

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

W.P.S.T. 185 of 2025

**Gitesh Das Mahapatra
Vs.
State of West Bengal &Ors.**

For the petitioner	: Mr. BikashRanjanNeogi, Ms. AnanyaNeogi, Ms. Anushka Ghosh
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For the State	:Mr. Amal Kr. Sen, Ld. AAG, Mr. ArkadiptaSengupta
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Judgment on	:22.05.2026
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Madhuresh Prasad, J.:

1. The writ petitioner was the applicant before the West Bengal Administrative Tribunal (for short '*Tribunal*') in O.A. No. 307 of 2023 seeking the relief of quashing of the charge memo dated 22.04.2022. The petitioner also sought consequential relief. The Tribunal dismissed the original application by an order dated 15.05.2025 which was put to challenge by the writ petitioner in the present writ proceeding.
2. Heard the learned advocate for the parties.

3. The writ petitioner herein was proceeded against by way of a departmental proceeding in accordance with the provisions contained in West Bengal Services (Classification, Control and Appeal) Rules, 1971 [hereinafter referred to as '*the 1971 Rules*']. A charge memo dated 08.08.2014 was served on the writ petitioner. The writ petitioner filed an application before the Tribunal. The O.A. No. 282 of 2017 thus came to be instituted. The authorities realized that a draft article of charge was enclosed with the charge memo dated 08.08.2014. Therefore, the Disciplinary Authority issued proper article of charges by a fresh charge memo dated 07.09.2015.
4. The first Original Application was thereafter taken up by the Tribunal. It was submitted by the State that the draft articles of charges was enclosed alongwith the charge memo dated 08.08.2014 due to inadvertence. On realizing the mistake, the authorities have served a proper articles of charge by a subsequent communication dated 07.09.2015, which was opposed by the applicant/present writ petitioner.
5. It was contended on behalf of the writ petitioner that the communication dated 07.09.2015 was not served on the writ petitioner. The State rather than going into the issue regarding service of the communication dated 07.09.2015, made a submission before the Tribunal that they do not want to proceed with the charge memo dated 08.08.2014 containing the draft articles of charges as well as the subsequent communication dated 07.09.2015 but want to give fresh chance to the applicant by issuing a fresh charge sheet.

Such submission was also opposed by the applicant. The Tribunal proceeded to pass an order dated 31.03.2022 in the first Original Application in the following terms:

“Heard both the parties and perused the records. It is noted that the applicant had initially challenged the impugned draft Charge Sheet dated 08.08.2014 on the ground that the said charge sheet was issued in a draft stage. Further it has been submitted by the counsel for the applicant that the subsequent final Articles of Charges and Statement of misconduct was not received by him. However, the respondents have themselves submitted that they do not want to proceed with the impugned Charge Sheet dated 08.08.2014 as well as communication dated 07.09.2015. Thus, subsequent issuance of Second Show Cause Notice proposing punishment (dated 30.11.2021 as well as the impugned Charge Sheet dated 08.08.2014 and communication dated 07.09.2015 has become infructuous. accordingly, OA is disposed of being infructuous with no order as to costs.

Since the circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.”

6. The petitioner thereafter was served with charge memo dated 22.04.2022. The same prompted him to file another Original Application bearing O.A. No. 307 of 2022 (hereinafter referred to as the second Original Application). The petitioner sought the relief of quashing of the charge memo dated 22.04.2022, regularizing his period of suspension from 29.04.2013 to 16.04.2017, and for payment of full salary and other allowances for the period in question. The Tribunal found no merit in the second Original

Application and dismissed the same by an order dated 15.05.2025, which is the subject matter of the present writ proceeding.

7. It is submitted by the learned advocate for the writ petitioner that the Tribunal failed to consider that the charge memo dated 22.04.2022 could not be made the basis of a fresh proceeding against the applicant/writ petitioner since despite a prayer made for liberty to proceed afresh, recorded in the order dated 31.03.2022 passed in the first Original Application, no such liberty was granted by the Tribunal. Accepting the stand of the respondents that they did not want to proceed on the basis of the charge memo dated 08.08.2014 and communication of charges vide letter dated 07.09.2015 the Tribunal had disposed of the first Original Application. It is, therefore, submitted that the principles contained in Order 23 Rule 1 of the C.P.C, contemplates that when a liberty is not granted then the party is precluded from instituting a fresh proceeding in respect of the subject matter of the earlier proceeding. He submits that Order 23 Rule 1 C.P.C. which applies to a writ proceeding, would apply to the Tribunal also.
8. The learned advocate has relied upon a decision of the Hon'ble Supreme Court of India in the case of **Sarguja Transport Service – Vs.- State Transport Appellate Tribunal, M.P., Gwalior and Others** reported in **1987 (1) SCC 5**. It is, therefore, submitted that the proceedings on the basis of charge memo dated 22.04.2022 are precluded and liable to be set aside.

9. The learned advocate further submitted that the petitioner remained deprived of many benefits in the meantime right from the issuance of the charge memo dated 08.08.2014 till date and, therefore, considering the entire conspectuous the Tribunal ought to have set aside the charge memo dated 22.04.2022.
10. The learned Additional Advocate General on behalf of the State submitted that the issue raised by the writ petitioner in the first Original Application was confined to a violation of the procedural prescription contained in Rule 10 of 1971 Rules. An issue was raised in the first Original Application that the charge memo was required to contain articles of charge, whereas only draft articles of charge was communicated to the writ petitioner.
11. Mr. Sen has drawn attention of the Court towards a copy of the first Original Application which was placed on record in the present proceedings by the learned advocate for the writ petitioner. Referring to various paragraphs including paragraph 6.10 to 6.17 of the Original Application. It is submitted that the subject matter of the proceeding was limited to issuance of a draft article of charge instead of a proper charge sheet. In fact the applicant consciously omitted to raise an issue regarding competence of the charge memo issuing authorities and in respect of the charges on merit. The first Original Application was confined to an issue that without a proper charge memo the proceeding was not maintainable.
12. The submissions according to the learned AAG are further fortified by a perusal of the representation dated 30.01.2017 filed prior to

filing of the first Original Application. The representation was filed because exhaustion of remedies which is mandatory under the Administrative Tribunal's Act, 1985. The representation dated 30.01.2017 highlights the procedural prescription which requires serving an articles of charge and not a draft article of charge.

13. A second submission has been advanced which is an offshoot of the first submission, namely that the merits of the charge memo was never made an issue in the first Original Application. The merits of the charge, therefore, was not a subject matter of the proceeding before the Tribunal in the first Original Application.

14. It is further submitted that service of a charge memo is preceded by an opinion being recorded by the Disciplinary Authority for proceeding against an employee. Prior to issuance of the charge memo, it is required that the employer arrives at a decision that grounds exist for proceeding against an employee as per procedures specified in Rule 9 of the 1971 Rules. Once such opinion is formed Rule 10 mandates that the Disciplinary Authority "shall" serve a charge memo on the concerned employee. The 1971 Rules thereafter contains the procedural prescription for service of a charge memo, appointment of an Enquiry Officer, Presenting Officer, the procedure for conducting the enquiry and submission of enquiry report. The Rules thereafter prescribes the procedural prescription for submission of the enquiry report to the Disciplinary Authority and the procedure to be adopted by the Disciplinary Authority. Thereafter, the procedure from Rule 10 of the 1971 Rules, and

thereafter till conclusion of the proceeding, are mandatory procedural prescription which cannot be compromised, in any way by any authority.

15. The compliance with principles of natural justice are inherent in the procedural prescription contained in the 1971 Rules. If a violation of the procedure occurred, as was accepted by the State authorities in the first Original Application then it was mandatory for the authorities to proceed ensuring compliance with principles of natural justice as per Rule 10 of the 1971 Rules. The respondent authorities cannot be expected to act in contravention of the Rules and submissions recorded in the first Original Application have to be read in this context. The authorities, therefore, cannot be precluded for complying with the mandatory procedure under Rule 10 of the 1971 Rules.

16. The submission is advanced relying upon decision of the Hon'ble Apex Court in the case of ***Rajasthan State Industrial Development and Investment Corporation –Vs.- Subhash Sindhi Cooperative Housing Society, Jaipur and Others*** reported in ***(2013) 5 SCC 427***.

17. Another judgment is relied upon by the learned AAG in support of his earlier submission that the principles contained in order 23 Rule 1 of the C.P.C does not come in the way of issuance of the charge memo dated 22.04.2022 because the subject matter of the first Original Application was a draft article of charge and the earlier communication dated 07.09.2015. The authorities are not proposing

to again proceed on the basis of the draft article of charge. They are also not proceeding against the appellant on the basis of the communication dated 07.09.2015, but action is taken afresh under the charge memo dated 22.04.2022. The substance of the allegations never being brought in question in the first Original Application, the present proceedings based on the charge memo dated 22.04.2022 cannot be said to be suffering with any infirmity as per decision of the Hon'ble Apex Court in the case of ***Vipulbhai Mansingbhai Chaudhary -Vs.- State of Gujarat and Another*** reported in **(2017) 13 SCC 51**.

18. Lastly, it is submitted that the case of the writ petitioner in the second Original Application has its foundation in application of the principles contained in order 23 Rule 1 of the C.P.C. Since the petitioner's case hinges on this provision, the consideration also must be strictly in accordance with the provision.
19. A plain reading of the provision leaves no room for interpretation that if at all any relief is abandoned wholly or in part it is contemplated by the provision to be done by the plaintiff against the defendants and not *vice versa*. Applying the principles contained in order 23 Rule 1 of the C.P.C, the defendants cannot be barred from raising any issue. Principles contained in the provision preclude raising of the same subject matter by the plaintiff in a subsequent suit if the earlier suit raising the same subject matter was withdrawn or abandoned without seeking leave/liberty. Therefore, the authorities which were not the petitioner/applicant before the

Tribunal cannot in any way be precluded from proceeding on the basis of a charge memo dated 22.04.2022.

20. Upon consideration of the rival submissions we find that the writ petitioner filed the First Original Application. Being aggrieved by a fact that a draft article of charge was served on the petitioner instead of a proper Charge Memo. Neither the competence of the authority issuing the Charge Memo, nor this substance of the allegations contained in the Charge Memo was made an issue by the writ petitioner in the original application. The limited relief prayed for by the writ petitioner in the First Original Application was setting aside of the Charge Memo dated 08.08.2014 containing draft charges. Consequential direction to treat the applicant as a regular revenue officer was also prayed for.

21. The writ petitioner was the applicant before the Tribunal in the First Original Application. The First Original Application was disposed of as infructuous since the respondent authorities did not want to proceed with the Charge-Sheet dated 08.08.2014 containing draft article of charge, and the consequential communication dated 07.09.2015 and second show-cause notice proposing punishment dated 30.11.2021. Therefore, the Tribunal recorded such a stand in its order extracted above. The learned advocate for the State, who is bound by instructions, did not give any undertaking or assurance that a fresh Charge Memo in accordance with law would not be issued against the writ petitioner in future. The learned State Counsel only gave up the Charge Memo dated 08.08.2014,

communication dated 07.09.2015 and the show-cause notice of proposed punishment dated 30.11.2021.

22. The writ petitioner cannot be permitted to rely upon such concession recorded in the order so that it would operate as bar to any future Charge Memo being issued against a government employee. More so when the substance of allegations in the Charge Memo dated 08.08.2014 was neither raised by the writ petitioner, nor considered by the Tribunal in the First Original Application. Substance of charge was not withdrawn and withdrawal was limited to the form of the charge memo, since the charges were stated in the form of a draft article of charge, rather than an article of charge. Reliance placed by the learned advocate for the writ petitioner on the provisions contained in Order 23 Rule 1 CPC therefore, is misplaced in the facts and circumstances.

23. We, therefore, find force in submission of the learned AAG for the State that the authorities, in the above noted facts and circumstances, cannot be prevented from complying with the mandatory procedure under Rule 10 of the 1971 Rules, regarding issuance of a Charge Memo.

24. The learned advocate for the writ petitioner also placed reliance on a decision of the Hon'ble Supreme Court of India in the case of **Sarguja Transport Service**(*supra*). We find that the same has no application to the facts and circumstances arising for consideration in the present case. In the present case, there is no issue of a litigant instituting proceedings again and again for the same cause of action

without any good reason. The principles of Order 23 Rule 1 discussed in the judgment would apply only if there is a case of repeated invocation of the process of the court. In the present case no such facts are involved.

25. In the present case, we find that the respondent authorities have fairly conceded in the first original application filed by the writ petitioner since the charge memo was served containing a draft articles of charge. The first original application was therefore disposed of as infructuous. The authorities in the circumstances cannot be precluded in future from proceeding against the petitioner based on proper charge memo, in accordance with the 1971 rules. We find force in the submission of the learned AAG in this regard relying on the decision of the Hon'ble Apex Court in the case of **Vipulbhai Mansingbhai Chaudhary** (*supra*) as also decision in the case of **Rajasthan State Industrial Development and Investment Corporation** (*supra*) wherein the Apex Court held that there can be no estoppel against the law or public policy. The authorities cannot be precluded from taking action in terms of the 1971 Rules framed under the proviso to Article 309 of the Constitution of India. The procedural prescription contained therein for imposition of penalties under Rule 10 are required to be observed by the authorities.

26. In the facts and circumstances of the present case and having regard to the law taken note of above we are of the considered opinion that the order passed in the first original application does not come in the way of the respondent authorities in proceeding

against the writ petitioner on the basis of a fresh charge memo. We therefore find no reason to interfere with the proceeding initiated by the respondent authorities on the basis of the charge memo dated 22.04.2022.

27. The tribunal in our opinion rightly rejected the petitioner's second original application. The Tribunal's order does not require any interference by this Court in exercise of extraordinary and discretionary writ jurisdiction under Article 226 of the Constitution of India.

28. The writ petition is devoid of any merit and the same is dismissed.

29. Urgent certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)