

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3275/2014

This the 3rd November, 2015

Hon'ble Shri Justice B.P.Katakey, Member (J)
Hon'ble Shri K.N.Shrivastava, Member (A)

Smt.Mamta Rani,
W/o Sh. Shyam Sunder Mittal
Aged 44 year
Lower Division Cler
Arbitration Branch,
Co-operative Societies,
Parliament Street,
New Delhi-110001.

.. Applicant

(Applicant in person)

Versus

Govt. of NCT of Delhi
Through

1. The Lt.Governor,
Raj Niwas, Delhi
2. The Chief Secretary
Delhi Secretariat, 'A' Wing
7th Level, I.P.Estate,
New Delhi-110002.
3. The Commissioner,
Food & Supplies, 'K' Block
Vikas Sadan, New Delh.
4. The Director, Family Welfare,
Vikas Bhawan II, Near Metcalf House,
Civil Lines
Delhi-110054

5. The Secretary,
Health & Family Welfare
9th Level, 'A' Wing,
Delhi Secretariat,
I.P. Estate, New Delhi-110002.

6. The Registrar,
Co-operative Societies,
Parliament Street
New Delhi-110001.

..... Respondents

(By Advocate: Shri Prashant Sivarajan for Shri Ankur Chhibber)

ORDER (ORAL)

By Shri Justice B.P.Katakey, Member (J)

This OA has been filed by the applicant challenging the order dated 20.06.2012 passed by the disciplinary authority i.e. Director, Health and Family Welfare, Govt. of NCT of Delhi, imposing the penalty of withholding 3 annual increments; order dated 24.06.2013 passed by the Secretary, Health and Family Welfare, Govt. of NCT of Delhi, and also the subsequent order dated 11.06.2014 passed by the Registrar of Co-operative Society, who became the disciplinary authority subsequent to the applicant's transfer to the co-operative department, imposing the penalty of reduction of pay of the applicant from Rs.8460 in the pay scale of Rs.5200-20200 with Grade Pay Rs. 1900 to Rs.7320/- in the same pay scale and grade pay for a period

of 4 years with effect from 30.06.2014 with cumulative effect.

2. It is the contention of the applicant that since the Tribunal vide its order dated 04.10.2006 has allowed the earlier OA-1105/2005, filed by the applicant, challenging the order passed, on the ground that the charge memo dated 10.04.2000 was not issued by the disciplinary authority but by the departmental appellate authority and hence the same is contrary to law and directed the disciplinary authority to take a fresh decision in the matter, no penalty could have been imposed by the disciplinary authority, as has been done vide order dated 20.06.2012 and 11.06.2014 on the basis of the said charge memo dated 10.04.2000 and without issuing a fresh charge memo by the disciplinary authority. It has also been submitted that the Hon'ble High Court vide order dated 30.09.2011 passed in Writ Petition (C) No.418/2007, which was filed by the present respondents challenging the aforesaid order of this Tribunal dated 04.10.2006 passed in OA- OA-1105/2005 though allowed the disciplinary authority to pass reasoned order within a period of 6 months from the date of receipt of a copy of the said order, upon dismissal of the Writ Petition filed, disciplinary authority having passed the impugned

orders dated 20.06.2012 and 11.06.2014, much beyond the time granted by the Hon'ble High Court, the said orders cannot sustain in law. Applicant in person, therefore, submits that the impugned orders dated 20.06.2012, 24.06.2013 and 11.06.2014 need to be set aside and the respondents may be directed to extend all the service benefits which has been withheld because of order of penalty passed by the disciplinary authority.

3. Learned counsel appearing for the respondents on the other hand has submitted that since the Hon'ble High Court in the aforesaid Writ Petition refused to interfere with the order dated 04.10.2006 passed in OA-1105/2005, disciplinary authority has considered the matter afresh and passed order of penalty dated 20.06.2012 which, however, was interfered with by the departmental appellate authority vide its order dated 24.06.2013 and thereafter, the disciplinary authority again having regard to the entire materials available on record, passed the order imposing penalty on 11.06.2014. It has also been submitted that there being no direction issued by the Tribunal in the said order dated 04.10.2006 directing initiation of a fresh proceedings by issuing fresh charge memo, no illegality has

been committed by the disciplinary authority in imposing penalty vide order dated 11.06.2014.

4. Admittedly, charge memo dated 10.04.2000 was issued by the Chief Secretary, who was at the relevant point of time, the departmental appellate authority on the following article of charges:-

"Article-I

That the said Ms.Mamta Rani while functioning, as Sub-Inspector (Grade-IV of DASS) during the period August'99 in circle No.22, Bawana committed gross misconduct in as much as she, while accepting the application forms for permanent Ration Cards for verification, altogether ignored the contents of the application forms. Not only this she also recommended issue of PRCs against these application forms without actually verifying the correctness of the facts stated therein and subsequently issued the PRCs against these application forms under her own signature and delivered the same to a person other than applicant/authorized representative of the applicant.

Article-II

That the said Ms.Mamta Rani while functioning in the aforesaid capacity during the relevant period accepted the application forms for the issue of PRCs from a person other than applicant/authorized representative which were subsequently diarised in FDR -A register at diary No.991 to 996 dt.2.8.99.

The above said acts on the part of Ms.Mamta Rani, Sub-Inspector (Grade-IV of DASS), Food & Supplies Deptt. reflect gross negligence and lack of devotion to duty and thus she acted in a manner unbecoming of a

Govt. servant, thereby violating and provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

5. Another disciplinary proceeding was initiated by the same authority against Shri G.C.Sharma Food and Supply Officer, of whom the Chief Secretary happened to be disciplinary authority, by issuing a charge memo. Since the allegations leveled against the applicant and the said Shri G.C.Sharma are based on identical facts, the Chief Secretary thought it fit to issue charge memo to the applicant also despite he being not the disciplinary authority but being the department appellate authority. The order of punishment passed by the Chief Secretary having been upheld by the Lt. Governor, the same was put to challenge by the applicant before this Tribunal in OA-1105/2005, which came to be decided on 04.10.2006. This Tribunal by the aforesaid order, recording the finding that the Chief Secretary being not the disciplinary authority but being the department appellate authority should not have issued charge memo against the applicant as the action amounts to losing the appellate forum as well as review forum before the departmental appellate authority and reviewing authority on the part of the applicant, had directed the disciplinary

authority to take a fresh decision. Disciplinary authority despite such specific finding recorded by this Tribunal vide order dated 04.10.2006, proceeded to pass the order of penalty withholding increments vide order dated 20.06.2012. The departmental appellate authority thereafter vide order dated 24.06.2013 having interfered with the said order of penalty has remanded the matter to the disciplinary authority on the ground that no specified time and details of penalty has been mentioned in the order of penalty dated 20.06.2012. The disciplinary authority then passed the order of penalty dated 11.06.2014 as aforesaid.

6. A specific finding having been recorded by this Tribunal that the charge memo issued by the Chief Secretary on 10.04.2000, against the applicant labeling the charges, was contrary to law, the disciplinary authority could not have imposed the penalty again, as has been done in the instant case, without issuing a fresh charge memo on the basis of the aforesaid charge memo.

7. Having regard to the aforesaid position, we set aside the impugned order dated 11.06.2014 passed by the Registrar of Co-operative Society. Having done so, the normal course would be to allow the disciplinary authority to

proceed afresh after issuance of a fresh charge memo, which, however, we are not inclined to do for the reasons given below.

8. The charge memo was issued to applicant way back on 10.04.2000, based on which order of penalty was passed earlier, which was interfered with by this Tribunal, as discussed above and allowed the disciplinary authority to take fresh decisions, despite which the impugned orders were passed on 20.06.2012, 24.06.2013 and 11.06.2014, without issuing fresh charge memo. In the meantime, more than 15 years have elapsed from the date when the charge memo was first issued by an authority who was not competent to do so. The applicant, who was a Grade-IV employee and hence had nothing to do in the matter of issuance of ration cards, which are also subsequently cancelled, she has already suffered a lot for last 15 years. That apart the Hon'ble High Court vide order dated 30.09.2011 passed in WP (C) No.418/2007, wherein order dated 04.10.2006 passed in the OA-1005/2005 was put to challenge by the present respondents, while dismissing the writ petition though directed the petitioners therein (present respondents) to take fresh decision within a period of 6 months from the date of receipt of a copy of the order, the

same has not been done within the aforesaid time and instead passed the orders on 20.06.2012 and 11.06.2014, without issuing fresh charge memo, despite the opportunity given to the disciplinary authority.

9. In view of the above, we allow this OA by setting aside the order dated 11.06.2014 passed by the respondent imposing the penalty, by which order earlier passed on 20.06.2012 has been superseded. We also direct the respondents to extend all consequential benefit to the applicant, which was withheld by virtue of the orders put to challenge in the present OA, within a period of three months from the date of receipt of a copy of the order. No cost.

(K.N.Shrivastava)
Member(A)

(Justice B.P.Katakey)
Member(J)

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