

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 391 OF 2020

CORAM:

THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
THE HON'BLE MR.C.V.SANKAR, MEMBER (ADMN.)

Ramesh Charan Behera, aged about 70 years, S/o. Late K.G.C. Behera,
Flat No. B-6/6, Chandrama Housing Complex, Kharvel Nagar,
Bhubaneswar-751 001, Dist. Khurda.

..... Applicant

Through Legal practitioner :M/s. K.P.Mishra, S.Rath, L.P.Dwibedy,
A.Mishra, Counsel.

-Versus-

1. Union of India represented through the Secretary to Government of India, Ministry of Personnel & Training at North Block, Central Secretariat, New Delhi-110001.
2. Union Public Service Commission, represented through its Secretary at Dholpur House, Sahajahan Road, New Delhi-110001.
3. Special Secretary to Govt. of Odisha in General Administration and PG Department, Lok Seva Bhawan, Bhubaneswar, Dist. Khurda.
4. Secretary to Govt. Housing & Urban Development Department, Lok Seva Bhawan, Bhubaneswar, Dist. Khurda.

.....Respondents

Through Legal practitioner :Mr.J.Pal (GA State), Counsel

Reserved on: 19/01/2021

Pronounced on: 08/02 /2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

Applicant, Shri Ramesh Chandra Behera, an IAS Officer of the State of Odisha Cadre, challenging and impugning the show cause notice issued to him in letter No. GAD-SER1-CASE3-0002-2020/8158/AIS.I, dated 10th August, 2020 in Annexure-A/1 has filed this Original Application u/s. 19 of the Administrative Tribunals Act, 1985, inter alia seeking the following reliefs:

- (i) Direction/order to quash impugned notice dated 10/08/2020 under Annexure-A/1 issued by the Respondent nO.1 by concurrently holding the same as without jurisdiction and illegal;
- (ii) Any other appropriate order may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. Despite due opportunities no separate counter has been filed by Respondent Nos. 1, 2 and 4. Respondent No.3/State of Odisha, has filed counter contesting the case of the Applicant. No rejoinder has been filed by the Applicant.

3. The case of the Applicant in brief is that Respondent No.1 is the cadre controlling Authority in so far as Officer of All India Service Officers and, therefore, in terms of Rule 6(1) of All India Services (DCRB) Rules, 1985, Respondent No.3 is not competent to issue the notice under Annexure-1. Hence it has been contended that the said notice is liable to be quashed/set aside being issued without jurisdiction. Accordingly, he has prayed for the relief claimed in this O.A.

4. On the other hand, it is the case of the Respondent No.3 that notice dated 10/08/2020 is a mere show cause notice issued to the Applicant calling upon him to submit show cause as to why penalty of withholding of pension and gratuity in full as prescribed u/r.6(1) of All India Services (DCRB) Rules, 1958 shall not be imposed upon him for his conviction of rigorous imprisonment for twenty months and fine to the tune of Rs.34,800/- in default rigorous imprisonment for a further period of three months for the offences u/s. 13(2) r/w 13(1)(2) of Prevention of Corruption Act, 1988. It has been contended that the notice did not intend imposition of penalty as the Respondent No.3 is well aware of the extant

rules which state that “no such order shall be passed without consulting the Union Public Service Commission”. Accordingly, Respondent No.3 has prayed for dismissal of this O.A.

5. Heard Learned Counsel for both sides and carefully gone through the materials on records.

6. Although the applicant had pleaded in para 4.2 of the OA that in the criminal appeal preferred by him, Hon’ble High Court has stayed his order of conviction, no such order has been filed to show that Hon’ble High Court has stayed the order of conviction. A copy of the order dated 17.12.2014 passed in Mis. case 1932/2014 & 1931/2014 arising out of CrLA No. 654/2014 vide Annexure A/2 shows that the appeal has been admitted, the realisation of fine imposed by the Ld. Special Judge in his judgment dated 01.12.2014 has been stayed till disposal of the criminal appeal. It has been further ordered by Hon’ble High Court that the appellant shall be released on bail on such terms and conditions as deemed. It was expected that the respondents should have placed the detail facts in the counter in this regard but without doing so they have stated that the matter are on record and hence not commented upon. It is seen that no such order passed by Hon’ble High Court has been submitted. Admittedly the applicant was convicted subsequent to his retirement after attaining the age of superannuation. The applicant had retired on 30.4.2010. The notice vide Annexure A/1 has been issued by Additional secretary to Govt. of Odisha in GA & PG department after more than one decade of his retirement. Therefore the state govt or any of its officer could not have exercised power on the pretext that they are acting as disciplinary authority of the applicant under Rule 6 (1) of AIS (DCRB) Rules. It is claimed by Respondent No. 3 in their counter that the said

show cause notice has been sent to the applicant under the provision of Rule 14 of AIS (D&A) Rules 1969 on the ground that he has been convicted in criminal case in question. It was submitted by learned counsel for the applicant that the alleged incident in connection of which the applicant has been found guilty by the trial court relates to an incident which are more than four years prior to the retirement of the applicant and therefore no departmental proceeding could have been started against the applicant after his retirement.

7. It has been mentioned in para 4 of the counter filed by Respondent No. 3 that the Hon'ble High Court has not suspended the conviction as per the provision of the Section 389 of the Cr.P.C and therefore there is no illegality in issuing the show cause notice in question. This Tribunal is unable to accept the claim made by the Respondent No. 3 that show cause notice was issued against the applicant by the State Govt under the capacity as disciplinary authority. It is seen from the record that the applicant has been convicted by Hon'ble Special Judge, Special Court Bhubaneswar in the case registered against the applicant by vigilance department under allegation of possession of disproportionate assets and was directed to undergo imprisonment for twenty months and pay a fine of Rs. 34,800 and in default of payment of fine to undergo rigorous imprisonment for three months more for the offences u/s 13(2) read with 13(1) (e) of Privation of Corruption Act, 1988. Therefore after his retirement the State Govt could not have issued said notice to the applicant. Although it has been averred that Respondent No. 3 has served the impugned notice dated 10.08.2020 under Rule 6 (1) of AIS (DCRB) Rules, 1958 but learned counsel for the applicant submitted that the said notice has been sent by the additional secretary to the Govt of Odisha, GA & PG department. In the counter affidavit filed by Respondent No. 3 it is claimed that Respondent No. 3 has followed proper procedure prescribed

under Rule 6 (1) of AIS (DCRB) Rules and issued the show cause notice in question to the applicant under the provision of Rule 14 of the AIS (D&A) Rules, 1969.

8. It has neither been pleaded nor any material has been produced before this Tribunal to show that Respondent No. 3 has been delegated with the power to take steps for withholding of the pension and gratuity of the applicant as per Rule 6 of the AIS (DCRB) Rules, 1958 by the Hon'ble President of India. There is also no whisper about the same by Respondent No. 3. In the absence of any such delegation of power by the Hon'ble President of India, this Tribunal finds that the respondent no. 3 is neither competent nor authorized to issue such show cause notice in question against the applicant.

9. It can be argued on behalf of respondent no. 3 that mere issue of show cause notice by Respondent No. 3 is neither illegal or irregular since no final decision has been taken in this regard, without consultation of UPSC. But once this Tribunal finds that Respondent No. 3 is not competent authority to take any steps in connection with the withholding of the pension or gratuity of the applicant, therefore he is not vested with any power or authority to issue show cause notice in question. If under the statutory rules a particular mode is required to be followed for exercising a particular power, then no other mode of taking steps in this regard is permissible except following the prescribed steps as required under the rules in question. Therefore it cannot be said that the action of the Respondent No. 3 in issuing show cause notice vide annexure A/1 to the applicant is a very innocuous one and applicant cannot challenge it at this stage, on the ground that the same is premature. Once this tribunal finds respondent no. 3 lacks jurisdiction or power at all to take any steps with regard to

withholding of pension and gratuity of the applicant, without any authorization or delegation to that effect in favour of respondent no.3, therefore the issue of show cause notice by Respondent no. 3 cannot be at all justified.

10. It is also further seen that in para 3 of the notice vide Annexure A/1, it has been mentioned that **“DECIDED to impose the penalty of withholding of pension and gratuity in full, on Shri Behera, IAS (Retd) for the aforementioned conviction on the criminal charges”** Once a decision has been already taken by respondent no. 3 there is no meaning in asking the applicant as to why penalty of withholding of pension and gratuity should not be imposed upon him. Thus it appears that Respondent No. 3 having already made up his mind and having already decided to impose the punishment of withholding pension and gratuity in full of the applicant on the ground of his conviction on criminal charges in question, the subsequent scope given to the applicant to show cause in the matter would only be post decisional hearing and the same is not in accordance with principle of natural justice or in accordance with fundamental principle of law.

11. In the above circumstances this Tribunal finds that issue of show cause notice vide Annexure – A1 by Respondent No. 3 is illegal and the same is quashed. This Tribunal has not expressed any opinion on the merit or ground on which show cause by competent authority can be issued against the applicant for the purpose of withholding of pension and gratuity.

12. The OA is accordingly allowed to the said extant but in the circumstances without any order to cost.

(C.V.Sankar)
Member (Admn.)

(Swarup Kumar Mishra)
Member (Judicial)