

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 538 of 2019

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

Santosh Kumar Parida, aged about 47 years, S/o Late Shricharan Parida, a permanent resident of Village/Post- Jampara, PS-Patkura, Dist-Kendrapara working s Secretary to the Court (under suspension) in the Office of the Industrial Tribunal cum Labour Court, H-24, Jaydev Nagar, Nageswartzangi, Lewis Road, Bhubaneswar and at present residing at Qr. No. Type-II/247, PO-GPO, Old A.G.Colony, Unit-4, Bhubneswar, PS-Kharvela Nagar, dist-Khurda, Group B Non-gazetted.

.....Applicant

VERSUS

1. Union of India represented through its Secretary, government of India, Ministry of Labour & Employment, Rafi Marg, New Delhi, Pin-110001.
2. The Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, H-24, Jaydev Nagar, Nageswartzangi, Lewis Road, Bhubaneswar, Pin – 751002.
3. Deputy Secretary (CLS-II), Government of India, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
4. Shri U.C.Mishra, Regional Labour Commissioner (Central), Government of India, Ministry of Labour and Employment, Kendriya Shram Kalyan Sadan, Plot No. 7/6 & 7, I.R.C.Village, Nayapalli, Bhubaneswar-751015.

.....Respondents.

For the applicant : Mr.K.N.Das, Counsel

For the respondents: Mr.R.K.Kanungo, Counsel

Heard & reserved on : 9.11.2020 Order on : 18.11.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in the present OA :

- “(i) To admit the OA;
- (ii) To call for the records;
- (iii) To quash the Memorandum No. D.P.I./2019/216 dated 27.05.2019 under Annexure A/2;
- (iv) to quash the Order of appointment of IO & PO dated 18.07.2019 & 18.07.2019 under Annexure A/4 & A/5 respectively;
- (v) To direct the Respondents to pay the applicant all his service and financial benefits retrospectively;
- (vi) To pass any other order/orders as deemed fit and proper;
- (vii) To allow this OA with costs.”

Facts and grounds in OA

2. The applicant was working as Secretary of Central Government Industrial Tribunal (in short CGIT) was placed under suspension vide order dated 9.4.2019 (Annexure-A/1) and then was served with a charge-sheet vide Memo dated 27.5.2019 (Annexure-A/2). Being aggrieved by the charge-sheet, the applicant has filed this OA impugning the said charge-sheet on various grounds as under:-

(i) The charges in different Articles are vague, non-specific or related to applicant's function as CPIO under the RTI Act, 2005.

(ii) In some charges, disciplinary authority (in short DA) is concerned himself and violated the principle that no one should be the judge of his own cause. There is also violation of the rule 12 of the CCS (CCA) Rules, 1965 under which another officer is to be designated as DA.

(iii) The applicant was allowed officiating promotion by the competent authority and if it violated the rule then the applicant was not responsible.

(iv) The applicant had submitted an application dated 7.6.2019 (Annexure-A/3) explaining the reasons as to why the charges are not sustainable. But the DA (respondent no.2) without considering the same or supplying the documents required by the applicant, appointed Inquiry Officer (in short IO) and Presenting Officer (in short PO) without submission of applicant's reply on the charges.

(v) The charge-sheet is issued by an authority who is not competent to do it. The charge-sheet is an outcome of malafide/colourable exercise of power and the same has been issued without application of mind.

(vi) The applicant has cited the judgment in the case of **R.L. Sharma vs. Managing Committee**, AIR 1993 SC 2155 and in the case of **State of Punjab vs. V.K. Khanna and others** reported in JT 2000 (Supp.3) SC 349.

Grounds in Counter

3. Counter filed by the respondents advanced the following grounds/points to resist the OA:-

(i) The charges are specific based on various omissions and commissions of the applicant. Due to supply of incorrect and malicious information under RTI Act under signature of the Presiding Officer of CGIT, Union of India had to face a civil suit for Rs. 25 lakh for compensation.

(ii) The applicant delayed release of subsistence allowance to Sri B.K. Barik who was under suspension, for which he has filed OA claiming interest.

(iii) The Ministry was moved for appointment of an IO for fair inquiry and accordingly, respondent no.4 has been appointed as IO.

(iv) Reliance has been placed on the judgment of Hon'ble Apex Court in the case of Union of India vs. Kunni Sethy Satyanarayan 2006 SCC 18 in which it was held that the Tribunal should not set aside the proceeding unless the same is initiated by authority having no jurisdiction to do so.

Grounds in Rejoinder by applicant

4. The action of the authority is actuated with bias and malafide in view of the averments in para 4A of Counter since under the RTI Act the information sought is to be furnished with approval of the first appellate authority on the basis of information furnished by CPIO. The applicant of the OA will not be responsible for the information provided by the first appellate authority. Similarly, the contentions in other paragraphs of Counter have been denied stating that the charges framed are arbitrary and without application of mind. The charge-sheet has been issued by the authority without jurisdiction because of the principle that one cannot be the judge of his own action. The judgment in the case of A.U. Kureshi vs. High Court of Gujarat & Anr (2009) 11 SCC 84 and Ashok Kumar Yadav & Ors. vs. State of Haryana & Ors (1985) 4 SCC 417 have been referred to fortify the applicant's case. It is also contended that there is element of bias for which the entire proceeding is void. Judgments in case of S. Parthasarthy vs. State of Andhra Pradesh, AIR 1973 SC 2701, Tilak Chand Managatram Obhan vs. Kamla Prasad Shukla & Ors. 1995 Supp. (1) SCC 21. Ground of violation of natural justice has also been urged linked to the principle of no one should be the judge for his own cause, referring to the judgments in the case of Secretary to Government, Transport Department vs. Munuswamy Mudaliar & Anr. AIR 1988 SC 2232 and Meenglas Tea Estates vs. The Workmen, AIR 1963 SC 1719.

Oral and written submissions by parties

5. Learned counsel for the applicant raised the point regarding sustainability of the charge-sheet since the charges are vague, relying on the judgment in the case of Sudarsan Giri vs. UOI reported in 109 (2010) CLT 426 and submitted that the charges are unfair and unjustified and related to the years 2014-15 during incumbency of the previous presiding officer and the applicant has no role. Learned counsel also reiterated the ground that a person cannot be the judge of his own cause and that the element of bias is there in this case.

6. Learned counsel for the respondents submitted that the applicant was negligent and his action was prejudicial to the interest of the state, for which the charge-sheet has been issued. Plain reading of the charges will indicate that the charges against the applicant are grave and the misconduct is unbecoming of a government servant as per the rule 3-C of the Conduct Rules. Regarding the ground a person cannot be the judge of his own cause, it is submitted that the DA in this case has not become the judge of his own cause since the charges related to negligence based on official records. There is no allegation of manhandling or misbehavior of the DA in the charge-sheet. In the circumstances, if the proposition of the applicant is accepted then no DA can initiate departmental action against his erring subordinates. Regarding ground of jurisdiction and bias, it is submitted that the respondent no.2 as the DA in this case has acted in accordance with the provisions of the CCS (CCA) Rules, 1965 and it cannot be said that he does not have jurisdiction for the same. It is further submitted that the interim order was passed to stay the inquiry mainly because of the fact that the suspension order or the impugned charge-sheet are unhappily worded, it cannot be a reason to quash the same.

Issues for decision

7. On consideration of the submissions as well as the pleadings by both the parties, the following relevant issues are required to be decided in this OA:-

(i) Whether the impugned charge-sheet can be said to have been issued by the authority who is incompetent for the same in view of the principle that a person cannot be the judge of his own cause?

(ii) Whether there is any element of bias or malafide in action of the respondents in issuing the impugned charge-sheet?

(iii) Whether the applicant has advanced sufficient ground under law for quashing the impugned charge-sheet?

Issue at paragraph 7(i)

8. The applicant has emphasized on the point that the impugned charge-sheet is not sustainable since the DA cannot be the judge of his own cause. He has referred to the charge in Charge-II, VI and VII in support of his contentions. These charges state as under:-

“Charge-II

Whereas, on being directed by the undersigned you did not submit your comments and explanation in time on a legal notice received under Section 80 CPC in regard to supply of such incorrect information and you submitted your comments and reply later in which you shifted the

liability to the ex-Presiding Officer for supply of such incorrect information though it appears from the RTI file that such incorrect information was furnished at your instance under the seal and signature of the then P.O. in pre-plan manner. Your such act and conduct appears to be disobedience and insubordination of your authority as well as gross immoral, unfaithfulness/untrustworthiness.

Charge-VI

Whereas, on being directed by the undersigned you did not submit your explanation and parawise comments in time in regard to O.A. case No. 63/2019 preferred by Sri Bank for interest on delayed disbursement of his subsistence allowance and you submitted a reply later wherein you alleged that Sri Barik has availed the subsistence allowance and other benefits including his reinstatement by a favour given by the undersigned and delay in releasing the allowance was due to clarification sought by the Presiding Officer. Your such act and conduct appears to be insubordination, unfaithfulness, untrustworthiness, gross immoral and unbecoming of a government servant.

Charge-VII

Whereas, you made a direct correspondence to Chief Vigilance Officer, Ministry of Labour and Employment, New Delhi and the CVC, New Delhi raising vague allegations against your authority (undersigned) without following official procedure/norm and such act/conduct is unbecoming of a government servant.”

9. The Charge-II and Charge-VI referred to non-compliance of the instruction of the DA to the applicant to submit his comment/explanation on the legal notice received under section 80 CPC. The matter related to the instruction of the DA which was allegedly not complied. The allegation cannot be said to be the own cause of the DA as the instruction was on an official matter. However, the Charge-VII relates to allegations against the authority. The applicant has failed to submit if the allegations mentioned in Charge-VII were against the DA. A letter dated 19.9.2017 of the CVC (Annexure-A/11) was furnished with the applicant's MA No.577/2020 for amendment which was rejected vide order dated 9.11.2020 with observation that the documents enclosed with the said MA could be taken on record. The CVC's letter dated 19.9.2017 informed to the applicant that his allegations have been sent to the Ministry for necessary action with advice to contact the CVO of the Ministry for the status of the complaint. There is nothing more on record to throw light about the said complaint submitted directly by the applicant to CVC. Since the said allegation was sent to the Ministry (respondent no.1) for necessary action, the Ministry should have taken a decision whether there was any impropriety on the part of the applicant to send the complaint directly to CVC.

10. The applicant has cited the judgment of Hon'ble Apex Court in the case of A.U. Kureshi (supra), in which a judicial officer was recommended to be dismissed from service after departmental proceeding. The dismissal was

challenged by the judicial officer concerned before Hon'ble High Court and the matter was considered by the learned Judge who was also a member of the disciplinary committee which recommended dismissal of the applicant. In this OA, as discussed earlier the applicant has not shown how the DA was involved any action or punishment imposed against the applicant, for which the cited judgment will not be helpful for the applicant's case. Similarly, in the cited case of S. Parthasarthy (supra), it was held that the disciplinary authority against whom the applicant had alleged harassment and bias, had also functioned as inquiry officer. In this OA, the respondent no.3 who is an officer not working directly under the DA (respondent no.2) cannot be said to be biased. Hence, the judgment in the case of S. Parthasarthy (supra) is factually distinguishable.

11. The applicant's counsel in written note has enclosed a copy of the judgment in the case of Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School, AIR 1993 SC 2155. In the said case, the inquiry committee for the disciplinary proceeding, one person was a member of the committee who was also one of the prosecution witness. Hence, the4 punishment was set aside with liberty to the Managing Committee to proceed in the matter afresh. In this OA, it is not the case of the applicant that any of the witness cited by prosecution has anything to do with the decision in the proceeding against him. The applicant has not specifically shown the reason for which the DA can be considered to be acting as a judge of his own cause. Hence, the cited judgment will not be applicable to the case.

12. In the case of Sudarsan Giri vs. Union of India & Ors. reported in 109 (2010) CLT 426, the punishment was found to be grossly disproportionate. This judgment will have no application to the present OA in which no punishment has been imposed. The contention of the applicant that the charges are vague is not acceptable since some of the charges are specific. In any case, it is open for the applicant to defend all the grounds to challenge the final order to be passed in the proceeding as well as the charge-sheet as was done in the case of Sudarsan Giri (supra) cited by the applicant.

13. The applicant has relied on the judgment of this Tribunal dated 12.9.2019 in OA No. 191/2013 in which the charge-sheet was quashed by this Tribunal since it was held to be vitiated that it was issued after a delay of about 14 years from the time when the misconduct was alleged to have been committed and such delay was not explained satisfactorily by the authorities. It is not the case of the applicant in this OA that the charges pertain to the misconduct alleged to have been committed long time back and the delay in initiating the disciplinary proceeding has not been explained satisfactorily. Hence, the cited judgment is factually distinguishable.

14. In view of the discussions above and considering the factual details as furnished by the applicant as discussed earlier, it cannot be said that the charges are hit by the principle that a person cannot be the judge of his own cause and hence. We are unable to accept the submissions made on behalf of the applicant that in this case the DA has acted to be the judge of his own cause and by issuing the impugned charge-sheet he has acted beyond his jurisdiction. The issue at paragraph 7(i) is answered in negative and against the applicant's contentions.

Issue at paragraph 7(ii)

15. Regarding the point raised by the applicant the impugned charge-sheet is issued out of bias and the same is malafide, it is observed that the factual details furnished by the applicant do not support such contention. It is noticed that the DA in this case has appointed the respondent no.3 who is an officer not under his direct control as Inquiry Officer. In any case, the applicant will have opportunity to show before the Inquiry Officer his objections against the impugned charge-sheet. Hence, the issue at paragraph 7(ii) is answered in negative against the contentions of the applicant.

Issue at paragraph 7(iii)

16. There is no other ground advanced by the applicant in his pleadings which will justify any interference of the Tribunal at this stage. Respondents' counsel in his written submission has cited the judgment in the case of Kunnisetty Satyanarayana (*supra*). In the said judgment it was held that no writ lies against a charge-sheet which does not amount to an adverse order unless it is issued by an authority who is not competent to issue the charge-sheet. In this case though the respondent no.2 as the DA is competent to issue the impugned charge-sheet, but the applicant disputed his competence on the ground that he cannot function as the judge of his own cause. Such ground urged by the applicant is not applicable to this case as discussed earlier under the issue at paragraph 7(i). In this case, the authority issuing the impugned charge-sheet is competent to do so. The Inquiry Officer appointed to inquire into the charges against the applicant is the respondent no.3 who is an officer under respondent no.1. Hence, the grounds advanced by the applicant in this case are not sufficient to quash the impugned charge-sheet at this stage. The issue at paragraph 7(iii) is answered accordingly against the applicant's case.

17. In the facts and circumstances as discussed above, we are of the view that no case has been made by the applicant in this OA to call for quashing of the impugned charge-sheet at this stage. However, considering the fact that one of

the charge against the applicant is about his allegation against the authorities submitted directly to the CVC (Charge-VII of the impugned charge-sheet) and in the interest of justice, the respondents no.1 is directed to consider appointment of another disciplinary authority in this case in accordance with the provisions of the rules and pass an appropriate order in this regard, copy of which is to be communicated to the applicant and the respondent no.2 within one month from the date of receipt of this order. Till such an order is passed and communicated by the respondent no.1, no final order in the disciplinary proceeding will be passed by the respondent no.2 in the disciplinary proceeding in question.

18. The OA stands disposed of in terms of the paragraph 17 of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath