

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

1. O.A.NO.060/0001/2018 Date of order:- 03-8-2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.Ajanta Dayaalan, Member (A).

Balbir Singh Ghataura son of Sh. Harchand Singh, presently working on the post of Enforcement Officer/Accounts Officer(EO/AO) in the office of Employees Provident Fund Organization, Regional Office Bhavishya Nidhi Bhavan, Sham Nagar, Ludhiana-141 001, Punjab.

.....Applicant.

(By Advocate :- Mr. K.B.Sharma)

Versus

1. Union of India through Secretary, Ministry of Labour & Employment (EPFO), Government of India, Sharam Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner(CPFC), Employees Provident Fund Organization, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110 066 through its Commissioner.
3. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office Bhavishya Nidhi Bhavan, Sham Nagar, Ludhiana-141 001, Punjab.
4. Sh. A.K.Singh, Regional Provident Fund Commissioner-I(EPFO), Regional Office, Bhavishya Nidhi Bhavan, Sham Nagar, Ludhiana-141 001, Punjab.

...Respondents

(By Advocate : Shri Aseem Rai, for respondents no.2 to 4).

II. O.A.NO.060/00002/2018

Balbir Singh Ghataura son of Sh. Harchand Singh, presently working on the post of Enforcement Officer/Accounts Officer(EO/AO) in the office of Employees Provident Fund Organization, Regional Office Bhavishya Nidhi Bhavan, Sham Nagar, Ludhiana-141 001, Punjab.

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(By Advocate : Shri Aseem Rai, for respondents no.2 to 4).

ORDER

Sanjeev Kaushik, Member (J):

The above noted two OAs are being disposed of by a common order as both the petitions have been filed by the same applicant impugning two charge-sheets on identical grounds. For convenience, facts are being taken from O.A.N.060/00001/2018.

2. Applicant has assailed the charge-sheet dated 13.11.2017 (Annexure A-1) and letter dated 13.12.2017 (Annexure A-7) and has prayed that the same be quashed and set aside.

3. The facts which led to filing of the O.A are that the applicant initially entered into service with the respondent

department on the post of Lower Division Clerk on 28.5.1991. During his service career, he was promoted as Upper Division Clerk on 27.7.1982 and thereafter as Senior Superintendent on 13.2.2002. Vide order dated 10.7.2017, the applicant was promoted as Enforcement Officer/Accounts Officer(EO/AO) on regular basis. On 10.8.2017, the applicant was transferred from AO Ludhiana to EO Bathinda. Aggrieved against his order of transfer, the applicant approached this Tribunal by filing O.A.No.060/00942/2017 which was disposed of vide order dated 16.8.2017, with a direction to the Additional Central P.F. Commissioner to consider sympathetically and decide the representation of the applicant by passing a speaking order in accordance with law. The Tribunal further directed to maintain status quo. In furtherance to the order of this Court, Additional Central P.F.Commissioner vide order dated 12.9.2017 accepted the representation of the applicant and posted him as Enforcement Officer at Regional Office, Ludhiana. Applicant went on medical leave since 14.9.2017. Respondent no.4 vide order dated 14.9.2017 itself ordered medical examination of the applicant. Notice was also issued to the applicant on 15.9.2017 for presenting himself before the Medical Board. Wife of the applicant submitted letter dated 18.9.2017 to respondent no.4 against harassment and humiliation of her husband and family and also requested that her husband be examined at his home. While availing medical leave from 14.9.2017, applicant submitted a request dated 21.9.2017 seeking voluntary retirement from service on medical ground with further request for relaxation of notice period. It is the case of the applicant that notice dated 2.11.2017 was served upon him wherein it was mentioned that leave from 1.8.2017 to 30.9.2017

was sanctioned by assuming that he will submit the documents in office. In the said notice, it has also been mentioned that the applicant has been treated absent from 1.10.2017 and his salary has also been stopped. Thereafter, the applicant was informed vide letter dated 14.11.2017 that his salary has been released. When his request for voluntary retirement was not acceded to, applicant submitted reminder dated 15.11.2017. On the same day i.e. 15.11.2017, applicant received charge-sheet for imposition of major penalty under Rule 10 of the Employees Provident Fund (Classification, Control & Appeal) Rules, 1971. Immediately thereafter, the applicant submitted medical certificate dated 16.11.2017 showing that he has been advised bed rest for four weeks from 16.11.2017 till 15.12.2017. Applicant vide his letter dated 20.11.2017 sought fifteen days time to submit his reply to the said charge-sheet. Applicant submitted a letter dated 8.1.2018 to respondent no.4 with a request to drop the charge-sheet as the same has not been issued by the competent authority.

4. By letter dated 13.12.2017, respondent no.3 informed the applicant that the charge-sheet has been issued by the competent authority in terms of Rule 9(3) of the EPF(CCA) Rules, 1971. Applicant submitted his reply which was forwarded to respondent no.2. Applicant has taken various grounds for invalidation of impugned charge-sheet with star one that the charge-sheet has not been issued by the competent authority, therefore, the same be set aside.

5. In support of above, Shri K.B.Sharma, learned counsel for the applicant submitted that applicant being a Group 'B' officer and as per 1971 Rules, the competent authority is the Central Provident Fund Commissioner, whereas the charge-sheet has been issued by the Regional Provident Fund Commissioner, thus, it has not been issued by the competent authority, therefore, the same is liable to be set aside.

6. To buttress his submissions, he placed reliance on judgment passed by the Hon'ble Apex Court in the case of **Union of India & Ors. versus B.V.Gopinath** (2013(4) S.C.T. Page 507); orders dated 27.4.2015 passed by coordinate Bench of this Tribunal in the case of **D.P.Gupta versus Union of India & Ors.** (O.A.No.1231/HR/2013) and order dated 23.11.2016 passed in the case of **S.K.Khanna versus Union of India & Another** (O.A.NO.060/00647/2015).

7. The respondents have filed written statement, wherein they have submitted that the charge-sheet has been issued by the competent authority in terms of Rule 9(3) of the EPF(CCA) Rules, 1971. It has also been submitted therein that the applicant has a chance to make submissions before the Inquiry Officer who is competent to decide the same. Therefore, it is prayed that the OAs challenging the impugned charge-sheet be dismissed.

8. Shri Aseem Rai, learned counsel appearing on behalf of the respondents vehemently opposed the prayer of the applicant and submitted that the judgments relied upon the applicant do not help

him because in those cases, the Hon'ble Apex Court has categorically held that if the charge-sheet has not been issued by the competent authority, then it cannot stand and the same is liable to be set aside, whereas in the present case, the charge-sheet has been issued by the competent authority under the Rules of 1971.

9. Having completed all the codal formalities, having heard the learned counsel for the parties, having gone through the pleadings on board and legal provisions with their valuable assistance, we are of the view that both these OAs deserve to be dismissed for the reasons to follow.

10. The only issue that crop up for our consideration is whether the impugned charge-sheets have been issued by the competent authority or not ? Though, this Tribunal cannot interfere in the matter of challenge to charge-sheets, as has been held by the various judicial pronouncements of the Hon'ble Apex Court, but since the applicant has alleged that the charge-sheet is without jurisdiction, so we entertain this petition on this limited issue only.

11. To better appreciate the controversy, as noticed above, in the present case, the rule governing the service conditions of the applicant particularly Rule 9(3) under the heading Authority to institute proceedings of 1971 Rules is reproduced hereunder:-

"9. Authority to Institute Proceedings:-

- (1) The Central Government may - Rule 9 (1) The Chairman, Central Board of Trustees or the Central Govt. as the case may be, may (i) institute disciplinary proceedings against any employee; (ii)

Direct disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 7.

Rules any of the penalties specified

(2) The Central Board may -

a. Institute disciplinary proceedings against any employee for whom it is the appointing authority under sub section 3 of Section 5(D) of the act;

b. Direct disciplinary Authority to institute disciplinary against any employee to whom the Central Board is the appointing authority provided that such authority is competent to impose any of the penalties on that employee under rule 7.

(3) Without prejudice to the generality of the provisions of sub rule (2), a disciplinary authority competent under those rules to impose any of the penalties specified in clauses (i) to (iv) or rule 7 may institute disciplinary proceedings against an employee for imposition of any of the penalties specified in clauses (v) to (ix) of rules 7 notwithstanding that such disciplinary authority is not competent under those rules to impose any of the latter penalties."

A perusal of the Rules reproduced herein above makes it clear that an authority other than the disciplinary authority can issue the charge-sheet. In the case of the present applicant, Regional Provident Fund Commissioner incharge of the region/SRO is the competent authority to impose penalties as has been reflected at running page 73 of the paper-book. But in terms of sub-Rule 9(3), an inferior authority is also empowered to issue charge-sheet. Thus, we cannot find any fault with the action of the respondents. Moreover, the virus of the rule is not under challenge. The judgment relied upon by the applicant in the case of B.V.Gopinath(supra) will not render any assistance to him because in that case, the Lordship have considered Rule 14(3) & 14(4) of the CCS(CCA) Rules, 1965 and

have concluded that if a specific authority has been instructed with the power, then he cannot delegate his power to another authority.

12. In the present case, as noticed above, the rule itself goes to show that charge-sheet can be issued even by another authority, other than the disciplinary authority, but ultimate decision to impose penalty is to be taken by the disciplinary authority, which in the present case, yet to be done, as only charge-sheets have been issued.

13. In view of above discussion, we find no merit in both the OAs and the same are accordingly dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A).

Dated:- August 3 , 2018.

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