

**HIGH COURT OF TRIPURA
AGARTALA
W.A. 121 of 2021**

Sri Sailen Malakar, Range Officer
son of late Sashi Malakar, resident of Dharmanagar Range
Office, District- North Tripura, Pin-799253

... APPELLANT
(Petitioner in the writ petition)

Versus

1. The State of Tripura

represented by the Secretary to the Government of Tripura,
Forest Department, having his office at New Capital Complex,
Agartala, Khejurbagan, District- West Tripura, Pin-799010

2. Principal Chief Conservator of forests & HOFF

Government of Tripura, having his office at Aranya Bhavan,
Pandit Nehru Complex, P.O. Kunjaban, Agartala, District- West
Tripura

3. District Forest Officer

North Tripura District, Government of Tripura having its office
at Rajbari, Dharmanagar, Pin-799253

4. Sub Divisional Forest Officer

Dharmanagar, Government of Tripura having its office at
Dharmanagar, Rajbari, District- North Tripura, Pin-799253

... RESPONDENTS
(Respondents in the writ petition)

For Appellant(s)	:	Mr. TD Majumder, Sr. Advocate Mr. T. Halam, Advocate
For Respondent(s)	:	Mr. D. Bhattacharjee, GA Ms. S.Kar Purkayastha, Adv.
Date of hearing & delivery of judgment	:	19.07.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

19/07/2023

(T. Amarnath Goud, J)

Heard Mr. TD Majumder, learned senior counsel assisted by
Mr. T. Halam, learned counsel for the appellant. Also heard Mr.
D. Bhattacharjee, learned GA assisted by Ms. S. Kar Purkayastha,
learned counsel appearing for the respondent-State.

2. This *intra* Court appeal has been preferred by the appellant challenging the judgment and order dated 25.02.2021 (Annexure-2 to this appeal) passed by the learned Single Judge in Writ Petition No. W.P(C)107 of 2021 whereby, the writ petition filed by the appellant/writ petitioner has been dismissed.

3. Briefly stated, the appellant, while serving as Forest Ranger under the respondent no. 2, the respondent no. 2, being Disciplinary Authority had issued a Memo of Charge dated 05.12.2020 against the appellant on the expression 'leading to public harassment'. Thereafter, the appellant has submitted his written defence statement before the Disciplinary Authority. On 15.01.2021, the Disciplinary Authority cancelling the Memo of Charge dated 05.12.2020, had issued fresh charge-sheet against the appellant on the same set of evidence only after removing the expression 'leading to public harassment' and directed the appellant to submit his further written statement of defence. It is the case of the appellant that without deciding or legal conclusion to the earlier issues relating to the Memo of Charge dated 05.12.2020, the Disciplinary Authority cannot initiate fresh disciplinary proceeding on the same and identical set of evidence. With such grievance, the appellant, being petitioner has filed a writ petition being WP(C) 107 of 2021, and the learned Single Judge of this Court by its order dated 25.02.2021 had dismissed

the said writ petition. Being aggrieved, the petitioner had preferred this writ appeal.

4. Mr. Majumder, learned senior counsel appearing for the appellant has submitted that after receiving the first charge-sheet dated 05.12.2020, the appellant has submitted his written statement of defence. The Disciplinary Authority vide its Memorandum dated 15.01.2021 again directed to initiate fresh disciplinary proceeding against the petitioner and issued fresh charge-sheet on the same and identical set of evidence, which is not permissible in law. Mr. Majumder, learned senior counsel has also argued that no reason has been assigned by the disciplinary authority in cancelling the original charge-sheet prior to issuance of fresh charge-sheet. In fine, learned senior counsel has urged this court to quash the disciplinary proceeding dated 15.01.2021. On this aspect, learned senior counsel has relied upon the judgments rendered by the apex court in ***State of Assam and another vs. J.N. Roy Biswas*** reported in ***(1976) 1 SCC 234 (para 4)*** and also in ***K.R. Deb vs. The Collector of Central Excise, Shillong***, reported in ***(1971) 2 SCC 102***.

5. On the other hand, learned GA has fairly submitted that findings of the learned single Judge in its order dated 25.02.2021 is valid and no interference is called for. Learned GA has submitted that the respondent no. 2 has only altered/amended

the charges during the pendency of the enquiry when enquiry report has not been submitted till date, thus, it is not the fresh departmental enquiry but it is the pending enquiry, in which, certain alteration has taken place. Thus, learned GA has urged that there was no laches on the part of the respondents and the second charge-sheet has been issued following the procedure of law. To support his submission, learned GA has relied on a decision rendered by the apex court in **Binod Chandra Mazumdar vs. Union of India, through Secretary, Ministry of works and Supply, New Delhi and another**, reported in **AIR 1960 Punjab 147**.

6. We have perused the record and also the judgment of the learned single Judge.

7. From the record, it is evident that till the date of issuance of impugned memo dated 15.01.2021, no enquiry report was prepared or submitted by the disciplinary authority. A comparison of the first and second charge-sheet would reveal that as far as second charge is concerned, there was alteration in the sense that the allegation with regard to 'leading to public harassment' has been omitted. The charges are only by way of alteration, and it is not a case of *de novo* enquiry.

8. While disposing of the writ petition being WP(C) 107 of 2021, learned single Judge has held as under:

[5] Comparison of the two charge-sheets would show that in the previous charge-sheet issued on 05.12.2020, the allegation contained following group of words which were omitted in the subsequent chargesheet "leading to public harassment". Thus, in the impugned charge-sheet, the disciplinary authority has narrowed the scope of the charge against the petitioner. Originally the allegation was that the petitioner as a Forest Range Officer of Dharmanagar had showed serious negligence in discharging of his duty by not processing documents relating to issuance of one FTL in time. This according to the disciplinary authority, led to public harassment. However, it can be safely presumed that when the petitioner gave his explanation in response to this charge-sheet, the disciplinary authority did not find it appropriate to proceed further with this element of charge of the petitioner's alleged misconduct leading to public harassment. This is the only conclusion one can reach upon comparison of the two charge-sheets.

[6] Perhaps the better option with the disciplinary authority was to continue with the departmental inquiry in connection with the charge-sheet dated 05.12.2020, however narrow down the scope thereof by asking the inquiry officer to inquire into the charge minus the element of public harassment. However, he chose to remodel his charge-sheet and while doing so, he first cancelled the previous charge-sheet and issued a fresh one. This mere procedure by which the disciplinary achieved the same purpose, cannot a ground to exonerate the petitioner of a charge which he has yet to face. As a disciplinary authority it was always open to the Chief Conservator of Forest to accept the explanation of the petitioner either in entirety nor in part. In the present case, he accepted the defence of the petitioner in part and has thereafter decided to go ahead with the inquiry with respect to a truncated charge. The charge-sheet cannot be quashed on the grounds pressed by the counsel for the petitioner.

[7] Nothing in Rule-14 of CCS(CCA) Rules provides to the contrary. Two Government of India's instructions relied upon by the counsel for the petitioner also would not change my opinion. He had relied on the Government of India's instructions dated 05.07.1979 wherein it has been clarified that when the departmental proceedings initiated under Rule- 14 are dropped, the disciplinary authority would be debarred from initiating fresh proceedings unless reasons of cancellation of the original chargesheet or for dropping the proceedings are appropriately mentioned and it is stated in the order that the dropping of the charge is without prejudice to the further action which may be taken.

[8] The present case is not one of dropping of the charge. It is only a question of accepting the petitioner's explanation vis-a-vis an element of the charge as initially alleged. The action of the authority of cancelling the previous charge-sheet and issuance of a fresh charge-sheet is a one integrated exercise contained in the same order. It is not as if by one order he dropped the departmental proceedings and sometime later revived it by issuing a fresh charge-sheet.

[9] The Government of India instructions issued under OM dated 12.03.1981 on which reliance was placed, merely reinforces my belief. It provides that the disciplinary authority has inherent power to review or modify the articles of charge or drop some of the charge or all charges, after receipt and examination of the written statement of defence by the delinquent. What is stated in the said OM merely flows from the existing rule position. Once a charge-sheet is issued, the delinquent Government servant is given opportunity to file his explanation. This is not a stage of mere formality. If the explanation is found satisfactory, noting prevents the disciplinary authority from dropping all charges or some of the charges contained in the charge-sheet or even a part of the charge. Surely a Government servant should not be made to face an inquiry in relation to the charge where the disciplinary authority finds his explanation satisfactory. In the present case, this is precisely what has been done by the disciplinary authority. The charge is originally framed at an additional element of the petitioner's delay causing public harassment. This element of public harassment has been dropped in the subsequent charge-sheet. As noted earlier, he could probably have achieved the same thing by modifying the charge and continuing with the departmental inquiry in relation

with the charge-sheet dated 05.12.2020. However, for such technical reason the departmental inquiry cannot be quashed.”

8. We have also gone through the O.M. dated 12th March, 1981 issued by the Government of India, wherein, it has been clearly stated that disciplinary authority has the inherent power to review and modify the Articles of Charges after receipt of the written statement of defence submitted by the delinquent officer. O.M. dated, 12th March, 1981, clearly stipulates that:

“(4) Whether charges can be dropped at the stage of initial written statement of defence:-
A question has been under consideration whether Rule 14 (5) (a) of the CCS (CCA) Rules, 1965 permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused Government servant under Rule 14 (4) *ibid*. The question has been considered in consultation with the Ministry of Law and the position is clarified as under:-

(a) The disciplinary authority has the inherent power to review and modify the articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused Government servant under Rule 14 (4) of the CCS (CCA) Rules, 1965.

(b) The disciplinary authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further cause to proceed with.”

9. Original Charge under Article I, dated 05.12.2020 is framed as under:

“Shri Sailen Malakar, Forest Ranger, Range Officer, Dharmanagar Range, Dharmanagar Forest Sub-Division Dhalai District during his incumbency as Range Officer, Dharmanagar Range showed serious negligence in his duty by not processing documents relating to issue of FTL in time leading to public harassment.

Such activity on the part of Shri Sailen Malakar, Forest Ranger, Range Officer, Dharmanagar Range was highly undesirable which amounts to misconduct. Shri Sailen Malakar, Forest Ranger is thus charged for misconduct as per Rule 3 of Tripura Civil Services (conduct) rules, 1988 and its amendments thereof.”

After submission of representation which has been received by the respondents, on 15.01.2021 another charge has been framed, which is as under:

“Shri Sailen Malakar, Forest Ranger, Range Officer, Dharmanagar Range, Dharmanagar Forest Sub-Division Dhalai District during his incumbency as Range Officer, Dharmanagar Range showed serious negligence in his duty by not processing documents relating to issue of FTL in time.

Such activity on the part of Shri Sailen Malakar, Forest Ranger, Range Officer, Dharmanagar Range was highly undesirable which amounts to misconduct. Shri Sailen Malakar, Forest Ranger is thus charged for misconduct as per Page 2 of 6 Rule 3 of Tripura Civil Services (conduct) rules, 1988 and its amendments thereof.”

In the process of framing charges dated 05.12.2020 and 15.01.2021, a Memo dated 13.01.2021 has been issued while indicating that Memo dated 05.12.2020 stands cancelled though the cause of action and the contents in the allegations are one and same. After receiving the explanation from the petitioner, subsequent proceeding which has been issued is squarely covered under Rule 14 of the CCS(CCA) Rules.

10. It is ***Binod Chandra Mazumdar vs. Union of India (supra)***, the Hon'ble apex court has stated that *in a departmental enquiry against a Government servant, when the first charge-sheet is dropped and there is a second charge-sheet, it may be contended that the whole procedure under Rule 15 has to be followed afresh, but the contention that once an enquiry has been ordered on a specific set of charges, the Enquiry Officer is bound to proceed with the same and that those proceedings cannot be cancelled, withdrawn or dropped, cannot be accepted. There is no express provision in the Rules that the Disciplinary Authority is debarred from dropping any charges that it may have considered fit to frame in the first instance and to frame*

fresh charges which may on further consideration appear to be appropriate charges for being preferred. Thus, where the second set of charges became necessary after there had been investigation by the police into the allegations against the petitioner, there is no reason or justification for the Disciplinary Authority not being competent to prefer a fresh charge-sheet after superseding the first one.

11. From the OM dated 12.03.1981 it is evident that the disciplinary authority has inherent power to review or modify the articles of charge or drop some of the charge or all charges, after receipt and examination of the written statement of defence by the delinquent. Applying the aforesaid principles, it appears that the disciplinary authority has ample power to amend the order of framing charges and the power to amend the same must be treated to be available with the disciplinary authority.

12. Taking into consideration the entire circumstances, we are not inclined to interfere with the judgment and order dated 25.02.2021 passed by the learned Single Judge in Writ Petition No. W.P(C)107 of 2021. Consequently, the instant appeal stands dismissed.

JUDGE

JUDGE

Saikat