. Bani Singh & Anr.(supra) it is held that Administrative Tribunals Act (1985), Ss.14, 19 - Disciplinary proceedings - delay and laches - Department aware of involvement of officer in alleged irregularities - no satisfactory explanation for inordinate delay in issuing the charge memo - Disciplinary proceedings initiated against him after more than 12 years - liable to be quashed. Para 4 of the said judgement, which is relevant, is extracted below:-

"The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counse. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987.. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

The case of the applicant is squarely covered by the above judgement. Hence, we are applying the ratio of the said judgement to decide the present case.

5.2 The respondents have cited the judgement of the Hon'ble Supreme Court in the matter of The State of Assam vs. J.N.Roy Biswas (supra) in which it is held that Govt. can re-open the proceedings only if the rules vest some such revisory power. No rule of double jeopardy bars

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but absence of power under a rule inhibites a second enquiry by the disciplinary authority after the delinquent had once been absolved. Once a disciplinary case has closed and the official reinstated, presumably on full exoneration chagrined, Govt. cannot re-start the exercise in the absence of specific power to review or revise, vested by rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. While rejecting the said appeal, the Hon'ble Supreme Court has made certain observations.

5.2 The facts of the said case and the facts of the present case are entirely different and hence the said judgement is not applicable to the present case.

5.2 The another judgement cited by the respondents is of the Hon'ble Supreme Court in the matter of Union of India & Ors. vs. Ashok Kacker, reported in 1995(29) ATJ 145 which relates to departmental enquiry - chargesheet - application impugning the chargesheet filed before the Tribunal without replying the chargesheet and without waiting for a decision of the disciplinary authority thereon - Held - premature - Administrative Tribunals Act, 1985, Sections 19 & 14 - premature application - Administrative Tribunal Act - judicial review of chargesheet - scope.


5.3 The respondents have relied upon the above judgement and/ stated that the application is premature and the applicant has to face the enquiry first and after concluding the enquiry, if he feels aggrieved by the orders of the authorities only then he should ~~have~~ approach this Tribunal.


6. On perusal of the ~~said~~ judgements and also on the basis of the facts of this case, we have come to the conclusion that when the alleged offence was committed on 10.2.1988 and the chargesheet was issued after a lapse of more than 11 years, the same is highly illegal. Therefore, the impugned charges are not sustainable in the eye of law,

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in view of the judgement of Hon'ble Supreme Court in the matter of the State of Madhya Pradesh vs. Bani Singh & Anr. (Supra). We also find that in the earlier order passed by the Tribunal on 24.8.1999 in OA No. 597/02, no liberty was given to the respondents to conduct a fresh enquiry.

7. For the reasons stated above, we allow the O.A. and quash the impugned chargesheets at Annexure A-4A, Annexure A-4B and Annexure A-4C. No costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

/na/

पृष्ठंकन सं ओ/का.....जबलपुर, दि.....

परिचयिका काटेगिरा:-

- (1) अधिकारी, जल संयंत्र, जबलपुर
- (2) अधिकारी, जल संयंत्र, जबलपुर के काउंसल R. Tiwari
- (3) अधिकारी, जल संयंत्र, जबलपुर के काउंसल P. Shankar
- (4) अधिकारी, जल संयंत्र, जबलपुर के काउंसल

सूचना एवं आदेशों का कार्यवाही हेतु

उप रजिस्ट्रार

Issued

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