

(2018) 09 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Writ No. 5339 of 2015

Union Of India And Ors @APPELLANT@Hash Vasudeo Regar

Date of Decision : 10-09-2018

Acts Referred:

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 10(4), 19

Citation : (2018) 09 RAJ CK 0027

Hon'ble Judges : PRADEEP NANDRAJOG, CJ;DR. PUSHPENDRA SINGH BHATI, J

Bench : Division Bench

Advocate : Narepen Shanker, Akshay Sharma, Sanjeet Purohit, S.K.Malik

Judgement

1. Since learned counsel for the respondent urges that on the merits of the enquiry report submitted against the respondent the Tribunal has not

considered the same and the matter is being remanded to the Central Administrative Tribunal, we note the relevant facts justifying setting aside of the impugned order dated 23rd February, 2015 and remanding OA No.543/2011 before the Central Administrative Tribunal for adjudication afresh on

merits as per law.

2. The respondent is an employee of the Union of India. A Tempo bearing registration No.RJ-06-TC-0126 owned by him was intercepted on 6.6.2005.

25 bags of poppy straw and 2 poppy husks were seized. The driver and the cleaner ran away. The respondent was arrested by Neemach police. He

was placed under suspension with effect from the date of his arrest. At the trial under NPDS Act before the Special Judge the respondent was

convicted and sentenced to undergo rigorous imprisonment for 10 years. Based on the conviction, proceeding under Rule 19 of the Central Civil

Services (Classification, Control & Appeal) Rules, 1965 an order was passed on 16.6.2008 compulsorily retiring the respondent from service. Appeal

filed by the respondent against his conviction under the NDPS Act was allowed by the Madhya Pradesh High Court on 20.1.2010. On 8.2.2010 he

submitted an application for reinstatement in service. On 12.4.2010 the order of compulsory retirement was set aside.

3. On 21.4.2014 a charge sheet was served upon the respondent and the problem lies in the fact that reference was made in the charge-sheet of it

being issued under sub-rule (4) of Rule 10 of the Rules of 1965. Sub-rule (4) of Rule 10 of the CCS(CCA) Rules, 1965 reads as under:-

“(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared on

rendered void is consequence of or by decision of a Court of Law and the disciplinary authority on a consideration of the circumstances of the case,

decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally

imposed the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order

of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical

grounds without going into the merits of the case.”

4. The charge sheet issued to the respondent lists three charges:-

(i) That he took a loan in sum of ₹ 1,00,000/- from a Cooperative Society and ₹ 40,000/- from Oriental Bank of Commerce but he did not repay the same.

(ii) That he took the loan from the Bank without permission from the competent authority.

(iii) That he purchased a motor vehicle and engaged himself in private business.

5. Suffice it to record here that the charge-sheet was not for further enquiry with respect to the allegations on which the penalty of compulsory

retirement was awarded earlier on. As noted above, the earlier penalty was on account of respondent being convicted and power exercised under

Rule 19 of the Rules of 1965. The second charge-sheet was on totally independent allegations i.e. of obtaining loans without informing the

department and from the loans purchasing a vehicle which was used for carrying

on private business.

6. Unfortunately, the officer issuing the charge-sheet made reference to a wrong source of power. It is settled law that unrelated to a criminal offence

if civil wrongs are found a chargesheet can be issued against a Government servant. In the instant case, the charge sheet issued has no concern with

narcotics being seized in the Tempo owned by the respondent.

7. Allowing the Original Application filed by the respondent challenging the penalty of compulsory retirement pursuant to the enquiry held, the

Tribunal has held that since the second chargesheet (called as a further enquiry) by the Department itself, did not relate to the allegations on which the

original penalty was levied, the action was contrary to law. Directing reinstatement with back wages the Tribunal has permitted the department to take action as per law.

8. This means that as per the impugned order the department is free to issue the same charge-sheet once again but by highlighting that the charge-

sheet was not being issued under sub-rule (4) of Rule 10 of the Rules of 1965.

9. It is settled law that if a power vests in an authority, mere referring to a wrong source of power would not vitiate the decision or action of the authority concerned.

10. Under the circumstances the impugned order passed by the Tribunal has to be set aside. But since contentions on merits concerning the enquiry

held pursuant to the charge-sheet issued to the respondent have not been considered by the Central Administrative Tribunal, we allow the writ petition

and set aside the impugned order dated 23rd February, 2015. OA No.543/2011 shall be decided afresh on merits as per law by the Tribunal.