

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 539 / 2000

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

Reproducible

I agree
C.K. Kaushik
2-5-03

J. K. Kaushik
(J.K. KAUSHIK)
JUDICIAL MEMBER
02/05/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. No. 539 / 2000

DATE OF DECISION _____

B.M.L. Sharma APPLICANT (S)

Shri S.C. Sharma Advocate for the Applicant (s)

V E R S U S

UOI & Ors. RESPONDENTS

Shri. M. Rao Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / NO
2. To be referred to the Reporter or not ? YES / NO
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / NO

J.K. Kaushik
(J.K. Kaushik)
Judicial Member
02/05/2003

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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 539 of 2000

Jabalpur this the 5th day of May 2003

Hon'ble Shri R.K. Upadhyaya -- Administrative Member.
Hon'ble Shri J.K. Kaushik -- Judicial Member.

B.M.L. Sharma, S/o. Shri C.L. Sharma,
Aged about 57 years, Occupation Divisional
Accounts Officer Grade-II, Bhandar Canal
Division Datia M.P. R/o. Chandra Shekhar's
House, Gwalior Road, Datia (M.P.). ... Applicant

(By Advocate - Shri S.C. Sharma)

V e r s u s

1. The Union of India,
Through the Comptroller &
Auditor General of India,
Bahadurshah Zafar Marg,
New Delhi.
2. The Principal Accountant General
(A&E) I Madhya Pradesh, Gwalior
New Building, Jhansi Road, Gwalior.
3. Sr. Dy. Accountant General (A/cs.)
of Madhya Pradesh (A&E) I, 53,
Arera Hills Hosangabad Road,
Bhopal (M.P.).

(By Advocate - Shri M. Rao)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri B.M.L. Sharma has filed this original
application under Section 19 of the Administrative Tribunals
Act and has sought the following reliefs :

- "(A) That, the order issuing second charge
sheet contained in Annexure A/4 may
kindly be declared as illegal, arbitrary,
malafide and against the rules, hence be
quashed.
- (B) That, any other relief which this Hon'ble
Tribunal deems fit be also awarded. Cost
Rs. 2000/- be ordered to pay to applicant."

2. The controversy involved in this case rests on
a very narrow compass. The applicant was initially appointed

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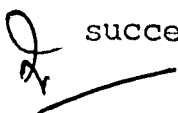
2.

The controversy involved in this case rests on a very narrow compass. The applicant was initially appointed

as Divisional Accountant on 26/05/1979 and was next promoted to the post of Divisional Accounts Officer Grade-II with effect from 14/12/1990 posted at number of places. During the year 1992 to June 1995 the applicant was posted in Land Management and Procurement Division, Shivpuri. He was issued with a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 regarding some irregularities alleged to have been committed in purchase and payments vide order dated 19/11/1998. The charge sheet was issued after about six years from the date of incident. A detailed reply was submitted to the same and a request was made to the respondents to make available the listed documents with the charge sheet. Nothing was heard in the matter and after about 10 months the charge sheet was cancelled vide order dated 04/10/1999 without assigning any reason. On the same date another charge sheet was issued vide order dated 04/10/1999 (Annexure A/4).

3. The further case of the applicant is that a detailed representation was submitted on behalf of the applicant to the respondents clearly explaining that the second charge sheet was not permissible under the rules and deserved cancellation. He also submitted ^{that} the illegal action of the respondents deprived the applicant on the promotion due on the post of Divisional Accounts Officer Grade-I. However no steps were taken to finalise the matter. A reference has been made ^{the} to/ instruction No. 9 below Rule 15 of CCS(CCA) Rule 1965 and the extract of which has been reproduced in the body of the application.

4. The original application has been assailed on number of grounds, but we shall deal with the grounds stressed by the learned counsel for the applicant in the succeeding paras.



5. The respondents have filed a detailed reply and have contested the case. They have taken two preliminary objections. One is that, that during pendency of the disciplinary proceedings the original application is not maintainable in view of the verdict of the Hon'ble Supreme Court in the case of Union of India Versus Upendra Singh (JT 1994(1) SC 658). The second objection is that first charge sheet was not adjudicated upon. Therefore there is no bar in issuing the second charge on the same charges. There is no principle of law that second charge sheet cannot be issued on the same charge. It has been submitted that in view of certain clarifications regarding the appointment of the disciplinary authority the second charge sheet was issued and the same is justified. The charge sheet was cancelled due to technical reasons and the same is in accordance with the provisions of CCS(CCA) Rules, 1965. A detailed enquiry in respect of the charges could not be conducted because the post on which the applicant was working as Gr-B Non-gazetted and the Principal Accountant General has become the disciplinary authority. The grounds taken in the OA has been denied and it has been prayed that the OA be dismissed with costs.

6. A rejoinder has been filed to the OA and the preliminary objections have been rebutted.

7. In this case the case ^{of} Shri Upendra Singh (supra) has no application since it is not that the applicant is challenging the validity of otherwise of the charges. In the present case it is the second charge sheet which is under challenge and it is not a matter of imposing the correctness of the charges. Thus the preliminary objection stands over ruled.

8. As regards the second preliminary objection the matter

relates to the subject matter of the very original application and for the name sake it has been raised as a preliminary objection. The same cannot be said to be preliminary objection ^{sense,} in its true /hence the same is over-ruled, and we proceed to decide this original application in merits.

9. We have heard the learned counsel for the parties and have carefully considered the arguments, pleadings and the records of this case.

10. The learned counsel for the applicant has heavily embarked upon the Instruction No. 9 below Rule 15 of CCS(CCA) Rules, 1965 extracted in para 4.(X) and has submitted that while issuing the order of cancellation of the earlier charge sheet vide order dated 04/10/1999 (Annexure A/3) neither any reason for cancellation have been indicated nor the intention to issue a fresh charge sheet has been mentioned in the body of the order. He has submitted that as per the ibid instruction while cancelling the charge sheet there should be **two mandatory** ~~xxxxxxxx~~ conditions namely the order of cancellation of dropping the proceedings must contain the reasons for cancelling or dropping. Nextly it should be specifically stated that the proceedings are being dropped without prejudice to the further action which may be considered in the circumstances of the case, in case there is an intention to issue subsequent charge sheet in the same matter. But nothing as such has been done. In this view of the matter the impugned fresh charge sheet and all subsequent proceedings are illegal and void-ab-initio.

11. On the contrary the learned counsel of the respondents have submitted that as per the question of intention of issuance of the fresh charge sheet is concerned that should be understood from the very **sequence** of events in as much

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as on the same very date when the order of cancellation of the charge sheet was issued, the fresh charge sheet has been issued to the applicant and there is hardly any violation of the instruction in vogue. As far as the reasons for the cancellation of the earlier charge sheets is concerned the reasons have been narrated, in the reply to the OA and there was certain technical grounds for cancelling the earlier charge sheet and the fresh charge sheet have been issued in view of the clarification regarding the case of Divisional Accounts Officer Grade-II and therefore a fresh charge sheet was issued by the competent authority. He has further submitted that the disciplinary authority has appointed the enquiry officer and presenting officer to conduct the detailed enquiry and the applicant will have all the liberty to defend his case and inspect the documents. The allegations of discrimination and arbitrariness are denied. Another application OA No. 139/2000 has been filed which was withdrawn by the applicant hence the present application is barred by res-judicata and deserves to be dismissed.

12. We have considered the rival contentions submitted on both behalf of the parties. To appreciate the same it is considered expedient to reproduce the very Instruction No. 9 which is the sole basis on which the OA has been preferred. The contents are extracted as under :

"(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, 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 charges the same was based on."

13. As far as factual aspect of the matter is concerned it is true that the Annexure A/3 vide which the earlier charge sheet has been dropped does not contain any reason for cancellation of the charge sheet and it also does not make any annotation so as to indicate the intentions of the respondents to issue the fresh charge sheet. As far as the first part of the matter is concerned, we are of our considered opinion that the said communication does not contain any reason for the cancellation and the requirement of the aforesaid instruction is not specified. As regards the submission of the learned counsel for the respondents that the reasons have been enunciated in the reply to the OA we are unimpressed with the same and are reminded of the decision of the Hon'ble Supreme Court in Mohinder Singh Gill Vs. Chief Election Commissioner (AIR 1978 SC 851) wherein once an order has been passed by a statutory authority the order is to be read as it is and nothing can be added and nothing can be reduced otherwise every illegal order can be justified by supplementary replies or affidavits. Para 8 of the said judgment is relevant and relevant portion is extracted as under :

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

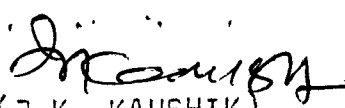
"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

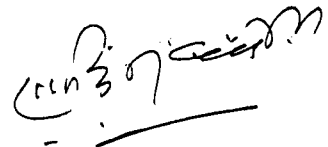
Orders are not like old wine becoming better as they grow older."


14. In view of the aforesaid the first part of the argument of the applicant that the order of cancellation of the charge sheet does not contain any reason has a force and attracts our acceptance. The OA deserves to be allowed on ~~xxx~~ this ground alone.

15. Now adverting to the second part of the submissions that the order does not contain any word which would reflect that the authorities have intention to issue a fresh charge sheet. The contention of the learned counsel for the respondents thus have force since fresh charge sheet has been simultaneously with the order of the cancellation and it safely be concluded that the second part of the instruction has been complied with. However once we have come to the conclusion that first part has not been complied with the second part would hardly affect the decision of this original application of this Hon'ble Tribunal.

16. The upshot of the aforesaid discussion leads us to an inescapable conclusion that the OA merits acceptance. The same is hereby allowed and the impugned memorandum dated 04/10/1999 (Annexure A/4) and all subsequent proceedings held thereof are hereby quashed. The applicant shall be entitled to all consequential benefits as if the impugned disciplinary proceedings ^{were} never in existence. However there shall be no order as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

Issued
on 12.5.03


कृतांकन सं ओ/प्रा.....जबलपुर, दि.....

प्रतिलिपि भेजने के लिए:-

(1) सचिव, उच्च न्यायालय, जबलपुर

(2) आवेदन की/विषय/.....के कार्डसल

(3) प्रत्यक्षी श्री/विषय/.....के कार्डसल

(4) कक्षपाल, उच्च न्यायालय, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

SC. Shadma, Adv. GWH

M. Rao, Adv. GWH


9.5.03