

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00699/2018

Bilaspur, this Friday, the 24th day of January, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

M.M. Sonwani, S/o Late Miluram Sonwani, aged about 54 years, Occupation : Ex-Assistant GSI State Unit C.G. Raipur (C.G.)
-Applicant

(By Advocate – Shri K.K. Dixit)

V e r s u s

1. Central Government of India through : Director General GSI Office of 27 Jawaharlal Nehru Road, Calcutta 700016 (West Bengal).

2. Central Government of India through : Additional Director General, Geological Survey of India, G.S.I. Complex Seminary Hills Nagpur 410006 (M.S.).

3. Government of India through Head of the Office, GSI Chhattisgarh Unit Kanchan Ganga Road, Behind Ravi Shanker University Rohinipuram Raipur (C.G.)
-Respondents

(By Advocate – Shri R.N. Pusty, proxy counsel of Shri Vivek Verma)

O R D E R (O R A L)

By Navin Tandon, AM.

The applicant is aggrieved that he has been imposed with the penalty of compulsory retirement by the respondents.

2. The brief facts of the case are that the applicant was found under influence of alcohol while on duty. The disciplinary proceedings were initiated and the Disciplinary

Authority passed the order on 28.12.2016 (Annexure A-2), wherein the applicant was compulsorily retired from service w.e.f the forenoon of 01.01.2017.

2.1 The applicant submitted his appeal, which was rejected by vide order dated 25.01.2018 (Annexure A-1).

3. The applicant has sought for the following reliefs:

“8.(i) That the respondent may be directed to call for the complete records of the case of the applicant including the departmental proceedings and enquiry and written short out of petitioner.

(ii) An appropriate direction/order be kindly passed to allow the petition of the applicant and the respondent authority may jointly or severally restrain the compulsory retirement to the applicant by quashing the impugned order dated 28/12/2016 and order dated 25/01/2018.

(iii) That in the alternative, if the applicant is found to be guilty at any stage of the proceedings, the penalty imposed on the applicant may be reduced to minor penalty.

(iv) Any other relief (s) as the court thinks fit in the circumstances of the case be also kindly granted.”

4. Learned counsel for the applicant brought our attention to the fact that the Disciplinary Authority, (Additional Director General & HoD, GSI, CR) and the Appellate Authority (Director General) are one and the same person, i.e. Shri N. Kutumba Rao. Therefore, orders of the Appellate Authority is bad in law.

5. The case was argued on two dates viz; 22.01.2020 and 23.01.2020 by Shri Vivek Verma, learned counsel for the respondents in detail. Today, under his instructions, Shri R.N. Pusty, learned counsel is present.

6. We have heard the learned counsel for the parties.

7. While learned counsel for the applicant submitted that the same person acting as Disciplinary Authority and the Appellate Authority is against the rules, learned counsel for the respondents submitted that the Appellate Authority at the relevant time has passed the reasoned order and, therefore, there is nothing illegal about it.

8. Learned counsel for the applicant relied upon the judgment of Hon'ble Apex Court in the case of **Amar Nath Chowdhury vs. Braithwaite and Company Ltd.**, (2002) 2 SCC 290 and **Cantonment Executive Officer & others vs. Vijay D. Wani & Ors**, (2008) 12 SCC 230.

9. We have considered the matter.

10. In the case of **Amar Nath Chowdhury** (supra), the Hon'ble Apex Court has held as under:

“One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating

authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as 'Debet esse Judex in Propria Causa', which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In Financial Commissioner (Taxation) Punjab and others vs. Harbhajan Singh - 1996 (9) SCC 281, it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswami, the then Chairman-cum-Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant. ”

10. In the case of **Vijay D. Wani** (supra), the Hon'ble Apex Court has held as under:

“7. Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. The objectivity is the hallmark of a judicial system in our country. The very fact is that the disciplinary committee who found the respondent(herein) guilty participated in decision making process for finding the respondent(herein) guilty and to dismiss him from service is bias which is apparent & real. Consequently, the view taken by the Division Bench of the High Court cannot be faulted.”

11. In the present case, the same person Shri N. Kutumba Rao has acted as Disciplinary Authority and Appellate Authority. The person, who has already taken a decision in a case as Disciplinary Authority would be having a fixed opinion about the case. Therefore, natural justice would not be done if the same person acts as an Appellate Authority.

12. Hon'ble Apex Court has also held the same view in judgments cited above that the same person who was the Disciplinary Authority should not act as Appellate Authority.

13. Therefore, we find that the order of the Appellate Authority (Annexure A-1) is bad in law. Accordingly, we quash and set aside the Appellate Authority's order dated 25.01.2018 (Annexure A-1) and remand the case back to the respondents

for considering the appeal filed by the applicant by a competent authority as per rules.

14. The Original Application is disposed of in above terms.

No costs.

(Ramesh Singh Thakur)
Judicial Member
am/-

(Navin Tandon)
Administrative Member