

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.12.2016

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and
The Honourable Mr. Justice V.PARTHIBAN

W.P.No.3623 of 2016 &
W.M.P.No.2989 of 2016

J.Kalaivanan

... Petitioner

Versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

2. Union of India,
represented by
Director of Postal Services,
O/o Postmaster General,
Western Region,
Coimbatore-641 002.

3. Senior Superintendent of Post Offices,
Salem East Postal Division,
Salem-636 001.

... Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the impugned order dated 13.11.2015 passed in OA 1810 of 2013 read with the corrigendum issued on 06.01.2016 by the Hon'ble Central Administrative Tribunal, Madras Bench and quash the same and direct the respondents 2 and 3 to conduct necessary enquiry as provided for in Rule 16(1)(b) of CCS (CCA) Rules, 1965.

For Petitioner : Mr. M.S.Velusamy

For Respondents: Mr.V.Balasubramanian, SC
for R2 and R3

ORDER

(Order of the Court was delivered by V.PARTHIBAN, J.)

The present Writ Petition has been filed praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the impugned order dated 13.11.2015 passed in OA 1810 of 2013 read with the corrigendum issued on 06.01.2016 by the Hon'ble Central Administrative Tribunal, Madras Bench and quash the same and direct the respondents 2 and 3 to conduct necessary enquiry as provided for in Rule 16(1) (b) of CCS (CCA) Rules, 1965.

2. The petitioner approached the Central Administrative Tribunal (in short, the Tribunal) seeking to quash the charge memo dated 23.5.2013 issued under Rule 14 of Central Civil Services (Classification, control and Appeal) rules, 1965 (in short, 'the Rules,') together with the order of rejection of the representation made against the charge memo, dated 29.10.2013 issued by the second respondent and consequently direct the respondents to continue de novo proceedings under Rule 16(1) (b) of the Rules.

3. The facts which give rise to the filing of the Original Application are narrated hereunder:

4. The petitioner, while working as Instructor, DLTC, Salem, was issued with a charge memo dated 3.2.2012 under Rule 16 of the Rules for certain acts of misconduct. The said charge sheet resulted in imposition of penalty of recovery of Rs.1,20,000/- vide order dated 21.2.2012. Against the said order of penalty, the petitioner approached the appellate authority who was the second respondent herein and pending the appeal, he moved the Tribunal by filing O.A.No.432 of 2012. The said OA came to be disposed of on 27.3.2012 by the Tribunal, directing the appellate authority, the second respondent to dispose of the appeal within three months. Thereafter, the appeal was disposed vide order dated 9.8.2012 by remitting the matter back to the disciplinary authority for de novo proceedings from the stage of issuance of the charge sheet in substitution of the original charge sheet. Thereafter, in compliance with the directions of the appellate authority, a separate charge sheet was issued under Rule 14 of the Rules dated 23.5.2013.

5. As against the above charge memo, the writ petitioner submitted his representation on 7.8.2013 for withdrawal of the charge sheet and his representation having been rejected on 29.10.2013, the petitioner once again approached the Tribunal in O.A. No.1810 of 2013 assailing the charge memo and rejection order.

6. Before the Tribunal, it was contended on behalf of the petitioner that the appellate authority has over reached his power under Rule 27 of the Rules and the charge memo under Rule 14 of the Rules cannot be issued without dropping the earlier charge memo issued under Rule 16 of the Rules and the writ petitioner cannot be penalized for approaching the appellate authority by issuing a major penalty proceedings against him in substitution of minor penalty proceedings issued to him, earlier.

7. Per contra, it was contended on behalf of the respondents 2 and 3 that the impugned charge memo was issued as per the liberty granted by the appellate authority and such power was well within the scope of the Rules and Therefore, the same cannot be faulted with.

8. The Tribunal, after advertng to the submissions put forth by the parties, has concluded that the subsequent charge memo issued by the disciplinary authority on the advise of the appellate authority, was in order and cannot be faulted with.

9. Heard the learned counsel for the parties and perused the entire material available on record.

10. From the perusal of the records and the order passed by the Tribunal, it can be seen that no sufficient or acceptable grounds were raised in the original application warranting interference for quashing of the charge memo, as the charge memo did not suffer from any jurisdictional error or the same was tainted with any mala fides. It was always open to the petitioner to participate in the disciplinary proceedings and whatever objections which are open to him, he can raise in accordance with law in the departmental enquiry. Such being the case, interfering at the preliminary stage and thereby preempting the action of the disciplinary authority against the writ petitioner would serve no public interest as the petitioner was alleged to have tampered with official data entries. It is always open to the petitioner to establish his innocence before the disciplinary authority by subjecting himself to the departmental enquiry. Such being the case, the Tribunal has rightly dismissed the original application.

11. As regards the principal contention of the petitioner that the appellate authority has exceeded his power under Rule 27, it should be noted that the scheme of the Rules, clearly empowered the appellate authority to remit the case to the lower authority with such a direction as it may deem fit and in the instant case, the appellate authority has given direction to the disciplinary authority to proceed with the de novo enquiry from the stage of the charge sheet. As stated supra, it is always

open to the petitioner to raise whatever objections, he may have in his defense by participating in the departmental proceedings.

12. Learned counsel appearing for the petitioner cited a decision rendered in O.A. No. 81 of 2008 by the Central Administrative Tribunal, Hyderabad Bench, which was confirmed by the High Court of Andhra Pradesh. On a perusal of the same, we find that the facts the case are different and hence, the said decision cannot be applied to the factual matrix of the present case.

For the foregoing reasons, we do not find any infirmity in the order passed by the Tribunal. Therefore, the Writ Petition stands dismissed as devoid of merits. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

2. Director of Postal Services,
Union of India
O/o Postmaster General,
Western Region,
Coimbatore-641 002.

3. Senior Superintendent of Post Offices,
Salem East Postal Division,
Salem-636 001.

+1cc to M/S.M.S.Velusamy, Advocate Sr.72881
+1cc to M/S.V.Balasubramanian, Advocate Sr.72445

W.P.No.3623 of 2016

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srg 23/01/2017