

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH:

HON'BLE SHRI JUSTICE SANJAY YADAV
&
HON'BLE SHRI JUSTICE ASHOK KUMAR JOSHI

Miscellaneous Petition No. 235/2018

J.S. Chauhan

Vs.

Union of India and others

Shri Alok Kumar Sharma, learned counsel for the petitioner.

Shri Mahendra Kumar Sharma, learned counsel for respondents No. 1 to 3.

Whether approved for reporting : Yes

Law laid down	Relevant para
A charge sheet having culminated into punishment order and the incumbent having undergone a punishment cannot be withdrawn later even by a competent authority on the anvil that the earlier charge sheet and the order passed thereon was not by a competent authority.	Para 7

O R D E R
(02/02/2018)

Per Justice Sanjay Yadav:

With the consent of learned counsel for the parties, the matter is finally heard.

(2) Exception is caused to the order dated 11/07/2017 passed by the Central Administrative Tribunal: Jabalpur Bench: Circuit sitting: Gwalior, whereby the challenge to issuance of second charge sheet has been negatived.

(3) Relevant facts briefly are that the petitioner while working as Health Inspector under the administrative control of the Divisional Medical Officer, North Central Railway, Gwalior, was served with a major penalty charge sheet on 30/11/2011 with the allegation that he had misused the duty card pass No. 048684 on 17/01/2011 between Gwalior to Jhansi in Train No. 12178UP which tantamount to serious misconduct. The charge sheet culminated into the order dated 21/02/2012 of withholding of one set privilege pass for the year 2012. Later on, after 2 ½ years, on 18/07/2014 the petitioner was served with a major penalty charge sheet for same misconduct for which he was already punished. That prior to issuance of said charge sheet, by order dated 15/07/2014 earlier charge sheet dated 30/11/2011 was directed to be withdrawn. The order is in following terms:-

"North Central Railway

Office of

ADMO/Banda

BNDA/H/1/Staff/DAR/JS

Date: 15/07/2014

Shri J.S. Chauhan

Health Inspector/Mahoba

(Now working under DMO/HU/GWL)

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Sub: Major penalty (SF-5) against you on dated 30/11/2011

*Ref: 1. Dy. CVO/T/NCR/ALD's Lr. No. 2011/01/070/P/V3/N/JHS dt 18/06/14
2. Sr. DPO/JHS's Lr. No. P/CON/MISC/DAR dt 01/07/14*

With reference to above subject, late Dr. S.K. Yadav, ADMO/BNDA had given major penalty (SF-5) vide Memorandum No. BNDA/HU/1/Staff/DAR/JS dated 30/11/11 under signature of ADMO/Banda as Disciplinary Authority and consequently punishment of minor penalty was also awarded to you vide letter no. MKP/HU/02/Staff/DAR/JS dt 21/01/12 by the same.

In view of the above letter no.'s as well as directive from vigilance ans as per order of CMS/JMS, the major penalty charge sheet dated 30/11/2011 is hereby withdrawn and further course of action may be taken by competent Disciplinary Authority.

This is for your information and acknowledgment.

*Dr. Rahul Upadhyay
ADMO/BNDA”*

(4) The petitioner challenged the said order on the ground that having suffered a penalty on the charges levelled and proved, it was beyond the competency of the Authority to have withdrawn the said charge sheet and issue a fresh charge sheet for same charges. It was urged that, the same besides being illegal is prejudicial to the petitioner as he had already disclosed his defence whereon he was already punished. And that, Revisional Authority had not revised the order. It was also contended that it was contrary to the stipulations contained in the Railway Board Circular No. E (D&A) 93 RG-6-83 dated 01/12/1993.

(5) The Tribunal vide impugned order negated the challenge holding that the issuance of charge sheet and the imposition of punishment mistakenly by an incompetent authority would tantamount to fraud and

therefore any action thereon stood vitiated. However no such finding is recorded by the competent authority.

(6) Railway Board's circular no. RBE No. 171/1993 stipulates:-

"R.B.E. No. 171/93

No. E(D&A)93RG6-83, dated 1.12.1993

Subject : Issuing fresh charge Memorandum after cancellation/withdrawal of original charge Memorandum or after dropping disciplinary proceedings.

It has come to the notice of the Railway Board that on one of the Zonal Railways, the Memorandum of charges issued to an employee was withdrawn by the disciplinary authority with the intention of issuing fresh detailed charge Memorandum. However, while withdrawing the chargesheet, no reasons therefore were given and it was only stated that the charge sheet was being withdrawn. The issue of a fresh charge Memorandum subsequently was challenged by the employee before CAT/Bombay. The Central Administrative Tribunal on hearing the case have quashed the said charge Memorandum holding that unless there is a power in the disciplinary authority by virtue of the rules or administrative instructions to give another chargesheet on the same facts after withdrawing the first one, the second chargesheet will be entirely without authority.

2. The matter has been examined and it is clarified that once the proceedings initiated under Rule 9 or Rule 11 of RS (D&A) Rule, 1968 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 Memorandum 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, necessary that when the intention is to issue a fresh chargesheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action

indication the intention of issuing chargesheet afresh appropriate to the nature of the charges.”

(7) It appears from the impugned order that the Tribunal glossed over the stipulations contained in the RBE 171/1993; and as no reasons were assigned by the competent authority, it was beyond its competence to have withdrawn the charge sheet dated 30/11/2011 which had already culminated into an order of punishment which the petitioner had already undergone. More particularly when the Revisional Authority did not revise the order. It was, therefore, beyond the competence of the Authority concern to have recalled the earlier charge sheet and issue a fresh charge sheet. In this context, reference can be held in the decision in Kanailal Bera Vs. Union of India and others [(2007) 10 SCR 612]:-

“6. The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5-4-1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules, 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry.”

(8) In view whereof, the impugned order passed in O.A. No. 202/01029/2014 being not sustainable in law

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is set aside. The order dated 15/07/2014 and the charge sheet dated 18/07/2014 are hereby quashed. The Original Application filed by the petitioner is allowed.

(9) Petition is disposed of finally in above terms. No costs.

(Sanjay Yadav)
Judge
(02/02/2018)

(Ashok Kumar Joshi)
Judge
(02/02/2018)

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