

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)**

O.A. No. 364/2014

1. Sri Pramod Kumar Adhikari, aged about 48 years, Son of Sri Rankanath Adhikari, At/P/O. Achutpur, P. S. Jankia, Dist. Khurda and presently working as Assistant Audit Officer, Office of the Accountant General and Social Sector Audit, AG Square, Bhubaneswar, Odisha, Dist. Khurda.

.....Applicant

VERSUS

1. Union of India represented through the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
2. The Dy. Comptroller and Auditor General of India, Office of the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
3. The Accountant General (G&SSA), AG Square, Bhubaneswar, Dist. Khurda, Odisha, Pin-751001.
4. Sri Santanu Ku Das, OSJS (Retd.), Ex-District & Sessions Judge and Inquiring Officer, Office of the Accountant General, G&SSA, Odisha, Bhubaneswar, Pin-751001.

.....Respondents.

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

For the respondents: Mr. S. K. Patra, Advocate.

Heard & reserved on : 03.12.2020 Order on :01.02.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

- i. To allow the Original Application.*

- ii. *To quash the charge sheet issued under Memorandum No. Admn. (G&SSA)/Vigilance/2012-13/DP-6/2339, dtd. 21.11.2012 (Annex. A/3);*
 - iii. *To quash the order No. 03/Staff (Disc.-II)/31-2013 dated 02.04.2014 (Annex. A/12);*
 - iv. *To quash the letter No. SKD/IO/DP-1/2012-13//01, dtd. 19.09.2013 (Annex. A/8) holding the same is opposing the statutory rules.*
 - v. *To direct the Respondents to grant the applicant all consequential service and financial benefits which he was entitled but deprived of for issuance of the charge sheet;*
 - vi. *To pass any further order/orders as deem fit and proper in the facts and circumstances of the case.*
2. The facts of the present O.A. are that the applicant was promoted to the post of Assistant Audit Officer with effect from 02.01.2007 vide order dated 29.12.2006 (Annexure A/1) by the Principal Accountant General. The applicant was served with memorandum dated 27.07.2012 (Annexure A/3) by Accountant General/Respondent No. 3. The applicant submitted that since he was promoted by Principal Accountant General which comes under Higher Administrative Grade and the post of Accountant General comes under Senior Administrative Grade which is much below in the rank of Principal Accountant General and Respondent No. 3 is not his appointing authority and hence cannot act as his disciplinary authority. The applicant submitted that as per rules and authenticated by various judicial pronouncements the appointing authority is the disciplinary authority who has been empowered under the statute to approve initiation of disciplinary proceedings, hence the memorandum of charge issued by the Accountant General/Respondent No. 3 is contrary to the rule and liable to be set aside. The applicant submitted his reply dated 21.08.2012 (Annexure A/4) to the charge memorandum and thereafter Respondent No. 3 vide

order dated 29.08.2012 (Annexure A/5 & A/6) appointed the IO, PO and Addl. P.O. to proceed with departmental inquiry. The applicant submitted representation requesting the IO to be changed since he had dealt with the matter previously and the Disciplinary Authority vide order dated 18.10.2012 appointed Sri C. Veeraraghavan as new IO. However after few days without giving any opportunity or prior notice to the applicant the Disciplinary Authority vide order dated 16.09.2013 (Annexure A/7) i.e. AG (G&SSA) suo motto changed the IO and appointed Respondent No. 5 as IO. The applicant further submitted that as per Govt. of India decision upheld by the Hon'ble Apex Court, *"The competent authority has the discretion to appoint a retired person as IO to enquire into the allegation in departmental proceedings. But such appointment of an outsider retired officer is permitted provided he has been empanelled in the list of names duly approved by the competent authority"* and the CAG of India is the competent authority to approve such names and no list has ever been published by the department figuring the name of Respondent No. 5 hence the very appointment of Respondent No. 5 as IO is against the rule. The applicant submitted that the IO vide letter dated 19.09.2013 (Annexure A/8) called for holding DE NOVO enquiry and called upon the applicant to remain present on the date fixed. After receipt of letter dated 19.09.2013 the applicant submitted representation dated 25.09.2013 praying for change of IO which was denied by order dated 07.10.2013 (Annexure A/10). The applicant submitted his representation dated 15.10.2013 (Annexure A/11) before Respondent No. 1 which was rejected by Respondent No.2 vide letter dated 02.04.2014 (Annexure A/12) and upholding the DE NOVO enquiry ordered by IO by invoking proviso to Sub Rule – (22) of Rule 14 of CCS (CCA) Rules, 1965. The applicant submitted that vide letter dated 24.04.2014 (Annexure A/13) the date of inquiry was fixed to 13.05.2014 and the applicant appeared before inquiry officer

and submitted a representation (Annexure A/14) praying inter alia not to proceed with the inquiry and enclosing copy of order dated 05.05.2014 passed by this Tribunal in OA No. 305/2014 restraining the Respondents to proceed with the inquiry. The respondents rejected the plea of the applicant raised in his representation dated 13.05.2014 and proceeded with the de novo inquiry from the initial stage, however on specific prayer the inquiry officer deferred the inquiry to 23.05.2014 vide daily order sheet dated 13.05.2014 (Annexure A/15). The applicant submitted that since he has alleged bias on part of the inquiry officer therefore the IO needs to be changed and by applying the test "likelihood of bias" the memorandum of charge is liable to be set aside. The applicant further submitted that allegation levelled in article of charges do not come within the meaning of "misconduct" and the Hon'ble Apex Court has distinguished what is misconduct which has not been adhered to while issuing the memorandum and since there was no fairness and the charge sheet is outcome of malice, bias and vindictiveness, issued by an authority having no competency is liable to be set aside. Hence this OA.

3. The respondents in their counter inter alia averred that the applicant along with two other officers were deputed to conduct audit under an officially approved tour programme and the time schedule and venue of audit had been pre-decided by the superior but during surprise visit of the Deputy Accountant General to the spot of audit at Panchayat Samiti Office, Talcher on 06.01.2012 the audit party members including the applicant were found absent though the audit was scheduled to be conducted over till 07.01.2012 as per the official tour programme. The applicant in his explanation dated 09.02.2012 the applicant claimed that he was conducting audit at Angul during the period of his absence at Talcher but no prior permission to this effect was obtained by the audit party members and the audit party had already

covered Angul as per tour programme before reaching at Talcher and since the tour programme had the force in an order of superior authority, non adherence to it was considered as indiscipline and insubordination on the part of the applicant and other party members. The incumbent AG (Respondent No. 3) being the disciplinary authority of Group B officers by virtue of his appointment as officiating Head of Department vide CAG Office order dated 01.08.2011 (Annexure R/10) initiated disciplinary action against the applicant and other party members for their misconduct or misbehaviour. The respondents submitted that in terms of Ministry of Finance order dated 20.04.2012 published in Gazette of India dated 29April-5 May, 2012 [Annexure R/9 (a)] the head of departments of the rank of Principal accountant General or Accountant General or equivalent ranked officer has been designated as the appointing authority as well as the Disciplinary Authority in case of all Group B officers. The respondents submitted that prior to that also HOD in the filed office in the rank of Principal Accountant General or Accountant General has been designated as the appointing authority and the authority competent to impost penalty vide CAG Manual of Standing Orders (Administrative) Volume-II [Annexure R/9(b)]. The memorandum/charge sheet dated 27.07.2012 was issued and the applicant responded by submitting his written statement dated 21.08.2012 where he claimed that the left Talcher under the direction of Sr. Audit Officer for collecting information from the earlier visited place of audit at Angul but nothing is there on record supporting his claim. The respondents submitted that one retired Deputy Accountant General of the office Shri Keshab Charan Behera was appointed as Inquiry officer who was in no way connected with the activities of the aforesaid audit party and had no personal knowledge of the charges. The applicant submitted his representation dated 27.09.2012 (Annexure R/1) alleging bias and in order to remove his doubt on fair functioning of

the IO, Shri Behera was replaced by another serving DAG, Shri C. Veeraraghavan vide order dated 18.10.2012 (Annexure R/2). The respondents submitted that after few sitting in the preliminary hearing of the departmental inquiry the applicant submitted a representation dated 28.06.2013 (Annexure R/3) citing lapses in maintaining proper procedure during preliminary hearing and requested that another suitable person preferable from outside the office may be appointed as IO and till such time inquiry may be stayed. Since no perversity was seen in the functioning of the IO Shri Veerarghavan the representation dated 28.06.2013 of the applicant was rejected by communication dated 08.07.2013 (Annexure R/4), but the applicant sought review of the said order vide representation dated 12.07.2013 (Annexure R/5) which was dismissed by Respondent No.1 vide a reasoned order dated 17.09.2013 (Annexure R/6). The respondents submitted that the applicant apparently alleges bias every now and then as a weapon to stay the inquiry though none of the bias exists and the departmental inquiry could not progress beyond the stage of preliminary hearing and evidences could not be recorded despite long lapse of time only due to dilatory tactics deployed by the applicant. The applicant further submitted that Shri Veeraraghavan who was appointed as IO on 10.09.2013 requested to be relieved of such duty citing work pressure and in view of fewer numbers of departmental officers available for the purpose of inquiry as well as repeated allegation of bias levelled against them, Respondent No. 3 decided to appoint IO from outside and accordingly Respondent No. 4 was appointed as IO vide order dated 16.09.2013 which was in consonance with the terms and conditions prescribed by the Govt. of India which has been printed in Swamy's compilation of CCS (CCA) Rule as Govt. of India's Decision No.-12 below Rule 14 (Annexure R/7). The respondents submitted that Respondent No. 4 decided to conduct preliminary hearing again since the applicant was not

satisfied with the preliminary hearing conducted by the previous IO and hence issue notice for de novo inquiry in terms of Rule-14 (22) of CCS(CCA) Rules and also in the spirit of judgment dated 04.05.1994 passed by Hon'ble CAT, Calcutta Bench in OA No. 29/1990 between Haricharan Shaw vrs. Union of India and others. The respondents submitted that on receipt of notice for appearance dated 19.09.2013 the applicant submitted a representation dated 25.09.2013 alleging bias against Respondent No. 4, the new IO on the ground that the appointment of new IO was made from outside without his consent and also the new IO intended to conduct de novo inquiry. The representation dated 25.09.2013 of the applicant was rejected by Respondent no. 3 vide order dated 04.10.2013. The respondents submitted that the applicant then sought review in the matter of bias and submitted revision petition dated 15.10.2013 to the Respondent No.1 instead of Revisionary/Appellate authority i.e. Respondent No.2 who dismissed the review petition by passed a reasoned order 02.04.2014. The respondents submitted that the hearing of departmental inquiry was stayed pending disposal of bias petition on the basis Govt of India order Rules (Annexure R/8) prescribing procedure for disposal of bias representation. The respondents submitted that as soon as the departmental inquiry resumed on 13.05.2014 the applicant appeared in the hearing and requested the IO to stay inquiry against him on the basis of interim order dated 05.05.2014 passed by this Tribunal in OA No. 305/2014 between Shri Pramod Kumar Nath vrs. Union of India and since the order was interim in nature and granted stay on departmental inquiry only against Shri Nath the inquiry against the applicant was not stayed. The applicant being reluctant to face the departmental inquiry filed the present OA.

4. The applicant in his rejoinder to the counter submitted that the applicant was appointed by Principal Accountant General

and the post of Accountant General is one stage below to the post of PAG and that the AG is officiating as Head of department in the field office. The applicant submitted that the Disciplinary Authority means who appointed the person to service or above the rank of appointing authority vide sub rule (a) (iii) of Rule 2 of CCS (CCA) Rules, 1965 and by various judicial pronouncements the appointing authority is the disciplinary authority who has been empowered under the statute to approve initiation of disciplinary proceedings. The applicant submitted that in absence of the approval of the disciplinary authority charge memo becomes non est and is liable to be quashed. The applicant submitted that as per the order of the Govt. of India, Ministry of Home Affairs dated 24th January, 1963 “officers performing current duties of a post cannot exercise statutory powers under the Rules and as per the order of Ministry of Finance wherein it has specifically been provided that “All Group B posts in pay band-3 of Rs. 5400, pay Band-2, Grade Pay of Rs. 5400, Rs 4800/-, Rs. 4600/- or corresponding thereof”- The appointing Authority is officer in the rank of Principal Accountant General or accountant General or officer of equivalent rank”. It further provides that the authorities empower the penalties is “Officer in the rank of Principal Accountant General or Accountant General or officer of equivalent rank and it is needles to emphasise that ‘or’ is always disjunctive and obviously even as per notification dated 20th April, 2012 whoever has been appointed by the PA the PAG shall be the appointing /disciplinary authority.

4. Learned counsel for the applicant relied on some citations including the following citations:
 - i. Hon’ble Apex Court in the case of Union of India and ors vrs. Paul George (2014) 1 SCC 352.
 - ii. CVC order dated 98/MSC/23 dated 29th November 2002.
 - iii. Government of India, Minsitry of Home Affairs OM No. F.7/14/61-Ests (A) dated 24th January, 1963

5. Learned counsel for the respondents relied on some citations the following citations:
 - i. Hon'ble High Court of Orissa judgment dated 09.08.2017 in WP(C) No. 9050 of 2016 in Union of India & ors vrs. Pramod Ku Nath.
6. We have carefully gone through materials on record, pleadings of the parties, as well as citations referred . The citations relied on by learned counsel for the applicant are not applicable to the facts and circumstances of this case.
7. The operative part of Hon'ble High Court order in WP (C) No. 9050 of 2016 is given below:

" 23. We have gathered from the order passed by the Tribunal by going through the order of promotion granted in favour of the private opposite party by the Principal Accountant General (Civil Audit) but the Tribunal fails to appreciate the fact that in the meanwhile i.e. in between the order granting promotion and the date of issuance of memorandum of charge, the nomenclature of the office has changed and i.e. in pursuance of the notification dated 20.04.201 which speaks about the H.O.D. in the rank of Principal Accountant General or A.G. or Officer in the equivalent rank.

24. The Tribunal while disposing of the original application ought to have taken into consideration the subsequent development as has been discussed hereinabove before coming to the conclusion regarding jurisdiction of the A.G. (Civil Audit).

We, on the basis of discussion made above, are of the view that the Tribunal ought to have taken into consideration the functioning of the officer in capacity of H.O.D. and not in the capacity of the Principal Accountant General or A.G.

25. In that view of the matter, we are not in agreement with the finding given by the Tribunal and as such the order passed by the Tribunal is not sustainable in the eye of law, in the result the same is set aside.

In consequence thereof, the competent authority is directed to conclude the departmental proceeding within a period of three months from the date of receipt of this order.

It goes without saying that while proceeding with the disciplinary enquiry, the authority will provide reasonable opportunity of being heard to the delinquent employee.

It is made clear that the competent authority will not be prejudiced in any way while passing the final order.

With this observation and direction, the writ petition is disposed of."

8. Taking into consideration the order passed by Hon'ble High Court above, we are of the view that there is no ambiguity, illegality or irregularity in issuance of charge memorandum and Respondent No. 3 acting as disciplinary authority.
9. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)