

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
&
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition Nos.6979, 7046, 7183 and 7184 of 2016
& connected Miscellaneous Petitions

P. Balu	...Petitioner in W.P.6979 of 2016
Abdul Malick	...Petitioner in W.P.7046 of 2016
S.Jayakumar	...Petitioner in W.P.7183 of 2016
N.Ravichandran	...Petitioner in W.P.7184 of 2016

Vs.

1. The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai - 600 014.
2. Union of India
represented by the Superintendent
RMS 'T' Division,
Tiruchirapalli - 620 001. ... Respondents in the
above W.Ps

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorari to call for the
concerned records to the order dated 12.11.2015 given in
O.A.Nos.950 of 2014, 1196 of 2014, 1195 of 2014 and 1197 of 2014
respectively passed by the first respondent and quash the same.

For Petitioners : Mr.S.Ramaswamyrajarajan

For Respondents : Mr.V.Balasubramanian, SPCG

C O M M O N O R D E R
(Order of the Court was made by R.SUDHAKAR,J.)

Challenging the order passed by the Tribunal dated
12.11.2015 made in O.A.Nos.1195 to 1197 and 950 of 2014,
wherein, the Tribunal declined the relief to interfere with the
charge memos issued on the petitioners herein, the present Writ
Petitions have been filed.

2. The brief facts of the case are as follows:

The first petitioner has joined the second respondent institution as Sorting Assistant and petitioners 2 to 4 have joined the second respondent institution as Multi Tasking Staff. While in service, they were issued with a charge memo dated 25.6.2013 by the Superintendent alleging that they had failed to keep and secure the parcel bags made over to them by Vridhachalam RMS and failed to dispose of the bags properly. It was also stated that the one parcel bag went missing and the contents in the bags were dissipated on the railway track. On receipt of the charge memo, the petitioners have submitted representations, all dated 01.07.2013 requesting extension of time for submission of explanation. Without proceeding with the charge memo dated 25.6.2013, the second respondent herein had withdrawn the charge memo in respect of one individual as in the case of others, holding as follows:

"The Charge Memo issued against Shri S.Abdul Malik, MTS, HRO, RMS 'T' Division, Tiruchirappalli 620 001 under Rule 14 of the CCS (CCA) Rules, 1965, in this office Memo of even No.dated 25.06.2013 is hereby treated as 'Withdrawn' with an intention to issue of fresh Charge Memo to Shri S.Abdul Malick by the Competent Authority."

3. Subsequently, another charge memo dated 29.8.2013 was issued against the petitioners on the same charges. Aggrieved by the second charge memo, the petitioners have filed Original Applications before the Tribunal.

4. Before the Tribunal, the petitioners herein contended that as per the DGP&T's letter dated 5.7.1979, the Disciplinary Authority has to disclose reasons for cancelling or dropping the original proceedings. The petitioners herein had placed reliance on the decisions of the Central Administrative Tribunals as well as the decision of the Karnataka High Court in the case of Senior Superintendent of Post Offices Vs. V.b.Ravindranathan dated 27.11.2012 reported in 2003(1) KarLJ 506 = (2003) IILLJ 74 Kant.

5. The Tribunal after analysing the issue and after considering the rival submissions of both sides framed the following issues for consideration:

"6. It is clear that the issues that need to be considered in this case are:

(i) whether the instructions issued by the DGP&T dated 5.7.1979 are such as to confer any inviolable right on the Charged official (CO) to be

provided with the reasons for withdrawing/dropping of ongoing inquiry before commencing a fresh inquiry;

(ii) whether the first charge memo dated 25.6.2013 was valid in the eyes of law and if not whether reasons need to be disclosed even for withdrawing an invalid order; and

(iii) if disclosure is necessary even in such a case, whether the nondisclosure of the reason ipso facto take away the right of the employer to discipline a delinquent employee by ordering an enquiry into an alleged misconduct which is otherwise serious in nature."

6. The Tribunal after considering the decisions relied on by the petitioners herein held as follows:

"18. It is thus seen that the citations in which the charged officers had been granted relief by the Tribunal/High Court were not entirely similar in terms of facts and circumstances and, therefore, the reliance on these cases is out of context. We are also unable to see any serious prejudice caused to the interests of the applicant in the issue of a fresh charge memo by the competent authority because the second charge memo had been issued within a period of about two months from the first. The proceedings under the first charge memo had not progressed beyond the applicant seeking copies of certain documents to enable him to reply. An inadvertent error on omission that has not hurt the right of defence of the applicant could not be converted into a case of estoppel against the respondents. It is not disputed that there was damage to certain number of answer sheets pertaining to SSLC public examination and compromise marks had to be awarded to the affected candidates. Resultantly there was a failure to award correct marks based on merit. In such circumstances, the respondents are fully justified in seeking to fix responsibility on the employees whose negligence led to this situation. It would be against larger public interest to allow the right of the respondents to discipline errant employees to be compromised on a flimsy ground such as the one raised by the applicant as it could then encourage indiscipline and a callous attitude in dealing with important duty and would be a mockery of the conduct rules that require every government servant to maintain devotion to

duty. We are, therefore, not inclined to interfere in the process of enquiry set in motion by the respondents which should be taken to its logical conclusion.

19. We would have directed the respondents to rectify the omission in the memo dated 1.8.2013 by disclosing the reason to the applicant but this seems to be unnecessary now as the applicant has already come to know the reason from the reply submitted by the respondents in this OA. No attempt has been made by the applicant or his counsel to assail this reason on merits or to indicate how a two months' delay in the process would jeopardize the applicant's interests in the departmental enquiry, though the purpose of such disclosure is precisely this i.e., to afford an opportunity to the C.O. to plead against the proposed action on such or other similar grounds."

7. Aggrieved by the above-said order, the unsuccessful employees have come before this Court.

8. Heard the learned counsel appearing for the petitioners and the learned Standing Counsel appearing for the second respondent.

9. It is not in dispute that a charge memo was issued against the petitioners on 25.06.2013, which has been withdrawn and a fresh charge memo has been issued. The contention of the petitioners is that the Disciplinary Authority has not recorded any reason while withdrawing the first charge memo, which is contrary to the DGP&T's letter dated 05.07.1979, wherein it has been stated that reasons should be recorded while cancelling the original charge sheet. For better appreciation, the relevant portion of the said letter is extracted hereunder:

"(3) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet - It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention

is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

10. Placing reliance on the decision of the Karnataka High Court in the case of Senior Superintendent of Post Offices Vs. V.b.Ravindranathan dated 27.11.2012 reported in 2003(1) KarLJ 506 = (2003) IILLJ 74 Kant., learned counsel appearing for the petitioners submitted that once a charge memo has been withdrawn, the same could not be issued without recording a reasons.

11. It is seen that the Karnataka High Court in the above-said decision, while dealing with the disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965, held as follows:

"5. It is well-settled that an employee cannot be charged with the same misconduct twice, either by issuing two charge memos or by conducting two departmental enquiries. There are, however, two recognised exceptions. The first is, where the charge memo or enquiry proceedings is quashed by a Court or Tribunal on technical grounds, reserving liberty to issue a fresh charge memo or hold a fresh enquiry. The second is, where the charge memo is withdrawn in view of a technical defect by disclosing the reason for such withdrawal, reserving liberty to issue a fresh charge memo in regard to the very same misconduct. The reason given for withdrawal should necessarily be such, which requires or necessitates withdrawal of the charge memo. On the other hand if the charge memo/enquiry is withdrawn/dropped reserving liberty to initiate fresh action, but without assigning any reason, or by assigning reasons which are not relevant or by assigning wholly inadequate or inappropriate reasons for issued of a fresh charge memo or revival of the enquiry, a fresh charge memo cannot be issued in regard to the very same charges. The principle underlying Order 23, Rule 1 of the CPC will generally apply in such a situation."

12. The above-said contention of the learned counsel appearing for the petitioners has been considered by the Tribunal in paragraph Nos.11, which reads as follows:

"11. We have carefully considered the matter in terms of the citations provided by the learned counsel for the applicant. It is seen that the Tribunal/Hon'ble High Court of Karnataka have gone into the effect of non-observance of the instructions dated 5.7.1979 in each case based on the facts and circumstances of that case. In TA.44 of 1986, it was observed that the disciplinary authority while cancelling the memo of the charge issued earlier never indicated his intention to issue a subsequent fresh charge memo. It was, therefore, held that action of the disciplinary authority in issuing a fresh charge memo and consequently passing an order imposing a certain penalty on the applicant therein was bad in law. However, in the instant case, the intention to issue a fresh charge memo has been made abundantly clear in the memo dated 1.8.2013 itself by which the previous charge memo was treated as withdrawn."

13. If the Disciplinary Authority, for some reason or other, decided to drop the proceedings and thereafter proceeds further with an intention to issue a fresh charge memo, then the question of giving reasons would arise. In the instant case, the Disciplinary Authority has clearly stated that the first charge memo issued was treated as withdrawn with an intention to issue a fresh charge memo, which means, the Disciplinary Authority has not dropped the proceedings. Therefore, the term 'withdrawing the proceedings' is different from 'dropping the proceedings'. Hence, the reliance placed on the DGP&T's letter dated 05.07.1979 does not apply to the facts of the present case. Further more, we find that this letter is only an instruction under Rule 16 of CCS(CCA) Rules and not a Rule, by itself.

14. The decision relied on by the learned counsel appearing for the petitioners in the case of Senior Superintendent of Post Offices Vs. V.b.Ravindranathan dated 27.11.2012 reported in 2003 (1) KarLJ 506 = (2003) IILLJ 74 Kant. does not come to the aid of the petitioners, because, the facts therein are different from the facts of the present case. In the said decision, the Disciplinary Authority while cancelling the first charge memo did not indicate the intention of issuing subsequent charge memo. Further, for the first charge memo issued, for more than three years, no action has been taken. Thereafter, after a lapse of four years from the date of dropping the first charge memo the second charge memo has been issued. Hence, it was found to be bad. In the instant case, the first charge memo dated 25.6.2013 was withdrawn on 01.08.2013 and the second charge memo was issued on 29.08.2013 within a period of two months from the date of issuance of the first charge memo. Even

otherwise, in the memo dated 01.08.2013, the Disciplinary Authority has made his intention very clear to issue fresh charge memo on the petitioners.

15. Admittedly, the petitioners have not challenged the memo dated 01.08.2013 withdrawing the first charge memo with an intention to issue fresh charge memo. Having decided not to challenge the memo dated 01.08.2013, the petitioners could not challenge the second charge memo dated 29.08.2013, which is consequential to the memo dated 01.08.2013.

16. It is stated that consequent on the second charge memo issued, the petitioners have received the documents and participated in the enquiry. It is also stated that further proceedings are going on and witnesses have been examined on 26.2.2016.

17. It is to be stated that the petitioners have not established as to prejudice that has been caused to the petitioners due to the issuance of second charge memo dated 29.08.2013. In the absence of the same, this Court holds that no prejudice is caused to the petitioners consequent to the withdrawal of the first charge memo. Since the disciplinary proceedings is going on and the petitioners have also participated in the proceedings, we do not want to scuttle the same on hyper technical plea.

18. Accordingly, we do not find any reason to interfere with the order passed by the Tribunal. In the result, all the above Writ Petitions stands dismissed. However, the Disciplinary Authority is directed to conduct the enquiry and complete the proceedings as expeditiously as possible. It is made clear that the Disciplinary Authority shall not adjourn the matter by more than three working days. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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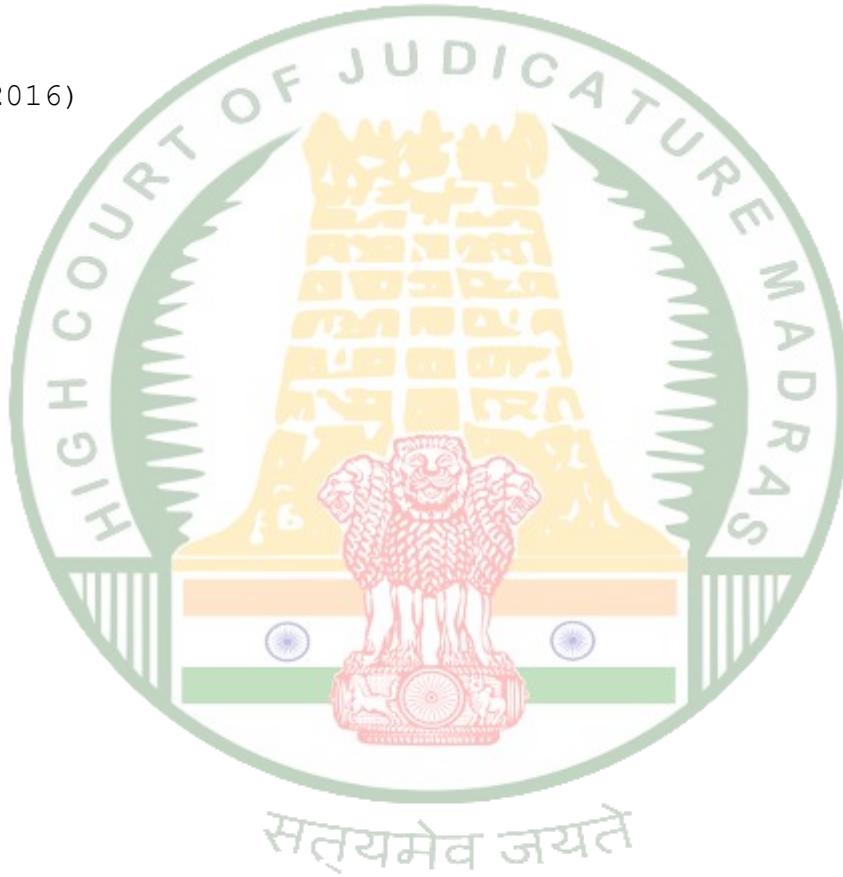
1. The Registrar,
Central Administrative Tribunal,
Chennai.

2. The Superintendent,
Union of India, RMS 'T' Division,
Tiruchirapalli - 620 001.

+lcc to Mr.S.Ramaswamyrajarajan, Advocate, S.R.No.13308

Writ Petition Nos.6979, 7046, 7183 and 7184 of 2016
& connected Miscellaneous Petitions

MG (CO)
CA(22/03/2016)



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