

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 045/00041/2018

Date of Order: This, the 6th day of May 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Shri Ratan Deb Nath
Accounts Officer-cum-Pay &
Accounts Officer (Under Suspension)
Office of the Principal Accountant General
Arunachal Pradesh, Itanagar – 791111.

...Applicant

By Advocates: Mr. M. Chanda & Ms. D. Neog

-VERSUS-

1. The Union of India
Represented by the Comptroller
& Auditor General of India
9, Deen Dayal Upadhyay Marg
New Delhi – 110124.
2. The Principal Accountant General
Arunachal Pradesh
Itanagar – 791111.
3. The Accountant General
Indian Audit & Accounts Department
Arunachal Pradesh
Itanagar – 791111.

... Respondents

By Advocate: Mr. R. Hazarika, Advocate for AG

Date of Hearing: 15.02.2019

Date of Order:

ORDER**MANJULA DAS, MEMBER (J):**

Being aggrieved with the action of the respondent authority for holding a fresh/de-novo inquiry, the applicant has preferred the instant O.A. under Section 19 of the Administrative Tribunals Act 1985 seeking the following main reliefs:-

- 8.1 That the Hon'ble Tribunal be pleased to declare that the impugned decision of the appellate authority communicated vide impugned appellate order dated 20.10.2017 only to the extent to hold a fresh/de-novo inquiry to be conducted against the applicant after setting aside the earlier inquiry report dated 14.03.2017 is bad and the impugned charge sheet dated 30.11.2017 is illegal and unsustainable.
- 8.2 That the Hon'ble Tribunal be pleased to set aside and quash the impugned Appellate order No. 20/staff(Disc-ii)/45-2017 dated 20.10.2017 only to the extent of direction contained in para 9(a),(b),(c) & (d) of the appellate authority as well as Memorandum No. AG/AP/MEMO/CONF/2012-13/1/1468 dated 30.11.2017 and all further actions thereon including the proposed fresh/de-novo inquiry, sought to be conducted against the applicant.
- 8.3 That the Respondents be directed to revoke the suspension order dated 14.11.2017 of the applicant forthwith and the applicant be reinstated into his service with all consequential service benefits.
- 8.4 Costs of the application.
- 8.5 Any other relief (s) to which the applicant is entitled to as the Hon'ble Tribunal may deem fit and proper."

2. Mr. M. Chanda, learned counsel appearing on behalf of the applicant submitted that applicant was initially appointed as Clerk/Typist on 05.08.1985 in the office of the AG (A&E), Assam, Meghalaya at Shillong. Subsequently he was transferred to the office of the AG (A&E), Assam, Guwahati on own interest on 03.11.1986. Thereafter, he was promoted as Accountant on 30.05.1989 and then promoted as Senior Accountant on 01.01.1993. Thereafter, he passed Section Officers Grade Examination in 2002 and accordingly, he was promoted as Section Officer w.e.f. 25.02.2005 on transfer posting to the office of the AG (A&E), Meghalaya, Shillong. According to Mr. Chanda, following cadre separation, the applicant opted for Arunachal Pradesh in 2006 and after shifting the office of the AG (A&E), Arunachal Pradesh from Shillong to Itanagar in May, 2009 and accordingly he joined at Itanagar on 21.05.2009 as Assistant Accounts Officer and eventually promoted as Accounts Officer w.e.f. 02.01.2012. In his capacity as Accounts Officer, he was made In-charge of Pay and Accounts Officer along with other charges.

3. Mr. Chanda submitted that while the applicant acting as Accounts Officer-cum-Pay and Accounts Officer, one

charge sheet was issued against him vide Memorandum No. AG/AP/Memo/Conf/2012-2013/30 dated 09.05.2013 whereby it was proposed to hold an inquiry against the applicant under Rule-14 of the CCA (CCS) Rules, 1965 alleging violation of Rule 20 of the CCA (Conduct) Rules, 1964 with three Articles of charges. Against the said Memorandum dated 09.05.2013, the applicant submitted his written statement of defence on 17.05.2013 by rebutting all the charges and prayed for exoneration from the charges leveled against him. Departmental inquiry was conducted wherein the applicant participated and extended his best cooperation with the enquiry proceedings. Accordingly, the Inquiry Officer submitted his report on 14.03.2017 and on the basis of inquiry report, the Disciplinary Authority vide order No. AG/AP/MEMO/CONF/2012-13/1/55 dated 21.04.2017 imposed upon the applicant the penalty of compulsory retirement effective from the date of issue of the order with further order that the applicant be granted pension at a rate of two-thirds on the date of his compulsory retirement from service under Rule 40(1) of the Central Civil Services (Pension) Rules, 1972.

4. Mr. Chanda further submitted that against the penalty order dated 21.04.2017, the applicant preferred

appeal on 19.05.2017 and in consideration of the said appeal dated 19.05.2017, the appellate authority vide impugned order under No. 20/Staff (Disc-II)/45-2017 dated 20.10.2017 set aside the penalty order dated 21.04.2017 and remitted back the matter to the PAG and DA for holding de-novo inquiry by withdrawing the charge sheet dated 09.05.2013 issuing a fresh charge sheet in accordance with provisions of Rule 14 of the CCS (CCA) Rules, 1965. According to Mr. Chanda, there is no authority or jurisdiction of the CCA (CCS) Rules 1965 on the part of the appellate authority to give a further direction to hold a fresh enquiry.

5. Mr. Chanda further submitted that since inception, formal handover and taking over of the charge of the Pay and Account Office, was never taken place even when the applicant was entrusted with the charge of the Pay and Account Office, the charge was not given in writing. As such, allegation of loss of two leafs cheque and subsequent withdrawal of amount of Rs. 61 Lakhs from State Bank of India, Itanagar main Branch, fraudulently cannot be shifted on the shoulder of the applicant alone in a selective manner. According to Mr. Chanda, the applicant had rendered nearly 32 years of service in the establishment of the Accountant

General with utmost satisfaction of his higher authority. As such, imposition of major penalty earlier, merely on the allegation of lapses, in the absence of proof of gross negligence as held by the enquiry officer in the earlier inquiry report dated 14.03.2017 is highly arbitrary and illegal and the same is in violation of Rule 15 (2) of the provision laid down in the CCA (CCS) Rule 1965. Hence, decision of the appellate authority to hold a de novo enquiry on the same set of charges is highly arbitrary and illegal and the impugned charge memo dated 30.11.2017 is liable to be set aside and quashed.

6. Learned counsel relied on the decisions of the Chandigarh Bench of CAT rendered in **Som Nath Sharma vs. Union of India & Others** (O.A. No.991-HP of 1993 decided on 25.03.1994), reported in **(1994) 27 ATC 771** and **Sujit Kr. Dubey v. Union of India & Ors.** (O.A. No.247/PB of 1990 decided on 07.02.1997), reported in **195. Swamy's CL Digest 1997/1 at page 240.**

7. On the other hand, Mr. R. Hazarika, learned Addl. C.G.S.C. vehemently opposed the submissions advanced by the learned counsel for the applicant. It was submitted that fresh enquiry proceedings can be initiated against the

employee. There is absolutely no infirmity in the order while initiating the fresh enquiry. Mr. Hazarika submitted that decisions rendered in **Som Nath Sharma** (supra) & **Sujit Kr. Dubey** (supra) are not applicable in the present case as the same are based on different facts. In **Som Nath Sharma**, the allegation was claim of fictitious LTC. In **Sujit Kr. Dubey** the allegation was negligence in discharging his duties.

Mr. Hazarika has referred Rule 27 (2) of Central Civil Services (Class, Control & Appeal) Rules, 1965 which says as here under:-

“When, on appeal, the Appellate Authority sets aside the punishment orders and remits the case for de novo trial, the original proceedings containing the charge-sheet are to be deemed as quashed unless the stage from which the retrial should be conducted is specified in the order. It would be open to the disciplinary authority to frame any other charge in addition to or in substitution of the original charge-sheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government Servant.”

8. We have heard the rival submissions in the light of materials placed before us and precedents relied upon. There is no dispute that the enquiry was completed and the applicant participated and extended his best cooperation in the enquiry proceedings. By the impugned order the authority decided to hold a de novo enquiry pursuant to the impugned

order dated 20.10.2017 on the same charges which were earlier inquired into and even penalty order was issued which has been set aside by the appellate authority subsequently.

9. In the case of **Som Nath Sharma** (supra), relied by the learned counsel for the applicant, it was held that there exists a world of difference between de novo enquiry and further enquiry. In further enquiry, whatever omission was there in the enquiry which can be supplied as per rules, can be supplied by adducing further evidence. But if it is de novo enquiry, whatever was recorded at the earlier enquiry would not form part of enquiry file which is likely to prejudice the government servant facing the charge. If it is allowed, the disciplinary authority if he finds that the evidence at the enquiry is in favour of the charged officer, can wipe them off by ordering a de novo enquiry to be commenced with a clean slate. That is not the legislative intent in framing the rule itself.

In the case of **Sujit Kumar Dubey** (supra) relied upon by the learned counsel for the applicant, it was held that failure on the part of the competent authority to first collect sufficient evidence and then start the disciplinary proceedings only should not be allowed to be used against the charged officer.

Jurisprudence does not allow second trial on the same facts in the name of de novo enquiry, once the person has been found to be not guilty due to lack of evidence. In that case, allegation was in regard to misuse of LTC facilities. The Tribunal held that it had not been proved in the enquiry that the family of the applicant had not travelled as claimed by the applicant in the LTC claim nor it was proved that the documents adduced by him were false and as such the charge of submitting a false claim was not proved and there was miscarriage of justice by passing the order adverse to the applicant by the disciplinary authority. The de novo enquiry is not permissible under the law is a trite law. While taking this decision, the Tribunal relied on the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of **K.R.Deo v. Collector of Central Excise**, reported in **1971 (1) SLR 291** wherein it was held that Rule 15 of CCS (CCA) Rules, 1965 provides for one enquiry only. It may in some cases happen that there has been no proper enquiry because of some serious defect in the enquiry or some important witnesses or documentary evidence were not available or examined for some valid reasons, the disciplinary authority may ask the enquiry officer to record further evidence by way of further enquiry, but there is no

provision in this rule for completely setting aside the previous enquiry and then ordering a de novo enquiry.

10. In the case of **Sub-Inspector Rooplal & Another v. Lt. Governor through Chief Secretary, Delhi & Others**, reported in **(2000) 1 SCC 644** the Apex Court held that earlier judgment of Coordinate Bench should be followed in order to maintain consistency. We find that the decisions in the cases of **Som Nath Sharma** (supra) and **Sujit Kr. Dubey** (supra) were rendered in the context of identical issues.

11. In the facts of the present case, we find that the applicant was not provided with reasonable opportunity of being heard. This was found to be an infirmity. To cure this infirmity it was held that applicant need to face fresh enquiry from the preliminary hearing stage on the same charges. In our opinion, this view is not correct. Enquiry should be made from the point wherefrom the irregularity supervened. If fresh enquiry is allowed, there is possibility that evidence in the enquiry found to be in favour of the charged officer can be wiped off. Justice should not only be done, but seen to have been done. It is the cardinal principle of law canonized in the dictum: "NEMO

DEBET BIS VEXARI PRO UNO DELICTO" meaning thereby that no one should be vexed twice for the same offence.

12. Taking into consideration entire conspectus of the case, we, hereby, quash and set aside the impugned order dated 20.10.2017 for fresh enquiry/de-novo inquiry with liberty to the respondents for further enquiry as provided under Rule 15 of the CCS (CCA) Rules, 1965.

13. OA stands allowed to the extent indicated above.
There will be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)