

(2011) 06 UK CK 0010
In the Uttarakhand High Court
Case No : Writ Petition No. 21 of 2007 (S/B)

S.S. Lamaba

APPELLANT

Vs

Wildlife Institute of India and another

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 12

Citation : (2011) 3 UC 2333 : (2011) 1 UD 512

Hon'ble Judges : Tarun Agarwala, J; Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri R.K. Raizada, the Learned Counsel assisted by Shri M.C. Pant, the Learned Counsel for the petitioner and Mrs. Anjali Bhargava, Standing Counsel (Union of India) for the respondents.

2. The petitioner was appointed as an Assistant Account Officer in the Ministry of Finance, Deptt. of Expenditure, New Delhi under the office of the Controller General of Accounts. By an order dated 5th September, 2002, the petitioner was sent on deputation as Finance Officer in the Wildlife Institute of India at Dehradun. This Wildlife Institute of India is a registered society under the Societies Registration Act and the entire share holding of the institute is held by the Central Govt, and the affairs of the institute is regulated and controlled by the Central Govt. Consequently, the Wildlife Institute of India is an authority as specified under Article 12 of the Constitution of India.

3. While working on deputation, a preliminary inquiry was conducted by the respondents with regard to the administrative and financial irregularities committed by the petitioner. Based on the preliminary inquiry report submitted, the Central Govt., by an order dated 8th August, 2003 directed the Director, Wildlife Institute of India to initiate a departmental inquiry against the petitioner. Based on the said direction issued by the Central Govt., the Director, Wildlife

Institute of India issued a chargesheet dated 19/12/2003 directing the petitioner to show cause as to why disciplinary proceedings under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 should not be initiated. The petitioner submitted his reply denying the charges levelled against him. The disciplinary authority, i.e., the Director considered the reply and, thereafter, issued an order dated 16th January, 2004 exonerating the petitioner from the charges framed against him. This order is an order purported to have been passed under Rule 14 of the CCS Rules, 1965.

4. After more than three years, the petitioner was issued a second chargesheet dated 8th January, 2007 on the same charges in which an inquiry was held and the charges were dropped by the disciplinary authority. The petitioner, being aggrieved by the issuance of the second chargesheet on the same subject, has preferred the present writ petition.

5. The Learned Counsel for the petitioner contended that once the petitioner has been exonerated from the charges and the enquiry has been dropped by the disciplinary authority, no second chargesheet on the same subject could be initiated again by the disciplinary authority in the absence of any specific Rule or Regulation made therein.

6. A counter affidavit has been filed by the respondents and the stand taken is that the first chargesheet was not issued by a competent authority, in as much as, the person who had issued the chargesheet was only holding an additional charge of the post of Director and, consequently, the proceedings initiated by the said Incharge Director was without jurisdiction. The respondents have further stated that the chargesheet so issued was defective since it was not given in the prescribed format and since there was a material defect, the respondents were competent to issue a second chargesheet.

7. In *State of Assam and Another Vs. J.N. Roy Biswas*, , the Supreme Court held that absence of power under a rule inhibits a second inquiry by a disciplinary authority after the delinquent had once been absolved. In the light of the aforesaid ruling, the Court finds that the proceedings were initiated against the petitioner under Rule 14 of the CCS Rule, 1965. A chargesheet was issued, explanation was submitted, and the disciplinary authority, after considering the reply, found that the charges levelled against the petitioner were not correct and, consequently, dropped the inquiry proceedings. There is no Rule to indicate that a second inquiry on the same charge could again be initiated and, consequently, we are of the opinion that in the absence of any power under any Rule or Regulation, the disciplinary authority was not competent to initiate a second inquiry on the same charges.

8. The contention of the respondents that the first chargsheet initiated against the petitioner was defective and, therefore, the respondents were justified in initiating a second inquiry is patently erroneous. The mere fact that the authority who had issued the first chargesheet was only the Incharge Director does not

mean that he was not the disciplinary authority or that he was not competent to issue a chargesheet against the petitioner under Rule 14 of the CCS Rules, 1965. We further find that the Central Govt, had issued an order dated 8th August, 2003 directing the said authority holding the additional charge to initiate a disciplinary proceeding against the petitioner. Once such an order has been issued, it was no longer open to the respondents to now contend that the authority was not competent to issue the chargesheet. Further, no rule, regulation or form has been brought forward to indicate that a chargesheet is required to be issued in a prescribed format.

9. In the light of the aforesaid, we are of the opinion that once a disciplinary inquiry has been closed and the matter has come to an end and the petitioner has been exonerated of the charges levelled against him, the respondents cannot restart the exercise of initiating a second inquiry on the same subject in the absence of any specific power to review, revise or reinitiate a second inquiry. In the absence of any legal provision, we are of the view that the second inquiry on the same subject cannot be sustained and, accordingly, we quash the second chargesheet dated 8th January, 2007. The writ petition is allowed.