

C.V. Anantharaghavan Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Madras

Decided On : Aug-19-1999

Judge : K B Vice-, B a S.

Appellant : C.V. Anantharaghavan

Respondent : Union of India (Uoi) and ors.

Advocate for Pet/Ap. : Mr. V. Parthiban

Judgement :

1. The applicant challenges a notice dated 30.3.1989 reconvening the Board of Enquiry by the first respondent and seeks a direction to reinstate the applicant into service with consequential benefits.
2. The applicant was appointed as Lascar in the Civilian side in the Air Force Station, Avadi and he joined the service on 27.6.84. The applicant was on long medical leave from November, 1988 to December, 1992. Certain charges were framed under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that he was remaining absent without leave or prior permission with effect from 25.11.88 onwards and has violated Rule 3(i)(ii)(iii) of CCS (Conduct) Rules, 1964. It seems that the charge memo sent to the applicant was returned by the Postal Authorities and the applicant was dismissed from service. The appellate authority by order dated 9.2.94 considered the appeal of the applicant and affirmed the order of the punishing authority. The applicant challenged the orders before this Tribunal in O.A. 108 of 1995. A Bench of this

Tribunal, of which one of us was a party (Vice-Chairman) by an order dated 6.3.97 allowed the application and set aside the order with the following directions : "In the result, the application stands allowed to the extent that the appellate order dated 9.2.94 stands set aside and the appellate authority is directed to pass an order afresh on merits in accordance with law within a period of three months from the date of receipt of a copy of this order." Pursuant to the directions of this Tribunal, the appellate authority on 10.6.97 allowed the appeal of the applicant holding that the enquiry conducted against the applicant was not in accordance with rules, thereby violating basic principles of natural justice, the result being the order of the disciplinary authority dated 16.1.93 was set aside and the case was remitted back to the disciplinary authority to proceed in the matter de novo from the stage of charge sheet. The disciplinary authority by its memo dated 7.7.97 issued a charge memo and by an order dated 5.7.1997 an enquiry officer was also appointed. The applicant has stated that the appointment of Enquiry Officer and Presenting Officer were made by an order dated 5.7.97 i.e. prior to the issue of charge memo dated 7.7.97. It seems that the applicant attended the enquiry on 22.7.97, 26.7.97, 4.8.97, 6.8.97, 8.8.97, and 9.8.97 and submitted his defence statement on 4.8.97. The enquiry was closed on 9.8.97 according to the applicant. The applicant alleges that there are serious irregularities and improper procedure was adopted in the conduct of the enquiry. The applicant therefore brought to the notice of the appellate authority the various irregularities in the enquiry conducted, by his representation dated 14.8.97. The disciplinary authority issued a communication on 28.12.98 that the appointment of enquiry officer, presenting officer and the subsequent enquiry conducted are withdrawn.

Subsequently, the second respondent issued a charge memo on 29.12.98, the charge memo containing the very same charges which were the subject matter of the earlier proceedings. The applicant states that in view of the repeated enquiry on the same subject matter and the charge memo has been withdrawn unconditionally, the disciplinary authority is estopped from framing the very same charges on the same subject, as such, the applicant made an appeal to the first respondent on 7.1.99 that the fresh charge memo issued on 29.12.98 is not in accordance with Rule 15 of the CCS (CCA) Rules.

It was also stated by the applicant that repeated enquiry on the same subject matter was to fill up the gap. By an order dated 9.2.99 on the representation of the applicant, the second respondent disposed of the same stating that there is no illegality in the issuance of the charge memo and the applicant was requested to co-operate with the board of enquiry. According to the applicant, when this Tribunal remitted back the matter to the appellate authority, the first respondent ordered de novo enquiry, in view of certain irregularities in the subsequent enquiry, the disciplinary authority withdraw the second enquiry. While so, the applicant states that it is not open to the respondents to order a third enquiry on the same subject matter, as the scheme of the CCS (CCA) Rules, 1965 do not contemplate such repeated enquiry on the same subject matter. It is stated by the applicant that the holding of successive enquiry on the same charges is against the provisions under Rule 15 of the CCS (CCA) Rules, 1965 and when this Tribunal remitted the matter in O.A. 108/95 a de novo enquiry was ordered by the appellate authority and that the department enquiry having been withdrawn by the second respondent without reserving the right to reopen the matter cannot once again order another enquiry on the same subject matter. It is stated further that appoint fresh enquiry officer and presenting officer is contrary to the CCS (CCA) Rules, 1965. It is pointed out that the under Rule 15 one enquiry alone is contemplated and does not permit enquiries.

3. A reply is filed by the respondents. The respondent in the reply, after referring to the orders of this Tribunal in O.A. 108/95 dated 6.3.97, has stated that the appellate authority reconsidered the appeal and passed an order afresh wherein it was required to proceed into the case de novo from the stage of charge sheet. Due to some technical mistake and violation of rules, the Board of Enquiry was reconstituted and a memorandum was served on the applicant on 29.12.98 along with charge sheet after withdrawing previous memorandum. When it was issued, the applicant submitted representations on 7.1.99 and 8.1.99, thereafter on 19.2.99 addressed to the Air Officer Commanding-in-Chief of HQ Maintenance Command, IAF the second respondent. The applicant was informed that the present Board of Inquiry is not a fresh one, it was only a re-convened Board to hold the proceedings de-novo from the stage of charge sheet as per the directions of this Tribunal. It is pointed out in the reply that re-convening of the Board of

Inquiry was ordered by the HQ Maintenance Command, in view of certain procedural infirmities observed in the conduct of Board constituted for holding de-novo proceedings, against which it is stated that the applicant has filed this application. It is further stated in the reply that the orders of this Tribunal has been complied with and the appellate authority have considered the case afresh and remitted the case to disciplinary authority to proceed in the matter de-novo from the stage of charge sheet. It is also stated in the reply that the entire proceedings conducted during the months of July--August, 97 was referred to higher formation for vetting wherein certain procedural lapses were observed in the process of proceeding and it was advised by HQ, MC, IAF that the Board of Inquiry is to be reconstituted from the stage of charge sheet. So it is stated in the reply that the charge memo issued for second time and the Board of Inquiry constituted was also withdrawn for some reasons as such the present order has been issued constituting a Board of Inquiry. It is further pointed out that before conducting afresh enquiry, the charge memo previously served on the applicant was withdrawn on 5.7.97 and 7.7.97. A reference to an order of the Chandigarh Bench of this Tribunal in Harbhajan Singh v. Union of India (1987 3 ATC 1) has been made in the reply. In the reply, it is made clear that reconvening the Board of Inquiry was ordered by the HQ Maintenance Command IAF. It is further stated in the reply that it is not a repeated inquiry or not a fresh one but the Board of Inquiry is only reconvened to hold the proceedings de-novo from the stage of charge-sheet.

4. We have heard Mr. V. Parthiban, learned counsel for the applicant and Mr. A.P, Suryaprakasam, learned counsel for the respondents, we have gone through the application and the detailed reply.

5. The short question which is to be considered in this application is whether the reconstitution of the Board of Inquiry dated 17.2.99 is correct on the facts and circumstances of this case and whether the impugned order dated 30.3.99 is correct in law.

6. We make it clear that we are not to go into the merits of this case at this stage. The applicant came up before this Tribunal in O.A. 108 of 1995 and this Tribunal by order dated 6.3.97 allowed the O.A. and remitted the case back to the appellate

authority. In pursuance of that order, the appellate authority considered the appeal of the applicant and directed de-novo enquiry from the stage of charge sheet. It is true that a charge sheet has been issued and the Board of Inquiry was constituted. When the enquiry was not done properly, the enquiry was withdrawn. A charge memo was issued on 29.12.98 after making clear by an order dated 28.12.98 that the appointment of enquiry officer and the presenting officer by order dated 5.7.98 and 7.7.98 and the subsequent enquiry conducted were withdrawn. The order reads as follows: "I am to inform that the Memorandum appointing an Inquiry Officer and Presenting Officer served on you vide 23ED/300115130/PC dated 05 July 98 and 07 July 98 and the subsequent Inquiry conducted are hereby withdrawn." A fresh charge-sheet has been issued on 29.12.98 as alleged by the applicant for the very same charge. By an order dated 9.2.99, the typographical error which occurred in the order dated 28.12.98 has been corrected. So, the sum and substance is that the first enquiry ended up with an order of this Tribunal setting aside the order of the appellate authority and remitting the case back to the appellate authority and the appellate authority remitted the case back to the disciplinary authority at the stage of charge memo. It is no doubt true that memo issued on 7.7.97 and the appointments of the enquiry officer and the presenting officer on 5.7.97 were withdrawn by an order dated 28.12.98 and the net result is the fresh charge memo, fresh Board of Inquiry which has been challenged by the applicant in this application. Though a charge memo issued, enquiry was conducted subsequent to the remit order of this Tribunal once, it has not ended up with the enquiry report and no final order is passed on the enquiry report. Before that stage could reach the proceedings were withdrawn and the very same charge memo was issued again now and a presenting officer is appointed.

Though the charge framed against the applicant has been enquired into, no conclusion has been reached so far, leave alone the first enquiry which has been set aside in pursuance of the orders of this Tribunal.

Here comes the interpretation of Rule 15 of CCS (CCA) Rules, 1965.

There is no doubt, that Rule 15 on the face of it looks as if it provides for one enquiry, Rule 15(1) reads as follows: "(1) The disciplinary authority, if it is not itself

the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be." The appellate authority's power is found in Rule 27 of the CCS (CCA) Rules, 1965. Sub Rule (2) of Rule 27 reads as follows: "(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate, or severe (i) confirming, enhancing, reducing, or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases:" "In an appeal "against any other order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable." So on the facts of this case what has been done is, in pursuance of the orders of this Tribunal in O.A. 108/95 dated 6.3.97, the appellate authority considered the appeal of the applicant and exercised the power under Rule 27 of the CCS (CCA) Rules, 1965 and set aside the order of the disciplinary authority and remitted the case back to the disciplinary authority to proceed with the matter de-novo from the stage of charge-sheet. A reading of Rule 15(1), (2) and (3) of the CCS (CCA) along with Rule 27 of the Rules would show that the impugned order cannot be said to be illegal and the reconstitution of the Board of Inquiry also cannot be faulted. The learned counsel for the applicant relied upon a judgment of the Supreme Court in K.R. Deb v. Collector of Central Excise, Shillong (1971 (1) LLJ 427). In that case, the Supreme Court has considered Rule 15(1) of the CCS (CCA) Rules, 1957 which read as follows: "(1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1950, no order imposing on a Government servant any of the penalties specified in Clause (iv) to (vii) of Rule 13 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter

provided." While construing that rule, the Supreme Court held that only one enquiry is contemplated. This is not a case where the report of the enquiry officer not appealing to the disciplinary authority. The Chandigarh Bench of this Tribunal in O.A. 247 of 1990 which is reported in 195 Swamy's Digest 1997/1, has held that the CCS (CCA) Rules provide for one enquiry only and there is no provision for completely setting aside the previous enquiry and then ordering *ad novo* enquiry, A Bench of this Tribunal in O.A. 771 of 1992 dated 15.9.93 (152 Swamy's CL Digest 1994) D. Devaraj v. Union of India and Others, has held that a second enquiry is not contemplated, that order relied upon an order of a Bench of this Tribunal in L, David v. Union of India (1990 14 ATC 590), wherein, also the very same view has been taken. In Som Nath Shanna v. Union of India and Others (153 Swamy's CL Digest 1994 is relied on by the counsel for the applicant. In that case the Chandigarh Bench of this Tribunal held that the disciplinary authority has committed an error of law by ordering a *de novo* enquiry.

On the facts of this case, *de novo* enquiry is done in accordance with the order of the appellate authority under Rule 27 of the CCS (CCA) Rules, 1965 that the disciplinary authority has been directed by the appellate authority to re-do the enquiry from the stage of charge sheet. So the effect of the order, in our view is that when an appellate authority set aside the punishment order and remits the case for *de novo* trial (enquiry), the original proceedings containing the charge-sheet are to be deemed as quashed. As we have already stated, the appeal power is very wide and this appellate power has not been considered in any of the cases cited above, which are relied upon by the learned counsel for the applicant. It is a fact that the applicant has not questioned the order of the appellate authority dated 10.6.97 which has given the following direction.

"6. Now Therefore, I allow the appeal in exercise of the powers vested in me under Rule 27 CCS (CCA) Rules, 1965 and set aside the order of the Disciplinary Authority dated 16 Jan. 93 and remit the case to the Disciplinary Authority to proceed in the matter *de novo* from the stage of charge sheet." The question which arose in Surjit Singh v. Chandigarh Administration and Ors. (1988) (1) SLJ 299 (CAT) is, whether the disciplinary authority can initiate a second enquiry against the applicant therein on the same charges when he had been exonerated.

That is not the case here. The order of the Ernakulam Bench of this Tribunal in *K. Ravikumar v. Inspector of RMS and Ors.* (1991) (1) SLJ 128 (CAT) is also not applicable and in that case fresh proceedings were initiated without mentioning the reason for cancelling the original proceedings. The order of the Principal Bench in *Shri Kartar Singh v. Union of India and Ors.*, (1987) (4) SLJ 230 (CAT) is also not applicable to the present case. In that case the reasons were not given for cancellation of the original charge sheet. The case reported in 1989 (7) SLR 261 *Baloo Singh v. Union of India and Ors.* is also not applicable to the facts of this case, as in that case the delinquent was discharged on the ground of benefit of doubt, then de novo enquiry was started. The order in *S.Nagarajan v. The General Manager, Southern Railway and Ors.*, 1988 (4) SLJ 420 (CAT) is also not applicable to the facts of this case. The facts in that case are clearly distinguishable. So also the decision in *Motiram Tejumal Gurbaxani v. Chief Commission of IT.*, 1990 (1) SLJ 161 (CAT).

7. In all the cases relied on by the learned counsel for the applicant, a conclusion has been reached by the disciplinary authority and to fill up the gap de novo enquiry was started. But in this case, since the procedure has not been followed and it has been violated, this Tribunal on an earlier occasion in O.A. 108 of 1995 on 6.3.97 set aside the appellate authority's order after observing thus : "As such, the appellate order dated 9.2.94 stands set aside and the matter is remitted back to the appellate authority to consider the appeal of the applicant once again after giving notice to the applicant and after giving a reasonable opportunity." So the contention raised contrary by relying upon the judgments cited supra is not applicable to the peculiar facts of this case. This is a case of unauthorised absence for a period of 1497 days from 25.11.1988 to 31.12.1992 and a punishment was imposed upon the applicant. He preferred an appeal and the enquiry seems to have been proceeded even before charge memo was served on the applicant, the order of dismissal showed that the dismissal order was passed on the ground that no enquiry was found practicable.

8. So, we are of the view that merits of the case has not been gone into by the authorities. This is not a case where the respondents wants to fill up any gap in the evidence, etc. It is under that Article 311 of the Constitution reasonable opportunity

to be given to the delinquent officer. In pursuance of that rules are made under Article 309 of the Constitution of India. On the facts of this case, what the authorities wants to do is to give a reasonable opportunity to the applicant to defend himself. We don't think that the applicant can wriggle out of the situation on the basis of some pronouncements which has not considered the power of the appellate authority and the effect of a remit order by the appellate authority to start enquiry de novo in a case which has been decided exparte. This is a simple case where the appellate authority in exercise of powers remits the case to the disciplinary authority giving a direction to start de novo enquiry from the stage of charge-sheet. Rule 27 of the CCS (CCA) Rules, 1965 read with Rule 15 empowers the appellate authority to pass such an order. We don't see any infirmity in the charge-sheet issued now and the reconvening the Board of Inquiry cannot be faulted. It is for the applicant to co-operate with the respondents and to see the end of the enquiry at the earliest.

9. In the result, we see no merit in the application and accordingly the application shall stand dismissed. No costs.

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