

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 12 of 2018

CORAM:

HON'BLE MR. ANIRBAN MUKHOPADHAYA, MEMBER(A)

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

1. Ms. Subhasree Pattanaik, aged 37 years, D/o – Late Hrudaya Kanta Pattanaik, At – Kotuan, PO – Arilo, PS _ Kishore Nagar & Dist – Cuttack.

.....Applicant

VERSUS

1. Union of India represented through the Special Secretary, ARC Head Quarter, Cabinet Secretariat, East Block – V, R. K. Puram & New Delhi – 110066.
2. Joint Director, Aviation Research Centre, Directorate General of Security, Government of India, Charbatia, At/PO – Charbatia, Cuttack, Odisha – 754028.

.....Respondents.

For the applicant : Mr. S. Mallick, advocate.

For the respondents: Mr. C. M. Singh, advocate.

Heard & reserved on : 16.04.2021

Order on :25.06.2021

O R D E R

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

The applicant by filing this OA is challenging the impugned order of punishment of dismissal from service pursuant to a disciplinary proceeding in which charges have not been proved against the applicant. The applicant has prayed for the following reliefs:

- i. *Quash the impugned order of charge sheet dt. 17.08.2017 at Annexure A/3, order of punishment of dismissal dt. 21.8.17 as at Annexure A/8 and the order dt. 12.12.17 in appeal as at Annexure A/10.*
- ii. *Direct/order that the applicant shall be reinstated into service with all consequential service benefit.*

iii. *Pass any other order(s), direction(s) deemed fit and proper.*

2. The brief of the case as inter alia averred by the applicants in the OA is that on 27.10.2015 she had accidentally fell into Puri Canal with her one year child and the police had registered a case as an attempt to suicide. The said criminal case is under trial and due to the said criminal case she was placed under suspension on 29.10.2015, which was revoked on 17.07.2016 and she was allowed to join. A departmental proceeding was initiated against her on 17.08.2016 on the allegation that she attempted to commit suicide and since it was broadcasted in local news channel and published in news paper referring her as an employee of ARC, Charbatia, therefore it was alleged she brought disrepute to the organization. The applicant was again taken into police custody on 26.08.2016 and she was again placed under suspension w.e.f. 26.08.2016. The applicant submitted her defense statement on 17.11.2016 through the Superintendent of Jail denying the allegation stating that the incident was an accident and not an attempt to commit suicide. The applicant submitted that she was enlarged on bail on 06.01.2017 and on 15.12.2017 she received a letter from the Inquiring Officer for appearance on 23.02.2017. The applicant participated in the inquiry proceeding and on 06.06.2017 the Disciplinary Authority asked her to submit her representation. The applicant submitted that it was revealed from the Inquiry Report submitted on 18.04.2017 that no charge was proved against the applicant. The applicant submitted her representation against the note of disagreement to Disciplinary Authority on 20.06.2017 but the disciplinary authority without considering her representation passed the final order of dismissal on 21.08.2017. The applicant the challenged the order of punishment by submitting an appeal before the appellate authority vide her appeal memo dated 29.08.2017. The applicant submitted that without considering the grounds taken in the appeal memo, the appellate authority rejected the appeal vide order dated 12.02.2017. Hence the OA.

3. The Respondents in their counter inter alia averred that the act of suicide attempt has been admitted by the applicant in her application dated 28.10.2015 (Annexure R/1). The respondents submitted that it is not the case of the department that the applicant was dismissed from service because she attempted suicide with her daughter but involving in such incident she had brought disrepute to the organisation, did not cooperate the investigation officer during investigation and failed to intimate to the department about the incident being accused in the said criminal case. In this regard the charges levelled and enquired upon during the DE which forms part of the memorandum dated 17.08.2016. The respondents further submitted that the applicant herself had admitted in the statement of defence that because of her involvement she had brought disrepute to the organization by stating "I understand that this media report brought disrepute to the organization but it was never intentional" & also the applicant made apology against the Article 1 wherein she submitted that "I am sorry for the inconvenience caused to you by me and regret the same". The respondents submitted that the DE submitted by the IO to the Disciplinary Authority was perused by the Disciplinary Authority and found that the IO did not take cognizance of any of the state exhibits and disregarded the same in forming his opinion and gave findings thereof. Hence the Disciplinary Authority in terms of Rule 15(2) furnished a copy of the inquiry report to the applicant. The respondents submitted that after receipt of representation of the applicant and going through the grounds of the representation and defence statement the Disciplinary Authority passed the final order of punishment. The respondents submitted that the appellate authority too had considered the grounds taken in appeal before disposal of her appeal. The respondents submitted that the applicant was given due opportunity in every stage of the proceeding to defend herself.

4. The applicant in her rejoinder inter alia averred that the charges in the inquiry proceeding have not been proved and the entire case of the prosecution was based on the news paper clippings. No witness was examined to prove the news paper clipping and regarding the charge that the applicant did not cooperate with the police for investigation it is submitted by the applicant that in the enquiry no police officer was examined.

5. The statement of imputation of misconduct or misbehaviour against the applicant as per charge sheet dated 17th August 2016 is extracted below:

"ARTICLE – 1

Smt. Subhasree Pattanaik, LDC while working at ARC Charbatia, on 27.10.2015 at around 10.45 AM had reportedly attempted to commit suicide by jumping into Puri Canal from a bridge on the NH 5 along with her one year old daughter Sai Shriya Mohanty. As reported in the FIR, she first threw her one year old daughter into the canal and subsequently she jumped into the canal. She was fortunately rescued by the locals who saw her jump but her daughter got drowned and died. The dead body of the girl child was found on the next day i.e. 28.10.2015 from a canal near Pipli under Pipli police station.

2. This saddening incident got attention of the local news channels and newspapers as well wherein Smt. Subhasree Pattanaik was shown and referred to as working with Aviation Research Centre located at Charbatia. There were also reports of alleged marital discord with her husband in the news column which forced her to take the extreme step. Being involved in the act of attempting suicide which led to disclosure of her organization, she has certainly brought a bad name to the serving organization.

3. By the aforesaid act of omission and commission, the said Smt. Subhasree Pattanaik has acted in a manner which is highly unbecoming of a Govt. servant thus violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE – II

Smt. Subhasree Pattanaik, LDC while working at ARC Charbatia, on 27.10.2015 at around 10.45 AM had jumped into Puri Canal from a bridge on the NH – 5 along with her one year old daughter Sai Shriya Mohanty with the intention to commit suicide. She was however saved by the locals who were taking a bath in the canal. But this act caused death of her one year old daughter who was siphoned off in the canal and the dead body was discovered on the next day near Pipli.

2. An FIR was lodged in the Baliana Police Station vide No. 281(27) dated 28.10.2015 and Smt. Subhasree Pattanaik was booked u/s 302 and 309 of the IPC for such criminal offence. Following the incident, she was placed under suspension w.e.f. 29.10.2015. The IIC of Baliana Police Station, Bhubaneswar when requested for the status of investigation of the case vide this office letter dated 13.01.2016, informed about her being at large/pending arrest vide their letter No. 797/BLAPS dated 28.03.2016. This indicated that she was absconding

since the incident and avoiding Police arrest thereby causing hindrance in the police investigation.

3. By the aforesaid act of omission and commission, the said Smt. Subhasree Pattanaik has acted in a manner which is highly unbecoming of a Govt. Servant thus, violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE – III

Smt. Subhasree Pattanaik, LDC while working at ARC Charbatia, on 27.10.2015 at around 10.45 AM had reportedly tried to commit suicide by jumping into the Puri Canal from a bridge on the NH- 5 along with her one year old daughter Sai Shriya Mohanty. As per the version of an informant (mentioned in the FIR) she first threw her one year old daughter into the canal and then she herself jumped into the canal. She was however saved by the locals and then taken to Capital Hospital, Bhubaneswar for medical treatment. Her daughter died in the incident whose dead body was found on the next day i.e. 28.10.2015 near Pipli under Pipli Police Station.

2. Following the incident a FIR No. 281(27) dated 28.10.2015 was registered by the Baliana Police Station, Bhubaneswar wherein she was listed as accused and booked under section 302/309 of the IPC.

3. On 28.10.2015, Smt. Subhasree Pattanaik had applied for grant of leave to her unit officer referring the incident. She however did not intimate the fact of being accused in the above criminal case/FIR to her office.

4. By the aforesaid act of omission and commission, the said Smt. Subhasree Pattanaik has failed to maintain absolute integrity and acted in a manner which is highly unbecoming of a Govt. Servant thus, violated Rule 3(1) (i) & (ii) of CCS (Conduct) Rules, 1964.

6. The matter was inquired into and the inquiry officer submitted his report on 18.04.2017 and extract from it is quoted below:

“As regards to Article – I, the PO prosecuted that the name of the department had been defamed being highlighted in the local news channels and print media by the incident that she was trying to commit suicide with her daughter in which her daughter died and she survived. In her reply, the CO stated that she was in a state of depression due to the problems developed in her married life and the incident occurred on 27th October 2015 was purely an accidental case and nothing else. She insisted that the news published in the print media or shown in the electronic media may not be accurate and reliable always. She further added that she had not given any oral/written statement about the organization (ARC). She further declared that being a self employed lady she would not take such a drastic step, however, the matter being subjudice in the Hon’ble Court the real fact would come to notice after the final judgment.

Although, the CO had mentioned about the suicide attempt by her in the leave application submitted on 28th October 2015 and in the reply submitted on 7th November, 2016 in response to Memo dated 17.08.2016, in her defence brier she declared that the incident was purely an accidental case and nothing else. Further, the matter being sub judice in the Hon’ble Court, an inference cannot be drawn at the present circumstance and whether the case was suicidal or an accident may be left on the final decision of the Hon’ble Court. There is no

witness on behalf of the PO. The CO submitted that she had not informed any media persons or any other person about her identity or identity of the organization where she was working. Therefore, the Article – I of the charge framed didn't substantiate.

Hence, the charge framed in Article – 1 is not proved.

As regards to Article – II, it was alleged that the CO was not cooperating/causing hurdle in Police investigation by absconding since the incident and by avoiding Police arrest based on the letter submitted by the IIC of the Baliana Police Station, Bhubaneswar. The CO had declined the charge of being at large by stating that she had continuously being staying in her mother's house at Village Kotuan, PO; Arilo, via Somepur, PS-Kishore Nagar, Dist- Cuttack. She further produced the copies of all the letters sent by registered post/by hand from ARC Charbatia, which she had received while staying in her mother's house. This indicates that she had been continuously staying in her mother's house.

Hence the charge framed in Article – II is not proved.

As regards to Article – III, the CO was booked for the offences of murder and attempt to commit suicide u/s 302/309 of the IPC by the Baliana Police Station, Bhubaneswar as per FIR No. 281(27) dated 28.10.2015. She had requested for grant of leave vide her application dated 28.10.2015 but failed to intimate the fact of being accused in the criminal case to her office. In her reply, she had declined the charge by stating that she was unaware of the fact that she had been accused by the police for any offences at that time as she had not been intimated by Police in writing to her. So she was not having any official/legal ground to give intimation of being accused in the criminal case to her office while applying for leave. She came to know the fact only after her arrest by the police on her joining in ARC, Charbatia. As the CO submitted the leave application on the same date on which the FIR had been lodged i.e. on 28.10.2015 and no documents are available to show that the application had been submitted after she was booked u/s 302/309 of the IPC, a conclusion cannot be drawn that she had knowingly suppressed the fact of being booked u/s 302/309 by the Police in her leave application.

Hence, the charge framed in the Article III is not proved.

Conclusion/Findings

The question still remains unresolved whether the CO had attempted to commit suicide by jumping into Puri Canal from a bridge on the NH-5 along with her one year old daughter in Annexure III of the memorandum dated 17/08/2015 issued to the CO, comprising of newspaper cutting of some local newspapers, copy of FIR No. 281(27) dated 28.10.2015 lodged in Baliana Police Station, Bhubaneswar, leave application dated 28.10.2015 submitted by the CO and the reply dated 07.11.2016 submitted by the CO in response of the above mentioned memorandum, it indicates that the CO, Smt. Subhasree Pattanaik, LDC, ARC, Charbatia had made an attempt to commit suicide on 27.10.2015. However, during the inquiry, the CO asserverated that the incident occurred on 27.10.2015 was purely an accident and nothing else during the cross examination by the PO held on 16.03.2017 as well as in the defence brief submitted by her on 30.03.2017. Further as the matter is subjudice in the Hon'ble High Court an inference can only be drawn after the pronouncement of the final judgment by the Hon'ble Court in the above matter. So far as the charges framed against her in Article I, Article II

and Article III are concerned, these have not been proved based on the facts/records produced during the course of inquiry.”

7. The disciplinary authority did not agree with the report of the IO and sent the report of the IO to the applicant with his disagreement note dated 06th June 2017 requiring the applicant to submit her reply if any. The full text of the disagreement note of the disciplinary authority is quoted below:

“Subsequent to the departmental enquiry initiated against Smt. Subhasree Pattanaik, LDC, ARC Charbatia vide issue of charge memorandum No. ARC/CBT/P.II/VI/PF(SP)/2010-12867 dtd. 17.08.16, the enquiry proceedings have been completed and the Inquiry Officer (IO) has submitted the Inquiry Report. A copy of the Inquiry Report is sent herewith with the following observations:-

(i) Article – I of the charge framed against Smt. Subhasree Pattanaik, LDC is regarding bringing disrepute to the organization by her act of attempt to suicide on 27.10.2015 causing death of her daughter. This act on the part of the Smt. Subhasree Pattanaik caused publication of the incident in the local newspapers and evidence to this effect is available in the form of clippings from the local news papers which is the part of the listed documents in the memorandum of charge dated 17.08.16. Moreover, Smt. Pattanaik herself admitted the attempt made by her to suicide and having lost her daughter due to such attempt in her application dated 28.10.15 which is available in the listed documents in the Memorandum of charges dated 17.08.16.

Undersigned, therefore, disagrees with the finding of the Inquiry Officer with regards to Article – I to the effect that she had not made any oral or written statement to the print or electronic media for which, the Inquiry Officer has concluded that Article of charge I is not proved. Even if the charged officer has not given statement to the media, then also her action to attempt suicide by jumping into the canal with her daughter has caused publication of the incident in the local newspaper identifying the charge officer as Smt. Subhasree Pattanaik and mentioning her employment in the organization. Therefore, the act of the charge officer is un-becoming and her association with the organization has caused disrepute to the organization. In disagreement to the finding of the inquiry officer, undersigned gives opportunity to the charged officer to submit her written representation or submission.

(ii) The charge in the article II is that the charged officer was at large and not cooperating with the police investigation with regard to her act of suicide and causing death of her daughter. The fact that copies of FIR No. 281(27) dated 28.10.15 and subsequent letters dated 28.03.16 and 07.06.16 from Baliana Police Station, which are listed at Sl. No. 2, 3 & 4 of the list of documents, clearly indicates that Smt. Subhasree Pattanaik after filing of the FIR dated 28.10.15 was at large and was an accused in the case.

The Inquiry officer has relied on the documents provided by the Charged Officer and on the claim of the charged officer to the effect that 09 documents from the office through registered post and by hand have been received at her place of stay. Undersigned disagrees with the Inquiry Officer who solely relies on the defence documents from the charged officer for the reason that receipt of documents at her place of stay from the office by post or by hand does not

dispute the contents of the letters from Baliana Police Stating that accused i.e. Smt. Subhasree Pattanaik was at large. The defence documents adduced by the charged officer also do not prove that all the documents sent by post or by hand have been received at her place of stay by herself. Undersigned also finds no reason to dispute the contents of the letter from Baliana Police, especially the letters dtd. 28.03.16 & 07.06.2016 which say that the charged officer was at large. Suicidal act of the charged officer causing death of her daughter, filing of the FIR to this effect and subsequent two letters from Baliana Police, when analysed in combination gives indication that Smt. Pattanaik was deliberately staying away from Police, thereby causing hurdle in the Police investigation and therefore, disagrees with the findings of the Inquiry Officer concluding that Article – II is not proved.

(iii) The incident on suicidal attempts by the charged officer causing death of her daughter on 27.10.15, filing of FIR in Baliana Police Station on dated 28.10.15 and application dated 28.10.15 from the charged officer admitting the act of suicidal attempt and death of her daughter indicate the chain of the happenings leading to evidence that the charged officer knew about the FIR filed on 28.10.15 & she failed to intimate about this to the office. Undersigned therefore disagrees with the findings of the inquiry officer concluding that Article III is not proved."

8. We have given our anxious thought to the arguments advanced by the learned counsels for the parties based on their respective pleadings and perused the records.

9. Interference in the matter of disciplinary proceeding initiated against the govt servant is no more res integra and suffice to state that the power of judicial review in such matters is an evaluation of decision making process and not the merit of the decision itself. The Court/Tribunal may interfere in the proceeding held against the delinquent official/officer if it is in any manner inconsistent with rules of natural justice, in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence and perverse or suffers from patent error on the face of record and/or no reasonable person would have ever reached such conclusion upon consideration of the evidence reached by the disciplinary authority. Keeping in mind the aforesaid dicta we have examined the case in hand and find that the IO in no uncertain terms has held the all the three articles as not proved. The allegation in the charge sheet was the subject matter in the criminal case was regarding throwing the child to the canal and jumping to the canal to commit suicide by the

applicant. The IO after due inquiry held that the allegation in the charge sheet as not proved and held that the issue can be dealt after the final outcome in the criminal case. However, the disciplinary authority disagreed with the report of the IO and ultimately imposed the punishment of dismissal from service holding the allegation as proved vide order dated 21st August 2017 which was also upheld by the appellate authority vide order dated 12th December, 2017. In the criminal case instituted against the applicant vide CT Case No. 03/368 of 2016, Ld. 1st Addl. Sessions Judge, Bhubaneswar vide order dated 30th September 2019 held as under:

“09. From the evidence of the prosecution, it appears that none of the witnesses had seen the accused throwing the child to canal and jumped to canal to commit suicide. The accused pleaded that the child went to the canal for which she jumped to the canal to save her child. The plea of the accused appears to be probable when none of the prosecution witnesses had seen her throwing the child to canal and jumping to the canal to commit suicide. Offences of murder of Sai Shriya Mohanty and attempt to commit suicide are not provide by the prosecution. Prosecution has failed to prove the charge U/s 302/309 IPC I hold the accused not guilty thereunder and acquit her U/s 235(1) Cr. PC. The accused is set at liberty forthwith.”

10. Simply lodging of FIR cannot be sole basis on the part of the disciplinary authority to come to conclusion that the applicant has committed offence or misconduct in question. The criminal case lodged against the applicant has been finalized by the competent court of law in acquitting her on the allegations. Similarly reporting of incident either factually correct or incorrect cannot be the basis for the disciplinary authority to find the applicant guilty as this is not a piece of evidence that has to be proved by the concerned reporter or by the witnesses. The reported was also not cited as witnesses in the departmental proceeding giving opportunity of examination and cross examination of reporting of such incidents. There is no material on record to show that the applicant had admitted that she had attempted to commit suicide. Simply admitting her daughter accidentally fell into the canal, cannot, in any stretch of imagination, be said to be admission by the applicant regarding the misconduct alleged against her. The disciplinary authority

has jumped to the conclusion by giving finding against the applicant without any evidence but on conjecture and surmises and in violation of principle of natural justice. Hence the order of the disciplinary authority in no circumstances can be said to be justified. The appellate authority failed to take note of all the points discussed above and simply upheld the order of punishment which also is in violation of rules. This Tribunal finds that this is a clear case of no evidence.

11. In view of the findings of the Ld. 1st Addl. Sessions Judge, Bhubaneswar we are at loss to accept the conclusions reached by the disciplinary authority and the harsh order of punishment of dismissal from service which has ultimately been not proved in the criminal court of law. Since the basic allegation has been found to be not proved in the criminal court of law and there was absolutely no evidence in the departmental proceeding against the applicant to prove allegation made against her, therefore the question of bringing disrepute to the organization does not arise. In view of the above we quash the orders of the disciplinary authority dated 21st August 2017 and the order of the appellate authority dated 12th December, 2017 and as a consequence the applicant is entitled to be reinstated to service with all service benefits but in so far as the backwages is concerned, the same is limited to 50% of her entitlement. The entire exercise shall be completed within a period of two months from the date of receipt of copy of this order.

12. In the result the OA is allowed. There shall be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(ANIRBAN MUKHOPADHAYA)
MEMBER (A)

(csk)