

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 850 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Bidyadhar Nayak, aged about 62 years, S/o Late Jayakrushna Nayak, permanent resident of L-194, Barmunda Housing Board Colony, PO-Barmunda, PS-Khandagiri, Bhubaneswar-3, Dist.-Khurda.

.....Applicant

VERSUS

1. Union of India represented through its Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-110016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No. 37, Dehradun, Uttarakhand-248001.
3. The Director, Survey of India, Survey Bhawan, Bhubaneswar, Dist-Khurda-751013.

.....Respondents

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.B.Mohanty, counsel

Heard & reserved on : 21.11.2019

Order on : 24.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

- “(i) To admit the OA;
- (ii) To quash the Charge Memo dtd. 01.07.2009 (Annex.A/3) and Inquiry report dtd. 07.01.2011 (Annex.A/5) and Punishment order dated 04.02.2013 (Annex.A/7) of the Disciplinary Authority.
- (iii) To quash the order No. SM/04/16/2016, dtd. 18.8.2016 (Annex.A/11) holding the illegal and non-est in the eye of law.
- (iv) To direct the Respondents to extend the consequential benefits and refund the recovered amount with interest to the applicant.
- (v) To pass any other order/orders as deem fit and proper for the ends of justice.”

2. The applicant was issued charge memo dated 1.7.2009 (Annexure A/3) by orders of Hon'ble President under the Rule 18 of the CCS (CCA) Rules, 1965. It was a common proceeding against the applicant and another person Shri Pramod Kumar Arya. The applicant was charged because of the alleged misappropriation by Sri Arya for the period he was working as Cheque Drawing & Disbursing Officer (in short CDDO) for the period from September 2005 to April 2006 in the office of J&K GDS, Survey of India. The inquiry was conducted and the Inquiry Report submitted (Annexure A/5 of the OA). It is stated in the OA that although the report of the Inquiry Officer (in short IO)

was submitted on 7.1.2011, no action was taken till 30.12.2011 when the Inquiry Report and copy of the advice of the Central Vigilance Commission (in short CVC) was sent to the applicant asking him to submit his representation on the IO's report. The applicant submitted his representation on 30.1.2012. After a lapse of time of about one year, punishment order dated 4.2.2013 imposing punishment of reduction to lower stage in time scale by three stages for the period upto 30.3.2013 was imposed. It is further averred in the OA that although the Disciplinary Authority has relied upon and accepted the advice of UPSC while passing the impugned order of punishment, but the copy of the UPSC advice was not supplied to the applicant before passing the punishment order. Copy of the advice of UPSC was given to the applicant along with the order of punishment. As a result, the applicant stated that he did not have opportunity to place his representation before the authorities before the impugned punishment order was passed, for which, violation of the principles of natural justice has been alleged in the OA.

3. The grounds mentioned in the OA by the applicant include the ground that the impugned order has been passed without proper application of mind and taking into account the materials on record. Conclusion about the misconduct committed by the applicant, is not based on rules. It is further submitted that the authorities have unnecessarily delayed the initiation and conclusion of departmental proceeding, which is malafide. It is further submitted that when the main charge of misappropriation of Government money could not be established against the applicant as revealed from IO's report, other misconducts cannot be established against the applicant to justify imposition of the penalty. It is further stated that the amount of misappropriation was recovered from him and there was no reason for the disciplinary authority to initiate further proceeding on the self-same charges.

4. The issue of communication of the UPSC advice as per the judgment of Hon'ble Apex Court in Union of India & Ors. -vs- S.K.Kapoor and Union of India & Ors. -vs- R.P.Singh has also been raised by the applicant in the OA. It is stated that as per the law laid down by Hon'ble Apex Court the case of DDA & Ors. -vs- J.S.Monga, a mistake cannot be termed as misconduct or fraud. The IO has discarded the allegation relating to misappropriation and integrity and the action of the applicant was found to be due to mistake. It is further stated that the review application filed by the applicant against the order of punishment dated 4.2.2013 was rejected vide order dated 18.8.2016 (Annexure A/11) by the respondent No. 1 who is not authorized to pass such an order. It is further stated that as per the IO's report, he was guilty of charge of lack of devotion to duty for which no charge was there in the charge memo. The

misconduct pertaining to integrity and misappropriation as alleged in the charge memo has not been proved according to the IO's report.

5. The counter affidavit has been filed on behalf of the respondents. It is stated that the Inquiry Officer found that the applicant can be exonerated from the charge of failure to maintain absolute integrity but found him guilty of the allegation of lack of devotion to duty which is unbecoming of a Government servant and thereby violating Rule 3 of CCS (Conduct) Rules, 1964. The matter was referred to UPSC and the UPSC advice was received vide letter dated 17.12.2012 and based on the UPSC advice, the punishment order dated 4.2.2013 (Annexure A/7) was passed. Regarding the manner of implementation of the penalty it is stated in the Counter as under :

“The Director Odisha GDC reduced the pay of the applicant by three stages, first stage on 30.06.2010, second stage 30.06.2011 and third stage on 30.06.2013 i.e. on the day of his superannuation. As the pay without reducing the stage in the pay scale had already drawn by Shri Nayak, the overdrawn salary from the gratuity payment of Shri Nayak was recovered from his gratuity on his superannuation.”

It is stated further in the Counter as under :

“That in reply to para 4.9 to 4.13 it is respectfully submit here that after due opportunity and proper calculation the applicant has been released with all his retiral benefits except the recovery of overdrawn amount. Moreover the representation filed before the authority has been disposed of on 18.8.2016 which is under challenge.

That in reply to Para-5.1 it is humbly replied that the applicant was held responsible for lack to devotion to duty which is unbecoming of Govt. Servant. Another delinquent Shri P.K.Arya, UDC/Cashier was dismissed from service vide DST's order No. C-14011/01/2007-Vig. That the joint enquiry was held to avoid multiplicity of proceedings and repetition in adducting evidence. The Hon'ble Supreme Court of India has held vide its order dated 28.4.2014 (CA No. 39330/2010) in the matter of Administrator, Union Territory of Dadra and Nagar Haveli –vs- Gulabhai M.Lad that :-

“In the matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference in so far as accord of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidences, a joint enquiry may be conducted against all delinquent officers but imposition of different punishments on proved charges may not be impermissible if responsibilities and duties of co-delinquent differ or where distinguishing features exist. In such a case, there would not be any question of selective or individual discrimination.”

6. The applicant has filed Rejoinder, stating that the respondents have not appreciated the procedural irregularities found in the proceeding. It was established in the Inquiry that the then Cashier had committed the misappropriation and he also admitted his guilt during Inquiry. Hence, it is stated that punishing the applicant on account of supervisory lapses was incorrect. The question of communicating the UPSC advice to give him an opportunity of representing against such advice before passing the order of punishment was raised in the Rejoinder.

7. Heard learned counsel for the applicant, who submitted that the applicant retired on 31.3.2013 and the punishment was imposed on 4.2.2013 reducing him to three stages till 31.3.2013 which meant that the punishment order was implemented retrospectively although the Disciplinary authority did not specify that it will be implemented retrospectively. He also submitted that the authorities have delayed the initiation and disposal of the proceedings since shortage of Cash was detected in the year 2006, where as the charge memo was issued on 1.7.2009 (Annexure A/3) after a lapse of about 3 years. He further stated that an amount of Rs.62,967/- was paid by the applicant for loss of Government, for which he was not responsible and Sri P.K.Arya, the then Cashier was responsible. It was further submitted that the applicant had handed over the charge of Cash to another official on 21.4.2006 and no shortage was reported at that time. Any additional shortage after 21.4.2006 should not be the responsibility of the applicant. The official who had assumed the charge did not report any shortage in Cash on 21.4.2006. It was further submitted by the learned counsel for the applicant that the main charge of misappropriation of government money has not been established against the applicant as per the report of the IO. He further submitted that the advice of the UPSC dated 17.12.2012 (Annexure A/8) was accepted by the Disciplinary Authority while imposing the punishment order vide order dated 4.2.2013 (Annexure A/7). Learned counsel for the applicant has also cited the following judgments at the time of hearing in support of his case :

- i) Union of India –vs- R.P.Singh [(2014) 2 SCC (L&S) 494]
- ii) UCO Bank –vs- Rajendra Shankar Shukla [(2018) 2 SCC (L&S) 625]
- iii) Raj Kishore Sinha –vs- State of Bihar [Civil Writ Jurisdiction No. 11240/2017 of Hon'ble Patna High Court]

8. Heard learned counsel for the respondents. Besides reiterating the points mentioned in the Counter, it was submitted that due to non-supply of the UPSC advice if any, prejudice was caused to the applicant, the same should have been mentioned in the pleadings. Regarding implementation of the punishment order, it was submitted that since the applicant was going to retire on 31.3.2013, the punishment order was implemented in such a way that the punishment period will be over by the date of retirement of the applicant.

9. We have considered the submissions by learned counsels as well as the pleadings on record. The fact that the misappropriation of Government money had taken place is undisputed. The applicant's stand is that the then Cashier was responsible for such misappropriation. But as CDDO the applicant had the responsibility to ensure that the work related to Government Cash is managed diligently and in accordance with the rules so as to prevent any

misappropriation. The fact that he has handed over the charge on 21.4.2006 and the official who had accepted the charge did not report any shortage of Cash, will not be helpful for the applicant for the reason that as CDDO, the applicant had the overall responsibility in this regard. The misappropriation had taken place in this case though the applicant was not held responsible directly by the IO. IO's report did not hold the applicant guilty of misappropriation of government money. However, other charges have been established during the inquiry as per the IO's report.

10. Regarding the question of non-supply of UPSC advice, the applicant relied on the case of Rajendra Shankar Shukla (*supra*) vide judgment dated 15.12.2018. The dispute in that case was whether the charged officer was given a fair opportunity to defend himself by denying him financial resources. The nature of dispute and facts in the present case are different, for which, the cited judgment is distinguishable.

11. Learned counsel for the applicant also filed a copy of the judgment dated 18.5.2018 of Hon'ble Patna High Court in the case of Raj Kishore Sinha (*supra*). In that case, the punishment of permanent reduction of pay in the lowest scale of time scale was imposed on the petitioner employee and the said order was challenged in the writ petition. It is observed that in that case the IO had exonerated the petitioner employee holding that the charges were not proved and the disciplinary authority issued a show cause notice and punishment was imposed. The petitioner had earlier approached the Hon'ble High Court in LPA No. 1710 of 2015 in which the punishment order was set aside and the matter was remanded to the Disciplinary Authority for a fresh decision regarding imposition of punishment in terms of the applicable rules. Accordingly a fresh order of punishment dated 31.3.2016 was passed, which was challenged by the petitioner in the case of Raj Kishore Sinha (*supra*). It was observed by Hon'ble High Court that the subsequent punishment order dated 31.3.2016 was similar to the punishment order dated 14.10.2006 which was quashed in the LPA No. 1710/2015. Accordingly, the said punishment order was quashed without any liberty to the respondents to proceed further in the matter. It is clear that the facts and circumstances of the cited case were different from the present case. Hence, the judgment in this case will not be helpful to the present case.

12. Learned counsel for the applicant has cited the judgment dated 22.5.2014 in the case of R.P. Singh (*supra*). In this case Hon'ble Apex court has held as under :

“24. We have been apprised by Mr.Raghavan, learned counsel for the respondent, that after the decision in *S.K.Kapoor case*, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training vide Office Memorandum dated 6.1.2014 has issued the following directions :

‘4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted:

- (i) On receipt of the inquiry report, the DA may examine the same and forward it to the Commission with his observations;
- (ii) On receipt of the Commission’s report, the DA will examine the same and forward the same to the charged officer along with the inquiry report and his tentative reasons for disagreement with the inquiry report and/or the advice of UPSC;
- (iii) The charged officer shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the inquiry report/advice of UPSC is in his favour or not.
- (iv) The disciplinary authority shall consider the representation of the charged officer and take further action as prescribed in sub-rules (2-A) to (4) of Rule 15 of the CCS (CCA) Rules, 1965.’

25. After the said office memorandum, a further office memorandum has been issued on 5.3.2014, which pertains to supply of copy of UPSC advice to the charged officer. We think it appropriate to reproduce the same :

‘The undersigned is directed to refer to this Department’s OM of even number dated 6.1.2014 and to say that it has been decided, in partial modification of the above OM that a copy of the inquiry report may be given to the government servant as provided in Rule 15(2) of the Central Secretariat Services (Classification, Control and Appeal) rules, 1965. The inquiry report together with the representation, if any, of the government servant may be forwarded to the Commission for advice. On receipt of the Commission’s advice, a copy of the advice may be provided to the government servant who may be allowed to submit his representation, if any, on the Commission’s advice within fifteen days. The disciplinary authority will consider the inquiry report, advice of the Commission and the representation(s) of the government servant before arriving at a final decision.”

26. In our considered opinion, both the office memoranda are not only in consonance with *S.K.Kapoor case* but also in accordance with the principles of natural justice which has been stated in *B.Karunakar case*.”

13. From the above cited judgment, it is seen that after the judgment of Hon’ble Supreme Court in the case of *S.K.Kapoor*, the DOPT had issued the OM dated 6.1.2014 specifying that the advice of UPSC needs to be sent to the charged official giving him opportunity to represent to the Disciplinary Authority before the final order is passed in the disciplinary proceeding. In this case the inquiry report dated 7.1.2011 (Annexure A/5) and the punishment order dated 4.2.2013 (Annexure A/7) were finalised prior to issue of OM dated 6.1.2014 of the DOPT. Hence, the said OM dated 6.1.2014 could not have been made applicable to the present case in which the punishment order was issued on 4.2.2013. The requirement that UPSC advice needs to be supplied to charged official before passing the punishment order will not be applicable to this case. Hence, the judgment in the case of *R.P.Singh* (supra) will not be helpful for the applicant’s case.

14. One ground of the applicant in the OA is that the punishment has been imposed retrospectively. The order dated 4.2.2013 specified the “penalty of reduction to a lower stage in the time scale of pay by three stages for the period upto 30.3.2013”. The penalty period was completed on 31.3.2013, which was the date of superannuation of the applicant from service. The punishment was as per the recommendation of the UPSC. The order dated 4.2.2013 of the Disciplinary Authority has clearly stated that the penalty will be imposed for the period upto 30.3.2013, which implied that it will be implemented in such a way that the period of punishment will be over just before one day of the applicant’s date of retirement, which will ensure that on the day of his superannuation the punishment period will be over and the applicant’s status in service will be restored to pre-penalty period so that the punishment imposed will not affect the retirement benefits including pension payable to the applicant. Hence, there is nothing wrong in the manner in which the punishment was imposed on the applicant by modifying the pay fixation for the period prior to the date of issue of the impugned order.

15. Regarding the ground of delay in initiation of the charge memo considering the fact that the shortage was detected in 2006, the applicant has not shown the prejudice caused due to delay. It is not case of the applicant that there was any violation of the statutory rules in the manner in which the disciplinary proceeding was conducted by the respondents. The proceeding was completed and the order was passed by the disciplinary authority before the applicant’s retirement in such a way not to affect the retirement benefits of the applicant. Hence, the ground of delay is not considered to be a good ground to treat the action of the respondents to be malafide as urged in the OA.

16. Another ground advanced in the OA is that the charge of misappropriation was not established against him as per the report of the IO. But the charge of lack of devotion of duty has been established as per the IO’s report. Taking into account the facts and circumstances of the case, it cannot be said that the applicant while acting as CDDO, did not have any responsibility in the matter when his subordinate staff indulged in misappropriation of government money.

17. The applicant in para 5(ix) of the OA has referred to the judgment in the case of DDA & Ors vs. J.S. Monga to state that the mistake cannot be termed as misconduct or fraud. In the cited judgment the observation was also made that such a plea needs to be pleaded by the party concerned for consideration. In this OA, the applicant has not explained whether the alleged misappropriation of government cash in this case was not due to his mistakes

as pointed out in the IO's report. Hence, the cited judgment will be of no help for the applicant's case.

18. In view of the discussions above, we are of the considered opinion that the grounds mentioned in this OA are not adequate to justify any interference of this Tribunal in the matter. The OA is accordingly dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath