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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. O.A. 350/00183/2014

Date of order: 4.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Amal Saha,
Son of Late Debendra Kumar Saha,
Aged about 47 years,
Working for gain as Office Assistant,
MBC, BNCC, Block, P.O. Kolkata-700 064;
Residing at 14, B.B.Ghosh Sarani,
Block - 3, Flat No. 24, Kolkata-700 067.

.. Applicant

- V E R S U S -

1. Union of India through the
Secretary,
Ministry of Communication & Information
Technology, Deptt. Of Posts,
Dak Bhawan,
New Delhi - 110 001.
2. The Chief Postmaster General,
W.B.Circle, Yogayog Bhawan,
Kolkata - 700 012.
3. The Sr. Superintendent,
Kolkata Airport Stg. Dn,
Kolkata - 700 028.
4. Shri Ashoke Dey,
ASRM, RMS, 'WB' Division,
Howrah - 711 101
& Inquiring Authority.

.. Respondents


For the Applicant : Mr. K. Sarkar, Counsel
For the Respondents : Mr. C.R. Bag, Counsel
Mr. U.P. Bhattacharyya, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-



"(a) to direct the respondents to cancel, withdraw and/or rescind the impugned charge-sheets dated 11.9.2012 & 30.5.2013; entire proceedings and Enquiry report dated 17.1.2014; as contained in Annexures "A-5", "A-7", "A-10" & "A-11" respectively.

(b) to direct the respondents to produce entire records of the case before this Hon'ble Tribunal for adjudication of the issue involved herein;

(c) and to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. Indebutably and indisputedly the applicant is working as Sorting Assistant in respondent Postal Department. While so the Sr. Superintendent of Post Offices namely the disciplinary authority issued the memorandum dated 11.9.2012 (Annexure A-5) enclosing with it the Statement of imputation of misconduct (A-6) or misbehaviour, based on which action was proposed to be taken against the applicant under Rule 16 of CCS (CCA) Rules, 1965.

4. The applicant on 26.9.2012 submitted his representation by way of reply, denying his liability and insisting an enquiry, whereupon as per Annexure A-7 the memorandum dated 30.5.2013 emerged along with Annexures namely "Statement of articles of charges framed against Sri Amal Saha O.A. MBC BN CC Block P.O. Kolkata - 700 064", "Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Sri Amal Saha, OA, MBC BN CC Block P.O. Kolkata - 700 064", "List of documents by which the articles of charge framed against Sri Amal Saha, O/A MBC BN CC Block P.O. Kolkata - 700 064" and "List of witnesses by whom the articles of charge framed against Sri Amal Saha, O/A, MBC BN CC Block, Kolkata - 700 064 are proposed to be sustained."

5. It would not be out of place here to specify and indicate that in stricto sensu i.e. the Annexure A-7 is the first and only

charge-sheet. The earlier one i.e. Annexure A-5 in only statement of imputation of misconduct and that is not to be treated as charge-sheet. As against the Annexure A-7, A-8 emerged so to say, the individual submitted his reply denying the charges. Thereupon the records would reveal that a regular enquiry was conducted in pari materia with the major penalty proceedings and ultimately the enquiry report was communicated to the applicant for giving his remarks or explanation. At that stage alone, the applicant did choose to file this O.A. challenging and impugning the proceedings on the ground as though the alleged second chargesheet was issued as per Annexure A-7.

6. Ld. Counsel for the applicant would submit that Annexure A-7 is nothing but a second chargesheet and without withdrawing the first chargesheet, i.e., Annexure A-6, it was issued. As per him, at any stage of disciplinary proceedings the applicant could invoke the jurisdiction of CAT and get the second chargesheet quashed.

7. Per contra, the Ld. Counsel for the respondents would submit that the enquiry reached the final stage and hence it was not open for the applicant to file this O.A. and on that ground he insisted for the O.A. to be dismissed.

8. The point for consideration is as to whether the applicant was justified in filing this O.A. even before completion of the enquiry proceedings and that to at the fag end of it, and whether Annexure A-7 could be termed as the second chargesheet at all.

9. At the outset itself I would like to refer to the decisions cited by the Ld. Counsel for the applicant:-

(i) 2006 SCC (L&S) 507 Canara Bank & ors. v. Swapan Kumar Rani &

anr.

(ii) WPCT No. 210 of 2008

10. Absolutely there is no quarrel over the proposition stood enunciated in those precedents. However, the factual matrix is entirely different here in this case. The Ld. Counsel for the applicant would try to portray and project, describe and detail that the Annexure A-6 as the first chargesheet and Annexure A-7 as the second chargesheet, which in our opinion is totally unacceptable and against the Rule 16 of CCS (CCA) Rules. Rule 16 is to be extracted hereunder for ready reference:

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after -

- (a) Informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) Holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
- (c) Taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;
- (d) Recording a finding on each imputation of misconduct or misbehaviour, and
- (e) Consulting the Commission where such consultation is necessary. "

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

- (2) The record of the proceedings in such cases shall include-
- (i) A copy of the intimation to the Government servant of the proposal to take action against him;
 - (ii) A copy of the statement of imputations of misconduct or misbehaviour delivered by him;
 - (iii) His representation, if any;
 - (iv) The evidence produced during the inquiry;
 - (v) The advice of the Commission, if any;
 - (vi) The findings on each imputation of misconduct or misbehaviour; and
 - (vii) The orders on the case together with the reasons therefor."

Unambiguously and unequivocally, the cited Rule 16 would highlight and exemplify the fact that once the delinquent officer seeks for personal hearing and enquiry in response to the statement of imputation of misconduct issued under Rule 16(1)(a), then the disciplinary authority is bound to apply his mind and, if he so desires to conduct an enquiry the procedures prescribed for conducting the major penalty proceedings as contained in Rule 14(23) should be followed, which means that as per sub-rule (3) of Rule 14 of CCS (CCA) Rules, charges should be framed and accordingly from that stage, it should be proceeded with. It is just and proper to refer to para 2 and procedure for imposing minor penalties as found set out in Swamy's Compilation of CCS (CCA) Rules, 1965 35th Edition, 2012. The relevant portion of the said para 2 is extracted below:-

"2. The grounds on which it is proposed to take action should be reduced to the form of a definite charge of charges. The charges should be clear, specific and precise. A separate charge should be framed in respect of each separate offence. It is desirable that the charges should not be of a petty nature or unnecessarily numerous. They should not, except where the charge is one of inefficiency or incompetence, relate to matters which have already been the subject of previous official enquiry and decision. Care should be taken that no expression of opinion as to the guilt of the accused official is contained in the wording of the charge. A charge may be framed only when there is some act in violation of the rules in different service manuals, CCS (Conduct) Rules, different circulars or general letters issued. It is, therefore, of greater importance to quote that rule or order in support of the charge invariably, the breach of which has constituted the charge."

17/6

11. Here legally and correctly Annexure A-7 emerged and that alone could be termed as the first charge sheet and in fact the disciplinary authority appropriately captioned, Annexure A-7 as charges and not Annexure A-6 as charges.

12. As such, the applicant misconceived as though A-7 is the second chargesheet and on that basis, filed the O.A. challenging the same.

13. A fortiori on merits itself the applicant had no cause of action to file the O.A.

14. Not to put too fine a point on it, admittedly the charged official the applicant herein after participating in the enquiry as found exemplified in the records, and that too after the emergence of the enquiry report, is not justified in filing this O.A. and the stage was long over-due to give a reply to the enquiry report by the applicant. The remarks or the explanation to the enquiry report should be filed by the applicant and face the full proceedings and thereafter, if any, adverse order, is passed as against him he may file statutory appeal against the same.

15. Ordered accordingly.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP