

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-3199/2014

Order Reserved on 10.07.2015
Order Pronounced on: 01.09.2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Pardeep Kumar Sahu,
S/o Late Shri Laxman Sahu,
Working as Section Officer,
Ministry of Defence, New Delhi.
R/o H. No.5/5, Block-2, New Minto Road Hostel,
Minto Road Complex, New Delhi-02.

-Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary,
Ministry of Earth Sciences, Mahasagar Bhawan,
Block No.12, CGO Complex,
Lodhi Road, New Delhi.
2. The Director (Estt.)
Ministry of Earth Sciences, Mahasagar Bhawan,
Block No.12, CGO Complex,
Lodhi Road, New Delhi.
3. The Under Secretary to the Govt. of India,
Ministry of Personnel Public Grievances & Pensions,
Department of Personnel and Training,
Lok Nayak Bhawan, Khan Market, New Delhi.
4. The Under Secretary (Estt.) to the Govt. of India,
Ministry of Defence, Sena Bhawan,
New Delhi.

-Respondents

(By Advocate: Shri Rajinder Nischal)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant is an officer of Central Secretariat Service (CSS, in short) and before us aggrieved by the disciplinary

proceedings initiated against him through Annexure A-1 dated 30.07.2014 after the same had earlier been initiated and an Inquiry Committee had submitted its report in the matter of MoES/Inq/PK Sahu/2012 with Dr. N. Khare as the Enquiry Officer and Shri Sandesh Saxena as the Presenting Officer.

2. Now, through the impugned order dated 30.07.2014, a new Enquiry Officer, Shri Rishi Kumar, Deputy Secretary, Ministry of Earth Sciences (MoES, in short), has been appointed to enquire into the charges framed against the applicant, while the same person Shri Sandesh Saxena has again been appointed as the Presenting Officer by the MoES. The applicant has assailed these actions of the respondents, because his being a Central Secretariat Service Officer, his Cadre Controlling Authority is the Department of Personnel & Training (DoP&T, in short), and his services were placed at the disposal of MoES vide order dated 23.11.2010 (Annexure A-6).

3. The MoES, without consulting the Cadre Controlling Authority DoP&T, posted the applicant to Centre for Marine Living Resources and Echology (CMLRE, in short), Kochi, where, the applicant has stated that, there is no sanctioned post of Section Officer encadred in the CSS, and he has assailed that a CSS cadre officer could not have been

transferred to a non-cadre post, which has not been encadred through order dated 24.12.2010 (Annexure A-7). The applicant represented against the same, but he was relieved through order dated 25.04.2011, with orders to join at CMLRE Kochi, but he did not go and join at Kochi. He again represented on 28.04.2011 against this. In the meanwhile, the Cadre Controlling Authority of the applicant, i.e., the DOP&T itself, sought clarification from the Respondent-MoES through OM dated 13.03.2012 as follows:-

“4.5 That it is submitted that the cadre controlling authority of the applicant was DOP&T and i.e. why the applicant submitted a detailed representation against his transfer to the DOP&T vide dated 27.01.2012. It is submitted that after considering the representation of the applicant, the DOP&T vide OM dated 13.03.2012 sought clarification from the Ministry of Earth Science with the following remarks:-

“The undersigned is directed to refer to Ministry of Earth Sciences’ I.D. No.MoES/11/26/2008-Estt. Dated 31.01.2012 on the subject mentioned above and to say that **as per records available in CSI Division, no post of Section Officer encadred to CSS grade is available in MoES, Kochi. MoES may therefore clarify further in the matter.**

A early reply in the matter is solicited”.

(Emphasis supplied).

4. Later on, on the representation of the applicant, the Cadre Controlling Authority-the DOP&T, transferred him through order dated 05.09.2012 from the MoES to the Ministry of Defence, and he was relieved from the MoES w.e.f. 17.09.2012, through order dated 14.09.2012. However, in the relieving order, it was stated that the period of absence of

the applicant, when he had not worked anywhere, shall be finalized/settled after following the due procedure as laid down in the Leave Rules. Thereafter, instead of regularizing the period of the applicant's absence under the Rules for the period from 24.04.2011 to 16.09.2012, due to his not having obeyed the transfer orders to Kochi issued by the MoES, a major penalty Charge Sheet was issued to him on 21.09.2011. The applicant has submitted that this Charge Sheet was issued by the Chief Vigilance Officer on behalf of President of India, but it was not approved by the Competent Authority, as the Vigilance Officer could not have been issued a Charge Sheet on behalf of the President.

5. The applicant has also submitted that the Respondent-MoES had appointed an Enquiry Officer on 08.12.2011, who had started the enquiry on 09.08.2012, and the Enquiry Officer had completed his enquiry and submitted his report to the Disciplinary Authority on 13.12.2013, in which it was held that the charges against the applicant were not proved. Thereafter, instead of taking a final decision in the matter, the Respondent-MoES has, through the impugned order dated 30.07.2014, instituted a fresh disciplinary enquiry, appointed a new Enquiry officer, and the same Presenting Officer, in respect of the same charges, as were framed against the applicant in the earlier Charge Sheet dated 21.09.2011. The applicant has submitted that no reason or justification has

been given for the Respondent-MoES not having passed any order under Rule 15 of the CCS (CCA) Rules, 1965, on the first enquiry report, and that there is no provision for the respondents to appoint a new Enquiry Officer and conduct the disciplinary enquiry afresh, on the same charge, which has already been enquired into.

6. The applicant has also submitted that when once from the correspondence with the Cadre Controlling Authority-DOP&T it has been proved that the transfer of the applicant to Kochi was illegal, not obeying that illegal transfer order cannot be a "**misconduct**" in the eyes of law, and, therefore, the charge levelled against him itself is no longer sustainable for the respondents to continue the proceedings, and re-institute the disciplinary enquiry afresh, even though he stands transferred to the Ministry of Defence in the meanwhile, and is not serving under the MoES. The applicant has submitted that by the same order by which he was transferred to CMLRE Kochi, one Shri V.K. Bhambani had also been transferred to CMLRE Kochi, and he had approached this Tribunal by filing OA No.1958/2013, which was decided on 04.06.2013 at the admission stage itself. In compliance of that judgment, the Respondent-MoES had passed an order dated 15.07.2013, cancelling that applicant's order of transfer, and the similar Article of Charges issued against that applicant on 25.08.2011 had also been cancelled

/withdrawn, and the period of that applicant's absence from duty from 11.01.2011 to 17.09.2012 was treated as duty for all purposes.

7. The present applicant has contended that when once the period of absence in respect of a similarly situated person has been treated as duty for all purposes, and the charges against him themselves stand withdrawn, there is no reason or justification for continuing the departmental enquiry against the present applicant, and, moreover, after the submission of the report of the earlier Enquiry Officer, instituting a second departmental enquiry against him on the same charges, is not permissible in the eyes of law. He had re-worded the same submissions while taking his grounds Para-5 (a to i) of the OA, and relied upon the ratio of the cases in **Transport Commissioner Madras vs. Thiru Radhi Krishana Moorty, JT 1994 (7) SC 744; Surath Chandra Chakravarthy vs. State of West Bengal, AIR 1971 SC 752;** **Northern Railway Co-operative Credit Society Ltd. vs. Industrial Tribunal Jaipur, AIR 1968 SC 1182; State of Uttar Pradesh vs. Mohd. Sherif, 1982 (2) SLR SC 265;** **Saval Singh vs. State of Rajasthan, AIR 1986 SC 995; Raj Kumar Singh vs. Union of India, 1992 (1) SLR (CAT) 280.**

In the result, the applicant had prayed for the following reliefs:-

- “i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 30.07.2014 (A/1) by which the respondents appointed new IO & PO to conduct inquiry again.
- ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned charge sheet dated 21.09.2011 (Annexure/2) declaring to the effect that the same is illegal, arbitrary and against the Rules.
- iii) That in case of not granting the above prayed relief (i) for any reasons, the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to drop the proceedings in respect of the charge sheet dated 21.09.2011 (A/2).
- iv) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to treat the intervening period between 26.04.2011 to 16.09.2012 as on duty for all purposes as done in the case of similarly situated person Shri V.K. Bhambani Personal Assistant with all consequential benefits.
- v) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicants”.

8. The applicant has also produced copies of the relevant orders and correspondence, a copy of the first enquiry report against him, and a copy of the order dated 04.06.2013 in **V.K. Bhambani’s** O.A. case (supra).

9. Respondents filed their counter reply dated 09.12.2014. They submitted that after the applicant had joined the Respondent-MoES, it was noted that he was a work-shirker, and, therefore, he was directed to submit his work accomplishments of last three months, with supportive documents, through a Show Cause Notice dated 03.09.2010

(Annexure R-1). The applicant did not submit any such report, which showed his complete dereliction to duty. On account of his dereliction to duty, as a corrective measure, the applicant was directed to report to Ministry of Home Affairs, under whose control the CSS staff of MoES earlier existed. However, the Ministry of Home Affairs declined to take him on its strength, and placed back the services of the applicant with the respondent-MoES.

10. In the meanwhile, since a request had been received from Director, CMLRE, Kochi, for posting of a Section Officer and a Stenographer to strengthen their administrative set up, as an officer of CSS Cadre working there earlier as Deputy Secretary was about to superannuate, and an officer of CSSS Cadre had been transferred out by the DOP&T upon his promotion as Principal Private Secretary, and since CMLRE, Kochi, is an attached office of the MoES, and some of the officers/officials of CMLRE, Kochi, are borne in the cadres of CSS, CSSS and CSCS, therefore, as a temporary arrangement, the applicant was transferred to Kochi in public interest. According to the respondents, the applicant did not demand withdrawal of his transfer order, but only requested for a re-consideration not to transfer him to CMLRE, Kochi, on the grounds of his family reasons. After his having been relieved on 25.04.2011, a report was received by the Respondent-MoES that the applicant had not joined at CMLRE, Kochi, and even his salary could not be disbursed, as he had not

joined his new place of posting at Kochi, and had been relieved from the MoES where he was earlier working at Delhi.

11. It was submitted that when the matter was placed before the Disciplinary Authority-Hon'ble Minister for Earth Sciences, he perused the matter, and directed to initiate disciplinary enquiry proceedings against the applicant under Rule-14 of the CCS (CCA) Rules, 1965, leading to the issuance of the Charge Sheet dated 21.09.2011. It was further submitted that on a query of the DOP&T, (as already reproduced above), the position was clarified to the DOP&T that the post of Section Officer would be operative from CMLRE, Kochi, on personal basis, for the time being, in public interest. Later, when the applicant was transferred by DOP&T to Ministry of Defence, he was relieved, mentioning that the period of his absence will be finalized as per the due procedure laid down under the Leave Rules. It was submitted that the Enquiry Officer's report was submitted to the Disciplinary Authority, i.e., Hon'ble Minister of State for perusal and direction. After perusing the enquiry report in entirety, the Hon'ble Minister had directed for fresh enquiry to be conducted, and as per his orders, the fresh Enquiry Officer and Presenting Officer had been appointed for conducting a fresh enquiry.

12. It was further submitted that the transfer of the applicant to CMLRE, Kochi, was temporary in nature, and not

a permanent transfer, and the arrangement was made wholly in public interest. Still, the applicant did not report for duty there, and, therefore, in terms of the DoP&T's guidelines, a Charge Sheet had to be issued to him in terms of Rule 3(ii) and (iii) of CCS (Conduct) Rules, 1964. It was submitted that the disciplinary enquiry, if necessary, can be conducted afresh, because it has been so directed by the Disciplinary Authority, and that the conclusion of the disciplinary enquiry is required for finalizing/settlement of the applicant's absence period. It was, therefore, prayed that the OA is devoid of any merit, and deserves to be dismissed.

13. The applicant filed a rejoinder on 17.02.2015, more or less reiterating his contentions, and re-wording the submissions already made in great detail in his OA, which have been taken note of by us in detail above. It was submitted that the Charge Sheet had been issued in a *mala fide* manner. It was submitted that since the enquiry report submitted by the Enquiry Officer is in fulfillment of the mandatory requirement as per CCS (CCA) Rules, 1965, therefore, the directions to conduct a fresh disciplinary enquiry is violation of the principles of natural justice. It was, therefore, prayed that the OA be allowed, and the disciplinary enquiry now initiated should be set aside.

14. Heard. During arguments, the learned counsel for the respondents also fairly submitted that as per the settled law

in this regard, further enquiry can be ordered, but no disciplinary enquiry can be ordered afresh under Rule-15 of CCS (CCA) Rules, 1965. Therefore, we need not discuss the case law on this subject.

15. The fact remains that the applicant had remained unauthorizedly absent for more than one and half years, and after his having been relieved from duty, he never joined at Kochi, and avoided reporting for work. Therefore, there appears some merit in the contention of the respondents that he is a work-shirker, who did not want to go to Kochi, even though respondents have submitted that his posting there was not permanent, but was only temporary, and was in public interest. Therefore, the applicant cannot be permitted to escape from his liability for such misconduct.

16. OA No.1958/2013 of Shri V.K. Bhambani, who had also been transferred along with the applicant, had been allowed in part on 04.06.2013, at admission stage itself, without giving an opportunity to the respondents to even file their reply. That is not the case in the instant case, in which pleadings have been completed, and both the counter reply and the rejoinder are before us for taking a considered decision. Therefore, it appears to us that the benefit of parity with that order issued at the admission stage itself cannot be provided to the present applicant.

17. The applicant has in the relief portion of the OA made out prayers for multiple reliefs, which are not related to each other. While reliefs at Para-8 (ii) & (iii) are related to each other, but they are not related to reliefs at Para-8 (i) & (iv). Therefore, on a careful consideration of the facts of the case, we decline to grant reliefs as prayed for at Para-8(ii) & (iii) of the present OA.

18. However, the relief as prayed for in Para-8 (i) is allowed, and it is held that on the same charge, while further enquiry can be ordered, a fresh disciplinary enquiry cannot be ordered under the process to be followed after submission of an enquiry report, which has been very clearly laid down in the CCS (CCA) Rules, 1965. If the Disciplinary Authority is not satisfied with the enquiry report, it can remand the matter back to the Enquiry Officer for further enquiry, which further enquiry is not a fresh enquiry.

19. On the other hand, the Rules provide that the Disciplinary Authority can take it upon himself to disagree with the findings of the Enquiry Officer, and instead of remitting the matter back to his delegatee, the Enquiry Officer, for further enquiry, the Disciplinary Authority can issue a Note of Disagreement, and afford an opportunity to the delinquent Government official to reply to that Note of Dissent, and, after having perused both the report of the Enquiry Officer, as well as the reply to the Note of

Disagreement, it can arrive at its conclusions, which process has not been followed in the instant case.

20. Therefore, after granting relief to the applicant as prayed for by him at para-8(i), the matter is remitted back to his the then Disciplinary Authority, to take further action on the basis of the already completed disciplinary proceedings, on the basis of the Enquiry Report submitted by the previous Enquiry Officer, strictly as per the provisions of CCS (CCA) Rules, 1965, and to complete the process from that stage onwards, after giving full opportunity of hearing to the applicant at all stages, wherever and in whatever manner, such opportunity has been provided for under the Rules to a delinquent Government official.

21. To that extent, the OA is allowed. But the other multiple reliefs as claimed by the applicant are rejected. There shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.