

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

27.07.2012

OA No. 30/2009 with MA 15/2009

Mr. P.N. Jatti, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Learned counsel for the applicant is filing rejoinder during the course of the day with an advance copy to the learned counsel for the respondents.

List it on 31.07.2012.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

ahq

31/07/2012

OA No. 30/2009 with MA No. 15/2009 & MA No. 240/11

Mr. P.N. Jatti, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard.

O.A. and MAs are disposed of by a separate order on the separate sheets for the reasons recorded therein

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 31st day of July, 2012

ORIGINAL APPLICATION No. 30/2009
With
MISC. APPLICATION NOS. 15/2009 & 240/2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Hassan Mohd. Son of Janab Phool Mohd. by caste Muslim aged about 61 years, resident of 21, Khandela House, Sansar Chandra Road, Jaipur. Presently retd. as Printing Supervisor O/o Directorate of Census Operation, Rajasthan, 68, Jhalana Doongri, Jaipur.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Registrar General and Census Commissioner India, 2A, Mansingh Road, New Delhi.
2. Deputy Registrar (Controlling Officer), Directorate of Census Operation, 6-B, Jhalana Doongri, Jaipur.

... Respondents

(By Advocate : Mr. V.S. Gurjar)

ORDER (ORAL)

The applicant has filed the present OA seeking for the following reliefs:-

- "(i) That by a suitable writ order or the direction, the impugned order vide Annexure A/1 order dated 22.11.2007 received on 29.11.2007, Charge Memo dated 29.11.2007 vide Annexure A/2 and order dated 12.09.2007 vide Annexure A/3 be quashed and set aside.
- (ii) The humble applicant prays that the penalty of reduction of pay of Shri Hassan Mohd. by two stages from Rs.8125/- to Rs.7775/- in the time scale of pay be restored with effect from 12.09.2007 with all consequential benefits.
- (iii) That a reasonable cost be allowed to the applicant from the respondents.
- (iv) Any other relief which the Hon'ble Bench deems fit."

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2. The learned counsel for the applicant submitted that the applicant was served a charge memo under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 29.11.2001. That the applicant filed a representation and reply to this Memorandum. The respondents after considering the representation of the applicant dropped the charge Memorandum dated 29.11.2001. He further argued that the respondents issued a fresh Memorandum under Rule 16 of the CCS (CCA) Rules for the same matter again, which was served to the applicant. The charges in this Memo are the same which were alleged in the Memo dated 29.11.2001. The charge Memo under Rule 16 of the CCS (CCA) Rules 1965 was served to the applicant on 15.07.2002. He further mentions that the charge Memo served under Rule 14 of the CCS (CCA) Rules, 1965 was dropped on the same day vide order dated 15.07.2002 (Annexure A/5). He further submitted that Disciplinary Authority inquired into the charges leveled against the applicant in the Memo dated 15.07.2002 and Inquiry Officer was appointed. As per the report of the Inquiry officer, charge Nos. 1, 2, 3 and 5 were proved and charge no. 4 was not proved. The applicant filed a representation against the inquiry report. In his representation, he mentioned that the Inquiry Officer has not been fair to him in finding the charges proved against him without any evidence. The subject matter of the enquiry pertains to the receipt of short size of clip boards in which entire CRR and Printing Section was actively involved under the supervision of Deputy Director who was exclusively assigned this task. Being part of the team only a handful number of clipboards were received by the applicant in comparison to K.L.

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Palawat, Proof Reader and the checking work was assigned to Shri Juneja. Therefore, it is not fair by the Inquiry officer to hold the applicant entirely responsible for the entire short size supply of clip boards. His representation was not properly considered by the Disciplinary Authority, who has awarded a heavy punishment by reducing two stages in pay from Rs.8125/- to Rs.7775/- in the time scale of pay without cumulative effect. It was further directed that the applicant will not earn any increment of pay during the period and that on expiry of this period, the reduction will not have the effect of postponing of his future increments. That being aggrieved by the order of the Disciplinary Authority, the applicant filed an appeal against his order but the Appellate Authority also did not consider the points raised in the appeal and rejected the appeal vide order dated 22.11.2007 (Annexure A/1).

3. Learned counsel for the applicant also argued that once the charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 has been withdrawn and thereafter a fresh charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 could not have been issued to the applicant. To support his averments, he referred to the case of the Central Administrative Tribunal, Principal Bench, in OA No. 2616/2008 in the case of **Kailash Chand vs. Union of India & Others**, 2011(11) CAT 261. In this case, the Hon'ble Tribunal held that if a proper inquiry is held and finding is given in that enquiry whether of guilty or innocence, no power is left with the Government to hold again a second enquiry on the same charges.

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4. On the contrary, learned counsel for the respondents argued that there is no element of any illegality in the action of the respondents. He submitted that at the time of Census 2001, one lac of clip board (size 18"X13" with a thickness of 3mm) were ordered to be supplied by M/s. Kendriya Bhandar, Jaipur. When the supply was started by M/s Kendriya Bhandar, Jaipur, the instructions were given to CRR Section that the Section will check the quality and size of clip board received through Store Section. When the bills of clip boards were received for payment by the Store Section, the applicant being in-charge of CRR Section recommended the payment for the said bills. On the basis of noting made by the applicant, the office of the respondents made the payment of Rs.8,48,658/- for 57536 clip boards to M/s Kendriya Bhandar, Jaipur. When these clip boards were supplied to various District Census Officers (District Collectors), the 12 District Census Officers informed that they have been supplied clip boards in size 18"X12" or even less size in place of 18"X13" with 3MM thickness. The total 35900 under size clip boards were supplied to 12 Census District Officers (District Collectors) whereas the applicant had reported that 6000 clips boards were received under size. Thus this act of the applicant shows and proves negligence towards his official duties beyond any reasonable doubt. Moreover the applicant has also been found guilty for wrong verification of file regarding size and quality of clip boards. Thus, the negligence and carelessness of the applicant resulted into excess payment to M/s Kendriya Bhandar, Jaipur. Accordingly, disciplinary proceedings was initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 29.11.2001. The applicant submitted his

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representation dated 20.02.2002 in response to the said Memorandum dated 29.11.2001. The representation dated 20.02.2002 was carefully considered by the Disciplinary Authority and after careful considering the representation of the applicant, the Disciplinary Authority decided to withdraw the Memorandum issued under Rule 14 of the CCS (CCA) Rules, 1965 and to issue a fresh Memorandum under Rule 16 of the CCS (CCA) Rules, 1965. He further mentioned that charges remained the same as issued vide Memorandum dated 29.11.2001.

5. That the applicant submitted his representation dated 12.09.2002 against the Memorandum dated 15.07.2002 and after due consideration by the Disciplinary Authority, it was decided that an opportunity of personal hearing be provided to the applicant. Accordingly, the applicant appeared before the Disciplinary Authority on 29.10.2002 and was heard in support of his representation aforesaid. In the light of the facts mentioned by the applicant in his representation dated 12.09.2002 and personal hearing, it was decided to conduct an inquiry in the matter. Accordingly, an inquiry was held to look into the charges leveled against the applicant and Shri K.S. Bhatnagar, Deputy Director of Census Operations, Rajasthan was appointed as an Inquiry officer. The Inquiry Officer submitted his report in which he has found the applicant guilty of four charges (Articles I, II, III & V) out of five charges leveled against him. Article IV of the charges was not proved. The copy of the inquiry report was made available to the applicant for his comments.

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6. The applicant submitted his reply. His reply was duly considered by the Disciplinary Authority. The Disciplinary Authority also considered material evidence placed on record and the report submitted by the Inquiry officer. After considering all the facts and circumstances and evidence on record, the Disciplinary Authority imposed the penalty vide order dated 12.09.2007 (Annexure A/3). Against this punishment, the applicant made an appeal dated 20.09.2007 before the Appellate Authority, which was duly considered and rejected by the Appellate Authority vide order dated 22.11.2007. He further argued that there is no element of illegality/arbitrariness or violation in the decision making process of the respondents. The OA is absolutely misleading and, therefore, merits rejection.

7. Heard the learned counsel for the parties and perused the documents on record. The main contention of the learned counsel for the applicant was that once a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was withdrawn then a fresh charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 could not have been issued to the applicant and he referred to the case of the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Kailash Chand vs. Union of India & Others**, 2011(11) CAT 261, in support of his averment. We have carefully gone through the order of the Central Administrative Tribunal, Principal Bench, New Delhi. In this case, the Principal Bench has held that if a proper enquiry is held and finding is given in that enquiry whether of guilty or innocence, no power is left with the Government to hold again a second enquiry on the same charges. The ratio laid down in this case by the Central Administrative

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Tribunal, Principal Bench is not applicable under the facts & circumstances of the present OA. In the present OA, after issuance of the charge Memo under Rule 14 of the CCS (CCA) Rules, 1965, no inquiry was held by the respondents and charge memo was withdrawn before any inquiry was conducted on the basis of that charge memo and a fresh charge memo was issued to the applicant under Rule 16 of the CCS (CCA) Rules, 1965. Learned counsel for the applicant could not show us any rule which prohibits withdrawing of one charge sheet and issuance of another charge sheet on the same ground by the respondents. Therefore, we do not find any illegality or infirmity in the action of the respondents of issuing another charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 after withdrawing earlier charge sheet under Rule 14 of the CCS (CCA) Rules, 1965.

8. The applicant was served with charge memo dated 15.07.2002 under Rule 16 of the CCS (CCA) Rules, 1965. The applicant submitted a representation dated 12.09.2002 against the Memorandum dated 15.07.2002 and after due consideration by the Disciplinary Authority, it was decided to give a personal hearing to the applicant. The applicant appeared before the Disciplinary Authority on 29.10.2002. In the light of the facts mentioned by the applicant in his representation dated 12.09.2002 and personal hearing, it was decided by the respondents to conduct an inquiry in the matter. Accordingly, inquiry was held. The Inquiry officer proved Articles I, II, III and V of the charges as proved and Article IV as not proved. The applicant submitted his reply against the inquiry report and after considering all the facts and circumstances and after giving proper opportunity to the

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applicant, the Disciplinary Authority passed the penalty order dated 12.09.2007 (Annexure A/3). We do not find any infirmity in the procedure followed by the respondents in finalizing the inquiry or in the action of the disciplinary authority of imposing penalty to the applicant. The applicant filed an appeal before the Appellate Authority and the Appellate Authority after due consideration of the appeal rejected it. The order of the Appellate Authority is also according to the provisions of rules on the subject and we do not find any infirmity/illegality in the order of the Appellate Authority.

9. Thus on the basis of the facts & circumstances of the present case, we are of the view that the applicant has not made out any case for our interference in the present OA. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

10. The MA No. 15/2009 for condonation of delay in filing the OA and MA No. 240/2012 for delay in filing the rejoinder also stands disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ

K.S. Rathore
(Justice K.S.Rathore)
Member (J)