

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.232/2020

CORAM:

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

HON'BLE MR. T. JACOB, MEMBER(A)

Smt. Santoshini Mishra, aged about 36 years, W/o Patitapaban Swain, At – Baraboria, PO – Patrapur, PS – Jagatpur, Dist- Cuttack, at present Officer Accounts, CIPET-CSTS, Balasore, Industrial, P.S. Balasore, Dist – Balasore.

.....Applicant

VERSUS

1. Union of India represented through the Ministry of Chemicals and Fertilizers, Govt. of India, New Delhi.
2. The Director General, CIPET Head Office, TVK Industrial Estate, Chennai – 600032.
3. Principal Director (F&A), CIPET Head Office, Guindy, Chennai.
4. The Director Head, CIPET, CSTS, Balasore, Dist – Balasore.
5. Dr. P. C. Padhi, Chief Manager (Tech.) & Principal, CIPET; IPT, Bhubaneswar.

.....Respondents.

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

For the respondents: Mr. G. R. Verma, advocate.
Mr. S. P. Pati, advocate.

Heard & reserved on : 25.03.2021

Order on :26.04.2021

O R D E R

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

The applicant has approached this Tribunal by filing the Original Application seeking the following relief(s):-

- i. *To quash the memorandum of charges framed on 06.05.2020 by Respondent No. 3, under (Annexure 10) by concurrently holding the same is bad, illegal and cannot be sustainable in the eye of law.*
- ii. *To declare the proceeding initiated by respondent no. 2 to 4 against the applicant as well as the framing of memorandum of charges as completely illegal and unsustainable in the eye of law.*
- iii. *To pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.*

2. The brief of the case as inter alia averred in the OA is that the applicant is challenging the memorandum of charges passed by Respondent No. 3 and the applicant claims that memorandum of charges has been framed without making any proper inquiry of show cause notice and is illegal, arbitrary and without following the due procedure of law and only in order to give mental harassment to the applicant.

3. The respondent Nos. 2 to 4 in their counter inter alia averred that the OA is liable to be dismissed since the applicant has not availed all the remedies available to her under the relevant service rules and she has challenged the charge memo framed in a disciplinary proceeding at the very initial stage immediately after submission of written statement of defence and before completion of disciplinary proceedings.

4. The applicant has filed rejoinder to the counter.

5. Learned counsel for the applicant relied on some citations including the following:

1. Nazir Ahmed vrs King Emperor (reported in AIR 1936 PC 253)
2. State of Punjab vrs V. K. Khanna & ors reported in IAR 2001 SC 343.
3. Sahni Silk Mills (P) Ltd V ESI Corpn reported in (1994) SCC (L&S) 1096.
4. State of UP v Neeraj Awasthi reported in (2006) 1 SCC 667.
5. Union of India vrs Ashok Kumar Aggarwal reported in (2013) 16 SCC 146.

6. Learned counsel for the respondents relied on some citations including the following:

1. Union of India vs. Upendra Singh reported in 1994 (1) SLR 831.
2. State of Orissa and another vrs Sangrah keshari Mishra and another reported in (2011) SCC (L&S) 380.
3. State of Punjab vrs V. K. Khanna and others reported in AIR 2001 SC 343.

4. SLJ 1987 (4) (CAT) 211 Duli Chand vrs Union of India and others.
5. AIR 1958 CALCUTTA 633 K.K. Murty Vs. The General Manager, South Eastern Railway and another.
6. AIR 1962 TRIPURA 15 Sukhendra Chandra Das vs Union Territoryof Tripura and others.

7. We have gone through pleadings, written note of submissions and citations relied by learned counsel for both the sides.

8. The applicant in para 4.14 of the OA has averred “*that it is humbly submitted that the Respondent No. 3 without issuing any show cause notice and with an illegal manner on 06.05.2020 has framed the memorandum of charges against the applicant. It is also directed that to make an inquiry over the matter and further directed to give the written statement within a period of ten days in order to take defense.*” In para 4.23 of the OA it is submitted “*that it is also the specific stand of the applicant that person issued the charge memo against the applicant was not conferred with any power or authority to issue the same. From letter/office order dated 03.06.2020 which demonstrating that Shri P. Vishwanathan after his retirement on superannuation of age w.e.f. 31.03.2020 was redeployed is the organization as Principal Director (Non-Technical) for a period of one year. In other words, by the time Sri P. Viswanathan issued the charge memo dated 06.05.2020 against the applicant was no more in service, hence, he had no authority to issue the same. Therefore, the charge memo is non est in the eye of law. Even assuming that the office order was issued offering re-employment to Sri P. Viswanathan giving the same retrospective effect, still the said order cannot validate the illegality already committed while exercising power under the D*A Rules. However, the Sri. P. Vishwanathan’s re-employment is not even against the post which he was holding earlier. Hence, Charge Memo is illegal and issued by*

one person who was not the employee in the organization by that time.” In para 5.4 of the OA the applicant submitted “For that it is humbly submitted that the allegation against the applicant is completely illegal, vindictive, erroneous and a concocted one. It is also humbly submitted that the organization CIPET, although it comes under the Department of Chemical and Petrochemicals, Ministry of Chemicals and Fertilizers, Govt. of India but the CIPET rule is guided by the Society Registration act, 1860. However, the charge framed against the applicant is beyond the Govt. Service Rule but do not comes under Service Rules. As such on the aforesaid false allegation only an inquiry under Administrative ground has to be conducted by the Respondent No. 2 and the respondent No. 3 with an illegal manner has directly framed the charges, which is completely illegal and unsustainable in the eye of law”.

9. The respondents in para 11 of the counter submitted that “*in reply to para 4.14, it is respectfully submitted that the allegations made by the applicant in this para are false and denied as such. There is no illegality in issuing the charge memorandum by the respondent No. 3 as per directives of the disciplinary authority and approval of the articles of the charges. The procedure for issuing a show cause notice or for holding a preliminary inquiry has not been prescribed anywhere in the CIPET’s Conduct, Discipline & Appeal Rules or CCS (CCA) Rules. It is also well settled that the complaint which contains verifiable facts may be subjected to scrutiny, in a confidential and discreet manner and then action should be initiated against the guilty. In this case, the Disciplinary Authority is of the opinion that there are grounds for the inquiry into the truth of the misconduct and misbehaviour alleged against the applicant under Rule 33 (2) of CIPET Conduct, Discipline and Appeal Rules and therefore, there is no illegality in issuing the charge memo. On the other hand, the action taken by the Disciplinary Authority is valid, legal and binding on the applicant.* In para 15 of the counter

the respondents have submitted “*In reply to Para 5.4, it is respectfully submitted that the allegations made by the applicant in this para are false and made without understanding the constitution of CIPET. CIPET is an autonomous Institute under the aegis of Department of Chemicals and Petrochemicals, Ministry of Chemicals & Fertilizers, Govt. of India and CIPET has got its own rules & regulations approved by the Governing Council which is also approved by the Govt. of India. The charge memo issued to the applicant is as per the rules & regulations of CIPET’s Conduct, Discipline and appeal Rules (June 2018) and the applicant in misconception of the rules & regulations of CIPET , has filed this original application at the very initial stage of disciplinary proceedings by challenging the memorandum of charges which is not to be entertained under the law and this original application is liable to be dismissed.”*

10. It is contended on behalf of the applicant that the charge sheet has not been issued by the competent authority i.e. the disciplinary authority. It is further submitted on behalf of the applicant that although it is claimed by the respondents that the disciplinary authority had authorized the Principal Director (F&A) for issue of the charge memo, the same has been issued by the Principal Director (Non-Technical). It is also submitted that Mr. P. Viswanathan, Principal Director (F&A) retired on 31.3.2020 and has not been appointed again for the said post. Learned counsel for the respondents in this regard has submitted that the Principal Director (F&A), P. Viswanathan was re-employed as Principal Director (Non-Technical) and ex post facto approval of the authority was also granted for the said job for a period of 2 years. Learned counsel for the respondents has drawn attention of this Tribunal to page 39 of the additional counter dated 27.3.2020 wherein it has been mentioned that “*It is therefore decided that Shri P. Viswanathan shall continue to function as Principal Director (F&A) at CIPET Head Office for a period of 03 months from 31.03.2020 to 30.06.2020 or till*

further orders/approval of the Competent Authority i.e. Administrative Ministry on the above proposal for extension of services for a period of 02 years, subject to the decision of the Administrative Ministry in the matter". In this regard he has also relied on the decision of CAT, Jabalpur Bench in OA 146/1986 passed on 24.6.1986 in the case of Dhulichand –vs- UOI. He had also drawn attention of this Tribunal to the fact that in the charge memo dated 06.05.2020 at Annexure A/10 by Mr. P. Viswanathan Principal Director (F&A) that “*This memorandum is being issued as per the directives of the Disciplinary Authority after due approval of the Article of Charges, imputation of charges and necessary annexures.*”

11. It was submitted on behalf of the applicant that the disciplinary authority has not applied its mind independently for issuing of charge sheet but the same has been issued on the request and at the behest of another person i.e. Director & Head Mr. P. C. Padhi as seen from Annexure A/9 dated 5.5.2020. He has emphasized that the charge sheet was issued on the very next date i.e. 6.5.2020. It is submitted on behalf of the applicant that the subsequent events will show that there was extraneous reasons for issue of charge memo and the authority was biased against the applicant before issue of charge memo and there was no sufficient reason. It is also contended by her counsel Mr. Ojha that the applicant intimated the authority as per Annexure A/5 dated 1.5.2020 in connection with misappropriation of Rs.300 crores and had filed an FIR vide Annexure A/7 dated 7.5.2020 apprehending danger to her life from some antisocial. Therefore the charge sheet has been issued against him only to hush up the matter. It is also contended that she has made an allegation of sexual harassment against another employee and the person has acted as such at the behest of Dr.P.C.Padhi, the then Director & Head. She has made subsequent complaint against Dr.P.C.Padhi vide Annexure A/11 dated 25.05.2020. It is submitted on behalf of the respondents that the said enquiry has already been closed. It was submitted by Mr.Ojha that Dr.P.C.Padhi was not working at

Baleswar but the learned counsel for the respondents has refuted the same submitting that Dr.P.C.Padhi was in additional charge of Baleswar in addition to his duty at Ranchi and subsequently relieved from Baleswar charge on 20.7.2020 as per instruction vide Annexure R/7 dated 17.7.2020. The alleged incident as per charge memo took place on 24.7.2020.

12. Mr.Ojha has drawn attention of this Tribunal to Rule 14 of CCS (CCA) Rules in support of his submission that the authority i.e. Principal Director (F&A) to whom the disciplinary authority has claimed for authorization of issue of charge memo has not issued the same and therefore the charge memo should be quashed. He had relied on decision of Hon'ble Supreme Court in the case of Union of India versus B. V. Gopinath reported in AIR 2014 (1) L&S 161 in support of his submission that issue of charge sheet and charge sheet itself has not been approved by the disciplinary authority. He had also relied on decision of Hon'ble Supreme Court reported in AIR 2007 (SC) drawing the attention of this Tribunal to para 22 of the said judgment wherein it is mentioned that "*A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued*". It is submitted by learned counsel for the applicant that there is total non application of mind as the charge sheet vide annexure A/10 has been issued within three days of letter of communication vide annexure A/8 dated 04.05.2020 of Dr. P. C. Padhi and Annexure A/9 dated 05.05.2020 requesting for initiation of disciplinary action on the applicant.

13. The applicant has mentioned in para 6 of the rejoinder that "It is not known under what authority Shri P. Viswanathan was continuing as Principal Director (F&A), CIPET s per the memorandum dated 27.03.2020 signed by Director General, CIPET but the DG, CIPET was not the appointing or authority competent to allow the Principal Director to continue in his post after retirement on 31.03.2020. However, the order dated 27.03.2020 cannot be said to be order

extending the service of the Principal Director (F&A) after his retirement on 31.03.2020. The Director General, CIPET vide order dated 27.03.2020 decided to propose for continuance of Shri P. Viswanath as Principal Director (F&A) at CIPET Head Office. Even conceding for a moment but not admitting that even if he continued in the said post as per rules, he is estopped to discharge any statutory duties without any authority of Rule by issuing the charge sheet on 06.05.2020 which is contrary to the provisions of CCS (CC&A) Rules. It has further been stated that as admitted by Respondents, the proposal made by the Director General vide order dated 27.03.2020 for continuance of Shri P. Viswanath was accepted by the competent authority/ministry not as Principal Director (F&A) but as Principal Director (Non-Technical) for one year. In other words issuance of charge sheet in the capacity of Principal Director (F&A) on 06.05.2020 is proved to be non est in the eyes of law and void ab initio and per se illegal and arbitrary.”

14. It is seen from order dated 03.06.2020 (Annexure A/14) that Shri P. Viswanathan was re-employed for one year from the date of his retirement i.e. w.e.f. 01.04.2020 as Principal Director (Non-Technical). It is also seen from the memorandum dated 27.03.2020 (Annexure R/13) that approval of the administrative ministry was sought for extension of services of Shri P. Viswanathan for a period of 02 years and for continuation of services of Shri P. Viswanathan for a period of 03 months i.e. from 31.03.2020 to 30.06.2020 as Principal Director (F&A). It is also seen that Director General had decided that Shri P. Viswanathan shall continue to function as Principal Director (F&A) at CIPET Head Office for a period of 03 months from 31.03.2020 to 30.06.2020 or till further orders/approval of the competent authority i.e. Administrative Ministry on the said proposal for extension of services for a period of 02 years, subject to

the decision of the administrative ministry in the matter. The respondents have specifically averred in para 6 of the counter that Shri P. Viswanathan after being re-employed as Principal Director (Non Technical) holds the position with same delegation of powers as held before his retirement.

15. No prayer was made on behalf of the applicant for production of relevant documents before this Tribunal by the Respondents to show that the approval of disciplinary authority was not taken before issue of memorandum of charges. Specific averment has been made by the respondents in the counter affidavit that the memorandum of charges have been issued as per the directives of the disciplinary authority and approval of the same, which has not been specifically controverted and challenged although the applicant has made other averments in the rejoinder. In para 7 of the memorandum dated 06.05.2020 (Annexure A/10) it has been specifically written that “this memorandum is being issued as per the directive of the disciplinary authority after due approval of the Article of Charges, imputation of charges and necessary annexures.”

16. It was inter alia submitted by learned counsel for the applicant that there was extraneous reason for issuing charge memo against the applicant as the authority was having biased mind since the applicant had taken steps by which it came to light that there has been misappropriation of about more than Rs. 300 crores. In this regard applicant had sent intimation vide annexure A/ 5 dated 01.05.2020. The applicant had also lodged FIR vide annexure A/7 alleging against some anti socials in connection with the matter. Learned counsel for the applicant further submitted that there was sexual harassment case filed by the applicant. Learned counsel for the respondent submitted that the said complaint was made on 07.09.2020 vide annexure R/11 but it has since been closed during corona period.

16. There is nothing to show that the charge memo has been issued due to bias mind against the applicant and that the said action is in any way with malafide

intention. It is not necessary that charge memo should have been signed by the disciplinary authority himself, if the power has been delegated by the disciplinary authority, then any other competent person can also sign the charge memo and in this case Shri P. Viswanathan has signed the same. The citations as relied by learned counsel for the applicant are not applicable to the facts and circumstances of this case.

17. The applicant has failed to show at this stage that any illegality or irregularity has been committed by the respondents in issuing the charge memo. Therefore, in view of the above, at this stage we do not find any illegality or irregularity on the part of the respondents in issuing the memorandum of charges.

18. Accordingly, the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)