
(2013) 05 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 8593 and 8766 of 2012

Leeladhar Sharma

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 4 WLN 295

Hon'ble Judges : Nirmaljit Kaur, J; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : J.K. Kaushik, for the Appellant; V.K. Mathur assisted by Mr. Ankur Mathur, for the Respondent

Final Decision : Disposed Off

Judgement

Narendra Kumar Jain, J.—Heard finally with the consent of learned counsel for the parties. Both the writ petitions are directed against common order dt. 30th May, 2012 passed by Central Administrative Tribunal, Jodhpur Bench, Jodhpur, whereby Original Applications Nos. 56/2011 and 62/2011 challenging the charge-sheets dt. 4th February, 2011 under Rule 16 of the CCA Rules, 1965 have been dismissed.

2. The respondents served two charge-sheets dt. 4th February, 2011 upon the petitioner under Rule 16 of the Rules of 1965. Both the charge-sheets were challenged by petitioner before Central Administrative Tribunal on the ground of malafides, which were alleged against late Shri S.N. Joshi posted as Sr. Superintendent of Post Office, Udaipur Division Udaipur. During the pendency of the Original Applications, respondent No. 5 Shri S.N. Joshi retired. The Tribunal vide its impugned order, while rejecting both the Original Applications, gave liberty to present Disciplinary Authority of the applicant to apply its mind once again, and if necessary, either continue with both the proposed disciplinary enquiries or to withdraw the charge memos issued earlier and frame them afresh, and conduct a proper disciplinary enquiry against the applicant as per rules. Para 24 of the judgment of the Tribunal reads as under:-

Bowing down before the wisdom laid down by the Hon''ble Apex Court in the case of Union of India vs. Kunisetty Satyanarayana (supra), and the two other cases cited in para 21 and 22 above, I consider that it will be improper for this Tribunal to interfere with the process of conduct of disciplinary enquiry, initiated against the applicant of these two OAs by the department concerned. The Private Respondent/respondent No. 5 has already retired on superannuation, and, therefore, the hint or whiff/smell of mala fide, which could have been perhaps smelt in the impugned Show Cause Notices, no longer survives. Therefore, both the OAs are rejected and the present Disciplinary Authority of the applicant will be at liberty to apply his mind once again, and, if necessary, either continue with both the proposed disciplinary enquiries, or to withdraw the charge memos issued earlier, and frame them afresh, and conduct a proper disciplinary enquiry against the applicant as per rules, if he arrives at such a conclusion in his quasi-judicial capacity, after re-appreciating all the facts and circumstances of the case.

3. Submission of learned counsel for petitioner is that after decision of the Tribunal and during pendency of these writ petitions, the petitioner gave a representation dt. 22nd October, 2012 (Annex. 9) to the respondents with a prayer for holding a detailed enquiry into the allegations. The said representation was considered and petitioner was informed vide letter dt. 5th December, 2012 that documents have been allowed to be perused on 15th October, 2012, therefore, demand of holding detailed enquiry can not be accepted. Subsequently, the petitioner again submitted a representation dt. 10th December, 2012. The said representation is said to be pending with the respondents.

4. It appears that this Court while issuing notice to show cause to the respondents on 4th September, 2012 passed an interim order that petitioner may submit his reply to the notice, but the respondents shall not pass final order in the matter until further orders of this Court.

5. Submission of learned counsel for the petitioner is that although the Tribunal has already observed and has given a liberty to the respondents to re-consider the matter, but the respondents are not considering the matter afresh. Therefore, a necessary direction be given to the respondents to apply their mind afresh and to pass appropriate orders.

6. Learned counsel for the respondents supported the impugned order passed by the Tribunal and submitted that directions of the Tribunal will be complied with and this Court may again observe for re-consideration of the matter in view of the fact that respondent No. 5 Shri S.N. Joshi, against whom malafides were alleged, has retired.

7. Learned counsel for both the parties also submitted that respondent No. 5 Shri S.N. Joshi has now expired.

8. We have considered the submissions of learned counsel for the parties.

9. Charge-sheets dt. 4th February, 2011 were challenged by way of two separate original applications before the Tribunal on various grounds including malafides, which were alleged against respondent No. 5 Shri S.N. Joshi. Admittedly, Shri S.N. Joshi has not only retired but has since died.

10. Be that as it may, we are of the view that Tribunal itself gave liberty to the respondents to re-consider the matter and to pass fresh order about continuing of the enquiries or to withdraw the memos of charges. It appears that the matter could not be finalized because of the interim order passed by this Court.

11. It is relevant to mention that Shri S.N. Joshi expired before filing of the present writ petitions. Therefore, he was not impleaded as party in the writ petitions and no notice was issued to him of these writ petitions. In these circumstances, there is no reply by respondent No. 5 also. Whether the charges were issued because of the malafide action of the respondent No. 5 cannot be decided in absence of specific reply by respondent No. 5, who is now no more. In these circumstances, it will be appropriate for the respondents to reconsider the matter again in accordance with law.

12. Consequently, we dispose of both the writ petitions as under:-

(i) The respondents will re-examine both the charge-sheets dt. 4th February, 2011 issued to the petitioner under Rule 16 of the CCA Rules, 1965 in accordance with law independently without being influenced by earlier charge-sheets.

(ii) In case, the disciplinary authority comes to a conclusion that charge-sheets were wrongly issued then respondents are at liberty to withdraw the same.

(iii) If, disciplinary authority is satisfied that charges are prima facie made out against the petitioner on the basis of material available on record then it will be open for the respondents to continue with the old charge-sheets or to issue fresh charge-sheets.

(iv) The needful may be done by the respondents within a period of two months from the date of receipt of this order.

13. Stay applications in both the cases also stand disposed of. Registry is directed to place a copy of this order on record in connected file.