

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

O.A. No.3612 of 2014

Orders reserved on : 17.12.2018

Orders pronounced on : 20.12.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Hon'ble Mr. S.N. Terdal, Member (J)

Smt. Amita Sudan, Aged-51 Years,
W/o Sh. Sunil Sudan,
Working as Deputy Director (FAS),
Department of Woman & Child Development,
Govt. of NCT of Delhi, New Delhi,
R/o 519-C, Sector-3, R.K. Puram,
New Delhi.

....Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
New Secretariat, Near ITO,
New Delhi.
2. The Principal Secretary,
Department of Social Welfare
and Wokan & Child Development,
Govt. of NCT of Delhi,
GLNS Complex, Delhi Gate, Delhi.

.....Respondents

(By Advocate : Shri Kapil Agnihotri)

ORDER

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant is seeking the following
reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be
pleased to pass an order of quashing the
impugned order dated 27.06.2011 (Annex.A/1),

disagreement note (Annex.A/5), appellate authority order dated 20.08.2014 (Annex.A/2), order dated 26.12.2013 (Annex.A/3), charge sheet dated 13.07.2005 (Annex.A/7) and entire proceedings declaring to the effect that the same are illegal, unjust, against the rules and against the principle of natural justice and consequently pass an order directing the respondents to grant all the consequential benefits to the applicant along with arrears of difference of pay and allowances with interest.

- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

2. Brief facts of the case are that the applicant, who is presently working as Deputy Director (FAS), while working as Senior Superintendent in Social Welfare Department, a major penalty charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued to the applicant vide Memorandum dated 13.7.2005 and alleged the following article of charges:

Article-I

Smt. Amita Sudan, Supdt./CDPO, while working in Old Age Home, Kalkaji made payment to suppliers for Rs.42050/- and 12060/- on 30.06.98 for the goods which was physically received in the home on 14.09.98 that too only after knowing that Ms. Raj Rani, LDC has complained about her unlawful action to the Head Quarter on 10.9.98.

Article-II

Smt. Amita Sudan, Supdt./CDPO, while working in Old Age Home, Kalkaji made payment to suppliers for Rs.42050/- and 12060/- without observing codal formalities.

Article-III

Smt. Amita Sudan, Supdt./CDPO pressed upon Smt. Raj Rani to make the entries of articles in Stock Register

which were not received in the Home, till the date of complaint made by Smt. Raj Rani in this regard.

Thus, Smt. Amita Sudan, Supdt/CDPO (Social Welfare Deptt) failed to maintain devotion to duty, absolute integrity and acted in a manner unbecoming of Govt. Servant, thereby violated the provisions of rule 3 of CCS (Conduct) Rules 1964.”

3. The contention of the applicant is that the said Memorandum of charges were issued by the Chief Secretary, Delhi, who was not the disciplinary authority of the applicant and even no approval was taken from the disciplinary authority before issuing the said impugned chargesheet and the said charge sheet is liable to be quashed on this sole ground.

3.1 Further contention of the applicant that the inquiry officer, who was appointed by the said Chief Secretary, Delhi to conduct the inquiry in the matter, has conducted the inquiry and submitted his report in which none of the charges was proved against the applicant.

3.2 Another contention of the applicant is that Joint Secretary (Vigilance) issued a disagreement notice to the applicant vide Memorandum dated 19.8.2010 to the inquiry officer report whereas the directorate of vigilance has no rule and no authority to issue or even to communicate any disagreement note to the applicant.

3.3 Further contention is that the as per rules, disagreement note should be tentative but in the present case, the concerned authority hold the charges as proved and then only communicate the same which clearly shows that the concerned authority was biased even before considering the representation of the applicant.

3.4 Further contention of the applicant that applicant submitted his representation against the said disagreement note. However, according to the applicant, since the concerned authority had already made up his mind to punish the applicant, the said representation was rejected and the said concerned authority passed the impugned order dated 27.6.2011 whereby awarding the penalty of stoppage of increment of pay for two years with cumulative effect.

2.5 Further when the applicant preferred her appeal against the aforesaid order dated 27.6.2011 to the Hon'ble Lt. Governor dated 13.8.2011, the Deputy Director (Vigilance) vide letter dated 26.12.2013, i.e., after more than two years, informed the applicant that the Hon'ble Lt. Governor, Delhi is of the considered opinion that the applicant has not been adequately penalized by the disciplinary authority for the evident misconduct. The Hon'ble Lt. Governor proposed to enhance the penalty imposed by disciplinary authority to stoppage of increments of pay for a period of four weeks with

cumulative effect and directed CVO to take appropriate action as prescribed under the Rule 27 of CCS (CCA) Rules and resubmit the case file within six months along with representation of the applicant on the proposed penalty and comments of the Department thereof, for passing of the final orders after due consideration.

2.6 Against the said order dated 26.12.2013, the applicant submitted his detailed representation on 17.2.2014 to the Lt. Governor and the respondent no.2 on behalf of Lt. Governor vide order dated 20.8.2014 enhanced the penalty of the applicant imposed by the Chief Secretary by imposing the penalty of stoppage of increment of pay for a period of four years with cumulative effect. So far as the jurisdictional issue of the Chief Secretary raised by the applicant is concerned, it is stated by the appellate authority's order that the applicant had never raised the issue of jurisdiction of Chief Secretary in the matter.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant was charge sheeted on 13.7.2005 by the competent authority, i.e., Chief Secretary, in her case, as prior to issuance of her promotion order dated 21.8.2008, the applicant was a Group 'B' Officer.

3.1 They further stated that inquiry report submitted by the inquiry officer was not found consistent and after careful consideration of the facts and circumstances of the case a disagreement note was issued with the approval of disciplinary authority and copy of the same was made available to the applicant on 19.8.2010 as per laid down procedure.

3.2 They further stated that the Chief Secretary, Delhi imposed the said penalty after carefully considering entire facts of the matter including her representations. They denied that the Chief Secretary is not the disciplinary authority of the applicant. They further denied that the Chief Secretary changed the entire charge-sheet and alleged new charges which are not a part of charge-sheet. They further denied that any extraneous matter was relied on by the disciplinary authority.

3.3 They also stated that reasonable opportunity was given to the applicant vide Memorandum dated 19.8.2010, the disagreement note was served upon the applicant to which applicant also submitted her representation vide letters dated 20.9.2010. After carefully considering her representation, the disciplinary authority imposed the penalty on the applicant vide order dated 27.6.2011.

4. The applicant has also filed her rejoinder reiterating the contentions raised in the OA and denying the contents of the counter reply filed by the respondents.

5. Heard learned counsel for the parties and perused the material placed on record.

6. The main contentions of the learned counsel for the applicant is that the chargesheet has not been issued by the competent authority and the disagreement note issued by the concerned authority is not a tentative one. As such the entire proceedings are liable to be quashed.

7. Counsel for the respondents reiterated the contents of the counter reply during the course of hearing. However, he further submitted that the chargesheet has been issued by the competent authority and the disagreement note was tentative and not final and after consideration of the representation submitted by the applicant to the said disagreement note, the disciplinary authority issued the order of punishment which was affirmed and enhanced by the appellate authority while considering the appeal preferred by the applicant against the said order of the disciplinary authority.

8. For proper appreciation of applicant's contention that the chargesheet has been issued by incompetent authority, it is relevant to state that at the time when the chargesheet was

issued to the applicant, she was holding a Group 'B' post and not Group 'A' post, as her promotion to Group 'A' post was ordered vide order issued in 2008 and as it is admitted fact that applicant was promoted in 2008 and in respect of Group 'B', the competent authority is Chief Secretary and not Lt. Governor. As such the chargesheet cannot be said to be issued by an incompetent authority.

9. So far as another contention of the applicant that the disagreement note issued by the disciplinary authority is not tentative is concerned, to appreciate this contention, it is relevant to note the contents of the disagreement note to ascertain the correct position in this regard. As such the relevant contents of the brief note giving the reasons for disagreement with the findings of inquiring authority in the disciplinary proceedings case against the applicant reads as under:-

“In view of above facts, Chief Secretary, Delhi, the Disciplinary Authority, has tentatively decided not to agree with the findings of the Inquiring Authority in respect of Smt. Amita Sudan, Supdt./CDPO and hold the charges as proved.”

10. From the above observation of the disciplinary authority, as quoted above, it is quite clear that while the disciplinary authority at the start of his above order has tentatively decided not to agree with the findings of the

inquiring authority but he has subsequently held that the charges as proved. This is a contradiction in itself and this contradiction should not be there in the disagreement note. The disciplinary authority should form only a tentative view when he disagrees with the findings of the Inquiry Officer and then give a fair opportunity to the charged officer to explain his/her case. Also, the Disciplinary Authority should form a final opinion only after receipt of the reply of the charged official to the show cause notice about the disagreement note. In view of the above, this court holds that disagreement note issued by the disciplinary authority is not in consonance with the provisions of Rule 15 (2) of the CCS (CCA) Rules, 1965. Since this Court finds that the disagreement note issued by the disciplinary authority is not in consonance of the provisions of Rule 15 (2) of the Rules *ibid*, there is no need to go into the other contentions of the learned counsel for the applicant and therefore, the disagreement note, order of penalty issued by the disciplinary authority as well as appellate authority's order are liable to be quashed.

11. In the result and for the reasons stated above, the present OA is allowed to the extent that the disagreement note, penalty order of the disciplinary authority as well as appellate authority order are quashed and set aside and the respondents are directed to proceed in the matter afresh from

the stage of receipt of inquiry officer's report, if so advised.

There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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