

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 411 of 2019 &
OA No. 421 of 2019
MA No. 730 of 2019**

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

OA 411/2019 Arun Kumar Nayak, aged about 54 years, S/o Nilamani Nayak, at present working as Assistant Store Keeper (Ad hoc) in the office of Executive Engineer, Central Ground Water Board, Division-X, Bhujal Bhawan, Khandagiri Chhak, Bhubaneswar-751030, Odisha.

OA 421/2019 Smt. Lovabati Mallilck, aged about 50 years, W/o Arun Kumar Nayak, resident of Dumuduma Housing Board Colony, House No. 807, Phase-II, Bhubaneswar-751019, Dist.-Khurda, Orissa, at present working as Office Superintendent in the office of Executive Engineer, Central Ground Water Board, Division-X, Bhujal Bhawan, Khandagiri Chhak, Bhubaneswar-751030, Odisha.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Central Ground Water Board, Ministry of Water Resource, Shrama Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Chairman, Central Ground Water Board, Ministry of Water Resources (Govt. of India), River Development & Ganga Rejuvenation, Bhujal Bhawan, N.H.-IV, Faridabad, Hariyana-121001.
3. Director (Admin), Central Ground Water Board, River Development & Ganga Rejuvenation, Bhujal Bhawan, N.H.-IV, Faridabad, Hariyana-121001.
4. Regional Director, Central Ground Water Board, South Eastern Region, Bhujal Bhawan, Khandagiri, Bhubaneswar, Dist.-Khurda-751030.
5. Executive Engineer, Central , Khandagiri, Bhubaneswar, Dist.-Khurda-751030.

.....Respondents.

For the applicant : Mr. N.R.Routray, counsel

For the respondents: Mr. B.P.Nayak, counsel

Heard & reserved on : 02.01.2020

Order on : 04.02.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

OA No. 411/2019 has been filed by the applicant Shri Arun Kumar Nayak seeking the following reliefs :

- “(a) To direct the Respondents to withdraw the charge sheet dtd. 17.04.2002 under Ann.-A/1.

- (b) And to direct the respondents to promote to the post of ASK w.e.f. 31.12.2007 and SK w.e.f. 22.05.2019 retrospectively at par with junior namely Damor Arjun Bhai Lakhani with all consequential and service benefits.
- (c) And to direct the Respondents to post the applicant in the promotional post of SK along with his wife at Amabala Division-II (Camp at Chandigarh).

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall ever pray."

2. OA No. 421/2019 has been filed by Smt. Lovabati Mallick, who is the wife of the applicant in OA No. 411/2019, seeking the following reliefs :

- “(a) To direct the Respondents not to effect the order dtd. 17.06.2019 so far the present posting of applicant at CGWB Ambala Division-II (Camp at Chandigarh) is concerned till final decision taken by the department so far her husband's regular promotion retrospectively in the post of ASK/SK are concerned.
- (b) And to direct the respondents to allow the applicant to continue at Bhubaneswar in her present place of posting as nobody replacing her.
- (c) And/Or to direct the Respondents to post the applicant in the promotional post along with her husband at Amabala Division-II (Camp at Chandigarh).

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall ever pray."

3. Since the reliefs prayed for in OA No. 421/2019 are linked to the promotion of her husband which is one of the main prayer in OA No. 411/2019, both the OAs were taken up for hearing together. Both the OAs are disposed of by this common order.

OA No. 411/2019

4. The facts in brief in OA No. 411/2019 are that the applicant while working as Technical Operator (Store) under the respondents, was placed under suspension and then charge sheet dated 17.4.2002 (Annexure A/1) was issued on the ground of his marriage during the lifetime of his legally married wife. Challenging the said charge sheet, the applicant had approached the Tribunal by filing OA 529/2002 which was disposed of vide order dated 30.6.2003 (Annexure A/2 of OA No. 411/2019) with the following observations:

“.....By our order dated 11.10.2002 we have also directed that the disciplinary proceedings will abate till the finalization of the case initiated by the police authority on the complaint of one Smt. Urmila Nayak in the court. We would like to impress upon the Respondents that the question raised in the complaint of Mrs. Urmila Nayak is that she is the married wife of the applicant. The applicant has denied his marriage with Mrs. Urmila Nayak and in the records of the Respondents, the applicant's wife is Lovabati Mallik. Therefore, the whole matter can only be decided by a competent Court of law and not by the Respondent-Department. The Respondent-Department will have occasion to take action under the CCS (CCA) Rules, 1985 against the applicant only after obtaining the verdict of the Court on the complaint filed by Mrs. Urmila Nayak and not now.”

5. Because of the pendency of the criminal case against Sri A.K.Nayak (the applicant in OA No. 411/2019), no promotion was allowed to Sri Nayak while his juniors were promoted. On consideration of the representation of the applicant, he was promoted to the post of Assistant Store Keeper (ad hoc) w.e.f. 26.5.2016 vide order at Annexure A/5. The applicants in both the OAs were acquitted in the criminal case vide judgment of the Court dated 7.12.2018 (Annexure A/6). After acquittal from the criminal charge the applicant submitted a representation dated 24.12.2018 to respondent No.1 for withdrawal of the charge sheet dated 17.4.2002 and for consideration of his promotion to the higher post at par with his juniors with consequential service benefits taking into account the direction given by the Tribunal by order dated 30.6.2003. It is the case of the applicant that after acquittal from the criminal case filed by one Urmila Nayak the charge sheet became non est in the eye of law and his representation dated 24.12.2018 (Annexure A/7) needs to be considered. It is stated in the OA that in the meantime the applicant's wife (applicant in OA No 421/2019) had been promoted to the post of OS on notional basis retrospectively w.e.f. 18.5.2012 and on actual basis w.e.f. 18.2.2016 vide order dated 17.6.2019 (Annexure A/10). But the case of the applicant (Sri A.K.Nayak) is yet to be considered for promotion. The applicant's claim is to be promoted to the post of Assistant Store Keeper on regular basis w.e.f. 31.12.2007 and as Store Keeper w.e.f. 22.4.2019 at par with his juniors namely Damor Arjun Vai Lakhan and he should be transferred along with his wife to any other nearby place.

6. While the OA was pending, the respondents transferred the applicant to Bolangir vide order dated 9.8.2019 copy of which is at Annexure A to the MA No. 611/2019 which was filed by the applicant praying to stay the said order dated 9.8.2019. The said MA has not yet been disposed of.

7. Preliminary counter has been filed by the respondents stating as under :

“That, the brief fact of the case is the applicant is working as TOS in the office of the Executive Engineer, CGWB, Div-X, Bhubaneswar. The petitioner submitted marriage declaration without any date along with GPF nomination on Dt. 05.03.1997 that he married on 02.01.1993 and declared Sm. Lovabati

Malick as his wife. The said documents accepted by Head of Office on 10.04.1997. The Petitioner declared that the said marriage was held in temple of 'Chintamaniswar', Bhubaneswar. The Petitioner entered into second marriage with full knowledge with Smt. Urmila Jena, under the Hindu Marriage Act on 12./03.1993. Smt. Urmila Jena filed a criminal case against the petitioner and he was arrested by the police on 28.8.2001 and detailed under the custody up to 24.09.2001. Subsequently he was released on bail on 25.09.2001. He concealed the fact from officer as he violated the provision of CCS (Conduct) Rules, 1964, Rule-3C read with GID decision (2), hence he was suspended w.e.f. 28.08.2001 in terms of Sub-Rule (2) of Rule-10 of CCS (Classifications, Control & Appeal) rules 1965 in connection with criminal offence. It is submitted that DPC for the post of ASK was held in 2007 wherein the name of the Petitioner was considered by the DPC Committee but due to pendency of criminal case G.R No. 2731/2001 in the court of S.D.J.M., Bhubaneswar, Odisha against the Petitioner, the recommendation of DPC was placed under sealed cover....."

It is further submitted in the preliminary Counter that the article of charge are referred to bigamy and suppression of material information, whereas acquittal of the applicant from the criminal case was on different issue, for which the charge sheet should not be withdrawn and the departmental proceeding which was stopped by virtue of the order of this Tribunal dated 30.6.2003 will be continued.

8. Rejoinder is filed by the applicant stating that after acquittal of the applicant the respondents could have proceeded with the proceedings but no action was taken after 11 months from the date of receipt of the judgment dated 7.12.2018 acquitting the applicant from the criminal charges. The judgment in the case of **Premnath Balli -vs- Registrar, High Court of Delhi & Anr.** has been cited saying that the disciplinary proceeding has been delayed. It is also stated in the rejoinder as under :

"It is the specific case of the applicant is that the charge memorandum is of dtd. 17.04.2002 and the G.R. case was instituted in the year 2001, which is the basis for drawal of the charge memorandum. It is pertinent to mention here that though the Respondents have mentioned the date of judgment passed by the Hon'ble Judge Family Court, Jajpur without specifying the date of institution of the Civil Proceeding. If the date of institution of the Civil Proceeding is after the date of issuance of the charge memorandum then the same cannot be taken in account for decision of the Disciplinary Proceeding.

Be that as it may in view of the order dtd. 20.06.2003 passed by this Hon'ble Court in OA No. 529/2002 the final outcome of the proceeding is depends upon the decision of the complaint lodged by Mrs. Urmila Nayak. When the complain of Mrs. Urmila Nayak not proved by the Competent Court of law, then the survival of the Disciplinary Proceeding amounts going against the order of this Hon'ble Court passed in OA No. 529/2002."

The circular of the CVC dated 18.1.2016 has also been cited stating that the disciplinary proceeding should be completed strictly within the time frame as specified in the said circular.

OA No. 421/2019

9. In OA No. 421/2019 the applicant is aggrieved because of the fact that vide order dated 17.6.2019 (Annexure A/5), the applicant has been promoted after opening of the sealed cover and she has been posted at Chandigarh, when her husband is continued to be at Bhubaneswar as his case for promotion has not been taken up as stated in OA 411/2019. The applicant in this OA relied on the OM dated 30.9.2009 of the DOPT (Annexure A/6), in which it is stipulated that both husband and wife should be posted in the same Headquarter. In the Counter, the respondents have taken the plea that due to urgent requirement of the Board and acute shortage of staff at Ambala Division-II, Chandigarh, the applicant has been posted there on promotion. But the applicant has not given acceptance to the said promotion and she was informed that the conditional acceptance of the promotion cannot be accepted. It is further stated in the Counter that action in respect of her husband cannot be the cause of action for the applicant in OA No. 411/2019 to approach this Tribunal. Rejoinder has been filed mainly relying on the OM dated 30.9.2009 of the DOPT in support of her claim to be posted in the same Headquarter as her husband.

10. Heard learned counsel for the applicant in both the OAs. Learned counsel for the applicant in OA No. 411/2019 restricted his prayer to para 8 (a) & (b) of the OA. It was submitted that the recommendation of the DPC in case of the applicant has been kept in a sealed cover. Learned counsel for the applicant referred to the Counter filed by the respondents in OA No. 421/2019, in which letter dated 17.7.2019 has been annexed as Annexure R/1 to the Counter, which was issued with reference to the representation of the applicant in OA No. 421/2019 and it is stated in the letter dated 17.7.2019 as under :

“However, since the matter is sub judice before the Hon’ble CAT, Cuttack, she may be informed that the matter of withdrawal of charge sheet in r/o Shri Arun Kumar Nayak is concerned with the charge sheet issuing authority i.e. RD, CGWB, Bhubaneshwar. The RD has already been requested by this office to take immediate necessary action to finalise the case for withdrawal of charge sheet. Therefore, the matter may be taken up with the RD.”

It is submitted by learned counsel for the applicant that above letter shows that the respondent No.2 was of the view that the matter of withdrawal of charge sheet is to be finalized quickly.

11. Heard learned counsel for the respondents in OA No. 411/2019 and OA No. 421/2019. It is submitted that the applicant has managed to obtain the order dated 30.6.2003 of the Tribunal by misleading the Tribunal about the facts of his marriage. He filed a copy of the judgment dated 11.1.2019 of the

Family Court, Jajpur in the Civil Proceeding No. 211 of 2019 between the applicant of OA No. 411.2019 and Urmila Nayak. In this judgment, it is stated that the marriage between the applicant and Urmila Nayak was solemnized on 12.3.1993 as per Hindu rights and customs. Another point addressed by the learned counsel for the respondents is that the charges in the criminal case in which the applicant was acquitted, are different from the charges made in the charge sheet dated 17.4.2002 (annexure A/1 in OA 411/2019). It was also pointed out by learned counsel that the OA has been filed for three different cause of action relating to the charge sheet, promotion and transfer of his wife and hence, the OA is not maintainable.

12. In reply to the submissions of learned counsel for the respondents, the applicant's counsel submitted that the Article I of the charge sheet related to second marriage or bigamy for which the applicant was acquitted in the criminal case. Regarding Article II of the charge sheet, it was submitted that the respondents had suspended the applicant and the authorities were aware about arrest of Sri A.K.Nayak. He further submitted that he is pressing for the reliefs at para 8(a) and 8(b) of the OA pertaining to the applicant's promotion and charge sheet.

13. Taking into account the submissions made by learned counsels for both sides as well as pleadings on record, we are unable to accept the contention of the learned counsel for the respondents that the order dated 30.6.2003 was passed by the Tribunal on the basis of suppression of material fact by the applicant, since no such plea was taken in the preliminary Counter filed by the respondents in OA No. 411/2019 and the order dated 30.6.2003 was not challenged by the respondents at higher forum. The said order dated 30.6.2003 has been complied by the respondents by stopping the disciplinary proceeding as stated in the preliminary Counter. Regarding the issue of multiple remedies sought for in OA No. 411/2019 raised by respondents' counsel, the applicant's counsel restricted the prayer in OA No. 411/2019 to para 8(a) and 8(b). Since promotion of the applicant is not being taken up due to pending charge sheet, the reliefs sought for are linked to each other, which cannot be considered to be different.

14. The following charges were framed against the applicant as per the charge sheet dated 17.4.2002 (Annexure A/1) :

“ARTICLE-I

That the said Shri Arun Kumar Nayak, while functioning as Technical Operator (Stores) in the office of the Executive Engineer, CGWB, Div.X, Bhubaneswar during the year 1993 married with Smt. Lovabati Mallick (at present UDC in the same situated office) on 02.01.1993 and entered into a

second marriage with Smt. Urmila Jena, D/o Shri Nabaghana Jena, Vill/PO-Andhari, PS-Korai, Dist.-Jajpur on 12.3.1993, having a spouse living.

By his aforesaid act, Shri Arun Kumar Nayak, Technical Operator (Stores) violated the rule 21 of CCS (Conduct) Rules, 1964.

ARTICLE-II

That during the period 8/2001 and while functioning in the aforesaid office, that the said Shri Arun Kumar Nayak arrested by the Police on 28.8.2001 and detained under custody upto 24.9.2001, subsequently released on bail on 25.9.2001. But intimation of arrest suppressed immediately by Shri Arun Kumar Nayak, T.O. (S).

That by his aforesaid act Shri Arun Kumar, Technical Operator (Stores) has filed on his part to inform the facts of his arrest by which the acts of suppression of material information and liable to disciplinary action. Shri Arun Kumar Nayak violated the provision of CCS (Conduct) Rules, 1964, Rule 3-C read with GHIO decision (2).”

15. The applicant's case is that after acquittal from the criminal case the above charges are to be withdrawn, which is also mentioned in the letter of the respondent No.2 copy of which has been enclosed at Annexure R/1 to the Counter submitted in OA No. 421/2019. Respondents' case is that after the disposal of the criminal case against the applicant, the disciplinary proceeding as per the charge sheet dated 17.4.2002 can be continued since the issues involved in the criminal case and the disciplinary proceeding, are not the same. We have taken note of the averments made in the Annexure to the Counter filed by the respondents in OA No. 421/2019, and Preliminary Counter in OA No. 411/2019, that the Regional Officer (disciplinary authority) has been instructed to take a decision on withdrawal of charge sheet dated 17.4.2002 and that the representation of the applicant in OA No. 411/2019 dated 24.12.2018 regarding his request for promotion is pending with the authorities.

16. As per the order dated 30.6.2003 of this Tribunal in OA No. 529/2002, the respondents were at liberty to take action in the charge sheet dated 17.4.2002 after disposal of case pending in the Court on complaint filed by Mrs. Urmila Nayak. The said complaint criminal case was disposed of vide judgment dated 7.12.2018 (Annexure A/6), after which the respondents could have continued further proceeding as per the charge sheet dated 17.4.2002 in accordance with the Tribunal's order dated 30.6.2003 (Annexure A/2). But no action was taken by the respondents till the date of filing of the Preliminary Counter in OA No. 411/2019, in which it was stated that the case of the applicant's promotion was kept in sealed cover due to pendency of criminal case. But after 7.12.2018, there was no criminal case pending against the applicant and the disciplinary proceeding/charge sheet dated 17.4.2002 which was stopped, has not been revived by passing a fresh order by the competent authority and the representation dated 24.12.2018 (Annexure A/7 series) has been kept pending without taking any decision. There was nothing on record to

prevent the authorities to proceed with the charge sheet dated 17.4.2002 (Annexure A/1) in OA No. 411/2019, after passing of the judgment dated 7.12.2018 (Annexure A/6).

17. Taking into consideration the factual position of both the OAs as discussed above, the respondents are directed as under:-

(i) Since after the judgment dated 7.12.2018 of the criminal court acquitting the applicant in OA No. 411/19, no criminal case was pending and the competent authority has not passed any order to take further action in the charge-sheet dated 17.4.2002 (A/1), the disciplinary proceeding cannot be considered to be pending against the applicant and no criminal case was pending against him after 7.12.2018. Hence, without reviving the disciplinary proceedings, there was no justification to keep the case of the applicant's promotion in the sealed cover. The respondents are accordingly directed to open the sealed cover of the applicant in OA No. 411/19 within one month and if he was found suitable for promotion by the DPC, action is to be taken to promote the applicant with all consequential benefits as per the rules.

(ii) After taking action as per sub para (i) above, the respondents will consider to post the applicant in OA No. 421/19 at the same station as her husband in accordance with the DOPT's OM dated 30.9.2009 (Annexure A/6 of OA No. 421/2019) and till such consideration, the order dated 17.6.2019 posting the applicant in OA No. 421/2019 to Ambala/Chandigarh will not be implemented.

(iii) After taking action as at (i) above, the competent authority will take a decision regarding the charge-sheet dated 17.4.2002 by passing an order as to whether the disciplinary proceeding will be continued or the charge sheet will be withdrawn within one month from the date of receipt of a copy of this order. If it is decided to continue the disciplinary proceedings as per the charge sheet dated 17.4.2002, then taking into consideration the delay in the matter at the level of the respondents, the aforesaid disciplinary proceeding will be completed within four months from the date of passing the order as stated above.

19. Both the OA Nos. 411 and 421 of 2019 are allowed to the extent as mentioned above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

