



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No. 350/01938/2015.

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

Hon'ble Mr Swarup Kumar Mishra, Judicial Member

Sukhen Halder, Aged about 48 years, son of Late Nrisingha Prasad halder, residing at 7/2/A/2, ghoshGochuipara Road, Post Office-Nona-Chandanpukur, District- 24-Parganas (North), Kolkata-700122 and working as Assisgtant Press Operator & ACP-I, Printing Section, PID-I, Geological survey of India, CHQ, 27, JawaharLal Nehru Road, Kolkata-700016:

.....Applicant

Vrs.

1. Union of India service through the Secretary, Ministry of Mines, Government of India, ShastriBhawan, Dr. Rajendra Prasad Road, New Dlehi-110001.
2. The Director General, Geological Survey of India, 27, JawaharLal Nehru Road, Kolkata-700016.
3. The Deputy Director General (P), Geological Survey of India, 27, JawaharLal Nehru Road, Kolkata-700016.

.....Respondents

For the applicant: Mr. P.C.Das, Counsel

For the respondents: Mr. A.K.Chattopadhyay, Counsel

Date of Hearing : 19.11.2019

Date of Order : 16.12.2019

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09.12.19

ORDER**MR SWARUP KUMAR MISHRA, MEMBER(J)**

This O.A has been filed seeking the following reliefs :

- "a) To quash and or set aside the Charge Sheet vide No. 4945/C-13013/155/SH/Admn.Vig/2010 dated 28.08.2012 issued by the Deputy Director General (P), Geological Survey of India, 27, J.L.Nehru Road, Kolkata being respondent No.3 herein.
- b) To quash and/or set aside the Memorandum of Charges vide No. 6138/C-13013/429/Complaint/Admn.Vig./2013 dated 14.06.2013 issued by the Deputy Director General (P), Geological Survey of India, 27, J.L.Nehru Road, Kolkata being respondent No.3 herein.
- c) To quash and/or set aside the impugned order of the Revisional Authority dated 23rd September, 2015 being respondent No.1 herein which was communicated by the Director General, Geological survey of India, 27, J.L.Nehru Road, Kolkata, being respondent No.2 herein to the applicant vide letter dated 03.11.2015 which is appearing at Annexure A-28 of this original application.
- d) To declare that the action of the respondent authority by holding such disciplinary proceeding is absolutely bad in law and illegal and the entire proceeding may be quashed and/or set aside and the applicant should be given all consequent benefits after setting aside the punishment order of the compulsory retirement from service which is passed without procedure of law and the applicant be instated in service along with all back wages within a specific period.
- e) Costs.
- f) Any other relief or reliefs"

2. Briefly stated, the facts of the case are that one charge memo dated 28.08.2012 containing 3 articles of charges were issued against the applicant while he was serving as Assistant Press Operator, Printing Section, Geological Survey of India, Kolkata. The charges leveled against the applicant was for unauthorized absent from duty with effect from 17.06.2009 to 13.10.2009 and joined duty on 14.10.2009, without submitting leave applications for the said period of long absence from duty. He filed an FIR before the New Market Police Station, Kolkata without prior


approval of the competent authority and without taking prior permission from the competent authority he brought two outsiders in the office hours in printing section on 05.01.2010. He has also submitted a representation dated 05.12.2011 directly to the highest authority without proper channel threatening the Director General, G.S.I, which was a serious misconduct on the part of a Government servant. After enquiry the Disciplinary Authority passed an order dated 30.07.2013 vide Annexure R/5 imposing a penalty of compulsory retirement of the applicant with effect from 01.08.2013. The applicant preferred an appeal dated 12.09.2013. The appellate authority i.e. Director General, Geological Survey of India vide order dated 23.10.2013 dismissed the said appeal on the ground that the appeal is devoid of merit. Being aggrieved the applicant preferred a revision petition on 08.01.2014 before the reviewing authority and also filed a pleader's notice on 23.03.2015 before the Secretary, Ministry of Mines, Govt. of India, New Delhi. The reviewing authority i.e. Secretary, Ministry of Mines dismissed the said revision petition by order dated 23.09.2015 vide Annexure A/7.

3. It was inter alia contended by learned counsel for the applicant that since the period of leave, for which charge memo was issued against him for unauthorized absence has already been regularized, the authority ought to have come to a conclusion that there was no misconduct on the part of the applicant for the said period of so called absence from duty. The fact that the said period has been treated as extraordinary leave as has been mentioned in para 10 of the counter reply. It was brought out during argument by the learned counsel for the applicant that whereas the first charge memo was issued on 28.08.2012, second the charge memo was issued against the applicant on 14.06.2013. The first

charge memo relates to major penalty and the second charge memo is on the minor penalty proceedings. Grievance of the applicant is that while imposing punishment vide order dated 30.07.2013 (A/19) imposed punishment of compulsory retirement having regard to the Articles of Charge framed against him under Rule-14 and Rule-16 of CCS(CCA) Rules, 1965. In other words, it is the plea of the applicant that merging of proceedings under Rule-14 and Rule-16 of CCS(CCA) Rules, 1965 with a view to passing a common punishment order is not permissible under the said rules and therefore, the entire proceeding initiated against him under the aforesaid Rules of 1965, stands vitiated and hence, the same is liable to quashed and set aside.

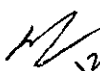
4. We have gone through the written notes of argument filed by the respondents to fortify their standpoint. In the written notes of argument, the respondents have pointed out some punishment imposed on the applicant earlier to the punishment imposed, which is the subject matter of dispute in the instant O.A. Be that as it may, it is the case of the respondents that they have imposed punishment on the applicant after following the due procedure of rules and law on the subject and therefore, this Tribunal should not interfere with the same.

5. Upon hearing the learned counsels for the parties and perusal of records, we are of the considered opinion that the appellate authority as well as the revisional authority while considering the appeal and revision petition respectively, filed by the applicant, should have passed reasoned and speaking orders. Merely mentioning that they have applied their mind while passing the appellate order and the orders in review petition, will not be quite enough to meet the requirement of law. It is seen from

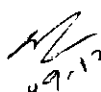

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the record that the applicant had raised several points including point of non-supply of relevant documents and in his appeal memo dated 12.09.2013, he had also raised several important points, like violation of principle of natural justice, not affording an opportunity of personal hearing and other procedural lapses. Those points have not been considered either by the appellate authority or the reviewing authority in its proper perspective. Therefore, there has been clear violation of the principle of natural justice by not giving due opportunity to the applicant to defend himself in the disciplinary proceeding and thus, thereby there has been a miscarriage of justice which caused serious prejudice to him. Viewed from this angle, the orders as passed by the appellate authority and the reviewing authority suffer from non-application of mind.

6. We may add that this Tribunal finds from the record as well as from the order passed by the appellate authority and revisional authority that except narrating the facts as discussed above, they have not at all given any reason in rejecting the appeal and revision respectively. The grounds taken by the applicant in the appeal and revision have not at all been mentioned and discussed by both the said authorities. Thus, this Tribunal is compelled to come to a conclusion that there has been total non application of mind by appellate authority and revisional authority while passing the order. The said action of the authorities have caused serious prejudice to the applicant and orders passed by the appellate authority and revisional authority are vulnerable. This apart, the Disciplinary Authority, Appellate Authority and the Reviewing Authority have nowhere in their orders mentioned whether a common conclusion could be arrived at and punishment imposed based on the disciplinary proceedings initiated against the applicant under Rule-14 and Rule-16 of CCS(CCA)


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Rules, 1965 inasmuch as, whereas the proceedings under Rule-14 is conducted by appointment of IO and PO or as the case may be, by the D.A. himself to enquire into the charges leveled against the delinquent, in a proceedings under Rule-16, there is no such procedure laid down and on the basis of explanation called for, the Disciplinary Authority comes to a conclusion whether the allegations are proved on based on the materials on record. Similarly, Rule-14 proceeding entails imposition of major punishment whereas Rule-16 proceeding entails minor punishment. Even there is no bar for imposition of minor punishment in case of proceedings under Rule-14. However, the peculiarity involved in this case, whereas the Disciplinary Authority is within its powers, authority and jurisdiction to club up both the proceedings under Rule-14 and Rule-16 and impose major penalty by holding that the charges have been proved against the delinquent, applicant herein. Such a question has not been answered by any of the authorities concerned, i.e., Disciplinary Authority, Appellate Authority and the Review Authority. Under the circumstances, there being sheer procedural irregularities, it cannot be said that the decision making process by the authorities concerned is just and proper and therefore, by clubbing up both the disciplinary proceedings and passing a common order by the disciplinary authority appears to be in violation of CCS(CCA) Rules and thereby a prejudice has caused to the applicant. Apart from the above, this Tribunal is of the opinion that the authorities have not adduced any convincing reasons in support of their action. In this connection, it is worthwhile to mention that the Hon'ble Supreme Court in M/s.Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan reported in 2010(9) SCC 496 has laid down that reasons must


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be assigned by the authorities administrative authorities in support of their action. Some of the notable guidelines are quoted hereunder:

- i) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect any one prejudicially.
- ii) A quasi-judicial authority must record reasons in support of its conclusions.
- iii) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- iv) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- v) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

7. Having regard to what has been discussed in the preceding paragraphs, we quash and set aside the order dated 23.09.2015 (A/2) passed by the reviewing authority, as communicated vide communication dated 03.11.2015 (A/28) and remit the matter to the said reviewing authority, to revisit the review petition and to consider the same in the light of the observations made in this order and accordingly, pass a reasoned and speaking order to be communicated to the applicant within a period of sixty days from the date of receipt of this order.

8. In the result, is partly allowed, with no order as to costs.

(Swarup Kumar Mishra)
Judicial Member

(Dr Nandita Chatterjee)
Administrative Member