

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No.102/2014

**Reserved On:08.03.2016
Pronounced On:16.03.2016**

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Smt. Laxmi Devi aged about 35 years
 D/o Late Shir Shnati Prashad
 (W/o Raveej Kumar Sharma)
 Ex-LDC in Group-C
 At Controller of Accounts,
 Central Board of Direct Taxes,
 9th Floor, Lok Nayak Bhawan,
 Khan Market, New Delhi.Applicant

(Argued by: Shri H.P. Chakravorty with Mr. P.S. Khare, Advocates)

Versus

1. Union of India, through
 The Principal Chief Controller of Accounts,
 Central Board of Direct Taxes,
 9th Floor, Lok Nayak Bhawan,
 Khan Market, New Delhi.
2. The Controller of Accounts,
 Central Board of Direct Taxes,
 9th Floor, Lok Nayak Bhawan,
 Khan Market, New Delhi. .Respondents

(By Advocate : Shri R.K. Jain)

ORDER

Justice M. S. Sullar, Member (J)

The sum and substance of the facts and material, which needs a necessary mention for a limited purpose of deciding the core controversy involved in the instant Original Application (OA) and emanating from the record are that applicant, Smt. Laxmi Devi, was appointed as Lower Division Clerk (LDC) on 14.08.2001 on compassionate ground on account of sudden demise of her father in the office of Controller of Accounts. During the course of

period of her service, she remained absent from duty which necessitated the department to issue her impugned Office Memorandum dated 07.10.2011 and Article of Charge (Annexure-I) proposing to hold an enquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short CCS(CCA) Rules]. She was required to submit her reply within a period of 10 days on receipt of the Memorandum and Article of Charge.

2. Likewise, the department claimed that the Memorandum of Statement of Imputation of misconduct, list of documents and list of witnesses were sent to her through Registered A/D at her available address, but same were received back in the office from the postal authorities with the remark "family members refused to accept the letter as the receiver not residing". Thereafter, a notice was published in the Hindustan Times (English and Hindi Edition) dated 07.02.2012 through which she was directed to report for duty and receive the charge sheet within 15 days of the date of publishing of the said notice. She has neither reported for duty nor sent any information in this regard. Therefore, the competent authority in exercise of power conferred by Rule 19 (ii) of CCS (CCA) Rules, imposed the penalty of dismissal from service on the applicant by means of impugned order dated 26/27-3-2012 (Annexure A-1). The appeal filed by her on 19.04.2012 (Annexure A-5) was dismissed as well, vide impugned order dated 26.06.2012 (Annexure A-4) by the Appellate Authority.

3. Aggrieved thereby, applicant has preferred the instant OA to challenge the impugned orders of dismissal dated 26/27.03.2012

(Annexure A-1) passed by the Disciplinary Authority and order dated 26.06.2012 (Annexure A-4) passed by the Appellate Authority, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

4. Sequelly, the case set up by the applicant, in brief, in so far as relevant was that, all the disciplinary proceedings are arbitrary and illegal inasmuch as neither the impugned Memorandum nor the Article of Charge etc. were ever served upon her. No material was ever furnished by the department with regard to its issuance or publication, to her on joining duty on 17.02.2012. It was alleged that the Disciplinary Authority has passed the impugned dismissal order without appointing Enquiry Officer (for brevity "EO") or without conducting any enquiry. The appeal was also summarily rejected by the Appellate Authority. Although the Disciplinary Authority has dismissed the applicant in exercise of power conferred under Rule 19 (ii) of the CCS (CCA) Rules, but the Appellate Authority in its order has merely mentioned that the Disciplinary Authority has done so in accordance with the procedure prescribed under Rule 14 of the CCS(CCA) Rules, which shows the non-application of mind. Moreover, there is no misconduct on the part of the applicant and she has been illegally victimized.

5. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claimed that she could not attend her duty due to her illness. No impugned Memorandum/charge sheet etc. are served upon her, neither any EO was appointed nor any enquiry was conducted. The impugned

order has been passed without any substance and material. The punishing authority has illegally invoked the provisions of Section 19(ii) of the CCS (CCA) Rules. The entire proceedings were stated to be arbitrary, illegal and without jurisdiction. On the basis of aforesaid grounds, the applicant sought to quash the impugned orders in the manner indicated herein above.

6. The contesting respondents refuted the allegations of the applicant, filed the reply in which it was submitted that when the charge sheet could not be delivered to the Delinquent Officer (for short "DO"), so the question of appointment of EO did not arise. The impugned Memorandum and charge sheet etc. were sent to the applicant but same were received back in the office with the remark "family members refused to accept the letter as the receiver not residing". Then the notice was published in the pointed News Papers. Thus, it was submitted that the applicant was rightly dismissed from service on account of her absence from duty and misconduct. The impugned orders were termed to be legal and valid. It will not be out of place to mention that the contesting respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

7. Controverting the plea taken in the reply and reiterating the grounds of main OA, the applicant filed the rejoinder. That is how we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to our mind, the present OA deserves to be accepted for the reasons mentioned herein below.

9. As is evident from the record, the impugned charge sheet was issued to the applicant, which in substance, is as under:-

"ARTICLES OF CHARGES FRAMED AGAINST MS. LAXM, LDC

That Ms. Laxmi, LDC while being posted and functioning as LDC in Departmental Canteen under the administrative control of O/o Pr. CCA, CBDT, New Delhi failed to maintain absolute integrity and devotion to duty, failed to discharge her public duty and committed misconduct as:-

Article: that she absented herself quite frequently from her office without any prior permission or intimation thus causing lot of inconvenience to her superiors responsible for the smooth running of office. Further, she has warned time and again to mend her ways but she continued to absent herself unauthorisedly from her office. Thus, she has exhibited a behaviour which equates gross indiscipline".

10. Thus, it would be seen that the Article of Charge is as vague as anything. No specific period of absence of the DO was mentioned. It was statutory duty of the Disciplinary Authority to serve the specific charges, i.e., specific period of her absence from duty and other misconduct, to enable her to explain the circumstances. The mere mention that she absented herself quite frequently without prior permission/information is not sufficient in this regard.

11. Not only that, the bare perusal of impugned order (Annexure A-1) would reveal that the Disciplinary Authority has initially initiated the disciplinary proceedings under Rule 14 of CCS(CCA) Rules, against the DO for her absence from duty (period of absence is not mentioned). It has been mentioned in it that the impugned Memorandum/Article of Charge were sent through registered A/D at her available address vide letters dated 07.01.2011 and

31.10.2011. The same were received back in the office from the postal authorities with the remark "**family members refused to accept the letter as the receiver not residing**". That means, the Memorandum/Article of Charge was never delivered to her. No evidence, much less cogent is forthcoming on record even to suggest remotely that the material was in fact published in the Hindustan Times as no enquiry was held by the authorities.

12. Moreover, it is not a matter of dispute that the competent authority has initiated disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, but neither any EO was appointed nor departmental enquiry held in the garb of Rule 19 (ii) of CCS (CCA) Rules by the competent authority. Having regard to the rival contentions, we are of the considered opinion that once the Disciplinary Authority has initiated the enquiry proceeding as contemplated under Rule 14 of the CCS (CCA) Rules, and in case the applicant had not participated in the enquiry proceedings, even in that eventuality it was obligatory on the part of the competent authority to appoint an EO to go into the charges based on cogent evidence on record and then the Disciplinary Authority was required to pass the appropriate order in the matter, as rightly urged on behalf of the applicant. Indeed, there was no occasion and reason for the Disciplinary Authority to take somersault to convert the already initiated enquiry under Rule 14 by invoking the provisions of Rule 19 (ii) of the CCS (CCA) Rules. The scope of Rule 19 (ii) is entirely different and is not meant for or applicable to the general rules of enquiry already initiated under Rule 14 of the CCS (CCA) Rules, as has been done in the present case. Thus the Disciplinary Authority has acted contrary to the rules.

13. Ex facie, the argument of the learned counsel for contesting respondents that in case of ex-parte enquiry, if charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges, is neither tenable nor the observations of the Hon'ble Apex Court in case of **State Bank of India and Others Vs. Narendra Kumar Pandey 2013 (2) SCC 740** are at all applicable to the facts of the present case wherein Memorandum/Article of 12 Charges were served and the delinquent officer (therein) submitted his reply denying all the charges. He sought permission from the Bank, which was allowed. The Disciplinary Authority appointed the inquiring authority to enquire into the charges. The Enquiry Officer conducted the enquiry and delinquent officer participated on 17 dates but subsequently he chose to remain absent on as many as 7 dates of hearing. On the peculiar facts and in the special circumstances of that case, it was observed that no oral evidence is necessary to prove those charges.

14. Possibly no one can dispute with regard to the aforesaid observation of the Hon'ble Apex Court, but same would not come to the rescue of the respondents. In the present case neither the impugned Memorandum/Article of Charge are proved to have been delivered to the DO nor any EO to go into the charges was appointed nor any enquiry was held. Strange enough, the competent authority has passed the impugned composite order of removal from service of the applicant.

15. As indicated hereinabove, that once the competent authority has initiated the departmental enquiry under Rule 14 of the CCS (CCA) Rules, then it was incumbent on the part of the disciplinary

authority to appoint the EO to go into the charges based on the evidence on record notwithstanding the fact that the applicant did not participate in the enquiry proceedings.

16. Not only that, the EO was then required to hold a detailed enquiry and to record the finding based on the evidence with regard to the culpability of the DO. Thereafter, the competent authority was required to act on the report of EO and to pass appropriate orders in the matter, which is totally lacking in the present case. Reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank and Others 2009 (2) SCC 570*** and ***State of U.P. and Others Vs. Saroj Kumar Sinha 2010 (2) AISLJ 59.*** Thus, converting the initially initiated enquiry proceeding under Rule 14 by invoking the provisions of Rule 19 (ii) of the CCS (CCA) Rules and passing the impugned composite order of dismissal by the competent authority (Annexure A-1) without any enquiry was not only arbitrary and illegal but without jurisdiction. Surprisingly, the same very mistake was committed by the Appellate Authority as well. Thus, the impugned charge sheet and orders are vitiated and cannot legally be sustained.

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order of dismissal dated 26/27.03.2012 (Annexure A-1) passed by the Disciplinary Authority, order dated 26.06.2012 (Annexure A-4) passed by the Appellate Authority and the vague Memorandum/Article of Charge (Annexure-I) are hereby set aside in the obtaining circumstances of the case.

Needless to mention, the competent authority would be at liberty to initiate a fresh inquiry after serving specific charges and by appointing Enquiry Officer and then to proceed in the matter, in accordance with law. No costs.

(MS. NITA CHOWDHURY)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh