

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 260/00353 OF 2019

CORAM:

THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
THE HON'BLLE MR.TARUN SHRIDHAR, MEMBER (ADMN.)

Shri Bibhupada Dash, aged about 47 years, Son of Late Brajabandhu Dash, Plot No. 655, Po. Nayapalli, Bhubaneswar, Dist. Khurda, PIN-751 012 working as Personal Assistant (under suspension), Central Government Industrial Tribunal Cum Labour Court, Government of India, Ministry of Labour and Employment, H-24, Jaydev Nagar, Nageswar Tangi, Lewis Road, Bhubaneswar, PIN-751 002.

.....Applicant

Through Legal practitioner :M/s. J. Pattnaik, S.Pattnaik, K. N. Dash
Counsel

-Versus-

1. Union of India represented through its secretary, Government of India, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi, PIN-110 001.
2. The Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, Government of India, Ministry of Labour and Employment, H-24 Jaydev Nagar, Nageswar Tangi, Lewis Road, Bhubaneswar, PIN-751 002.
3. Smt. Manjulata Behera, Welfare & Cess Commissioner Cum I.O, Government of India, Ministry of Labour and Employment, Labour Welfare Organization, Kendriya Shram Sadan, Behind ISKON Temple, Plot No. N-7/6 & 7, Nayapalli, Bhubaneswar-751 015.
4. The Advocate General, Orissa High Court Square, Cuttack, IPIN-753 002.

.....Respondents

Through Legal practitioner :Mr.P.R.J.Dash & Mr.J.Pal, Counsel

Reserved on: 17/12/2020

Pronounced on: 21/04 /2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

The Applicant, Shri Bibhupada Dsh, working as Personal Assistant (under suspension), being aggrieved by the initiation of disciplinary proceedings under

Rule 14 of CCS (CC&A) Rules, 1965 vide Memorandum No. D.P.1/2018/26 dated 15/01/2019 under Annexure-A/15 has filed this original application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “(i) To admit the OA;
- (ii) To call for the records;
- (iii) To quash the Memorandum No. D.P.1/2018/26 dated 15.01.2019 under Annexure-A/16;
- (iv) To direct the Respondents to pay the applicant all his service and financial benefits retrospectively;
- (v) To allow this O.A with costs.
- (vi) The Memorandum No. 407 dated 20.11.2020 along with the findings of disagreement dated 20.11.2020 by the disciplinary authority under Annexure-A/19 (a) series be quashed.

2. The charge against the Applicant reads as under:

“Article-1:

That the said Sri Bibhupada Dash, Personal Asst., CGIT cum Labour Court, Bhubaneswar (now under suspension) was appointed as Personal Asst. CGIT cum Labour Court, Bhubaneswar on deputation basis even though he was not qualified and eligible for not having requisite experience of regular service of 08 (eight) years in the post of Grade D Stenographer (Junior Stenographer) as required by the Central Government Recruitment Rules regulating method of recruitment to Class III and IV (now Group B (NG) and Group C) posts in the Central Government Industrial Tribunal cum Labour Courts and as per the norms of the Circular No. 40/2/2000-Admn. Dt. 09.10.2000 issued by the then Presiding Officer, CGIT cum Labour Court, Bhubaneswar.

Article-II:

That Shri Bibhupada Dash, Personal Asst. (now under suspension) had suppressed material information willfully and furnished false and incorrect information in regard to his actual post held by him and the period/the date of his joining as regular Jr. Stenographer in the office of Govt. Advocate Odisha, Bhubaneswar while submitting his application for his appointment on deputation basis as PA, CGIT Cum Labour Court, Bhubaneswar.

Article-III:

That Shri Bibhupada Dash, PA, CGIT Cum Labour Court (now under suspension) had acted prejudicially to the interest of the State/Central Government and exhibited insubordination and disobedience and found negligence of duty for his act of refusal to comply the official instruction/direction of his authority. “

3. Respondents filed their counter in which they have opposed the stand taken by the Applicant in support of his relief inter alia stating as under:

- a. On 09/10/2000 , the CGIT, BBSR invited application from willing candidate having 08 years of regular service in the post of Gr. D Stenographer for filling up of the post of Personnel Assistant on deputation basis fixing the last date of receipt of application as 08/11/2000 which was extended till 10/13/2000;
- b. Applicant applied for the post stating therein that he had 10 years working experience both in Govt. and non govt. organization since 1995, based on which he was selected and appointed in the post of Personal Assistant on deputation basis in CGIT, BBSR;
- c. He submitted application for his permanent absorption which was forwarded to Ministry and the Ministry communicated no objection for his permanent absorption subject to fulfilling the condition stipulated in the Rules. In the meantime, the applicant was placed under suspension against which he submitted appeal wherein the Ministry has made observation that the appointment of the applicant on deputation basis so also absorption was not in accordance with the RRS/guidelines of GOI;
- d. Several complaints were received on the appointment/permanent absorption of the Applicant de hors the Rules. AG Audit (Central) had also submitted its report raising question on absorption of the applicant to the post of PA;
- d. The Applicant was acting as CPIO under the RTI Act, 2005. During his incumbency as CPIO he has furnished incorrect information to an RTI Applicant that too instead of his own signature it was sent under the signature of the Presiding Officer, CGIT with apparent mala fide mischievous intension.
- e. Rule 11 sub rule (2) of CCS (CCA) rules, 1965 provides that whenever it is found that a government servant, who was not qualified or eligible in terms of the recruitment rules for initial recruitment in service and had furnished false information o produced a false certificate in order to secure appointment he should not be retained in service;

- d. The Presiding Officer, CGIT is the disciplinary authority in so far as the service of the Applicant is concerned;
- e. OA does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of Applicant. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Therefore, this OA is liable to be dismissed.

4. It is the case of the Applicant in the OA as well as in the rejoinder summarized as under:

- (i) The allegation made Article I is not correct as 08 years experience was reduced to 5 years. The applicant has not suppressed any material facts in his application. His application was forwarded with due certification with regard to the years of service by his previous employer and he was selected and appointed on deputation and subsequently permanent basis after being satisfied by the then CGIT, BBSR. Therefore, initiation of disciplinary proceedings is bad in law;
- (ii) The PO, CGIT, Respondent No.2 is estopped under law to reopen the issue after such a long lapse of time. Thus, issuance of charge after such long lapse of time is bad in law;
- (iii) Charge sheet is opposed to the principle *Nemo contra factum suum (proprium) venire potest* (No one can contradict his own deed). Thus, charge sheet after such long delay is not sustainable in the eyes of law;
- (iv) Charge sheet is opposed to the principle *Aliquis non debet esse iudex in propria causa, quia non potest esse iudex et pars* – A person ought not to be judge in his own cause because he cannot act both as judge and party is staring against the Respondent NO.2 to act as a judge of his own cause. Thus the charge sheet is not sustainable in the eyes of law;
- (v) As per legal maxim *Sublato fundamento, cadit opus* (when the foundation has been removed the structure collapses), since allegations in the charge sheet are not sustainable proceeding with the enquiry amount to keeping a person unnecessary humiliation and harassment and, therefore, the charge sheet is liable to be quashed.
- (vi) Committing offence in giving reply to RTI application cannot be a subject matter of disciplinary proceedings in

view of specific provisions available under RTI Act, 2005. Thus, the charge sheet is liable to be quashed.

(vii) Initiation of disciplinary proceedings is not free from bias;

(viii) Action of the Respondents is hit by law and provisions enshrined in Articles 14, 16 and 21 of the Constitution of India.

5. Learned counsel appearing for the parties have reiterated the stand taken in their respective pleadings. According to Applicant he has not obtained appointment fraudulently and has not acted in a manner unbecoming on the part of a Government servant in the capacity of CPIO, under RTI Act and therefore, initiation of proceedings after such long lapse of time is not permissible under law. Further, in the statement of imputation accompanied with the charge sheet it has been stated that the applicant did not obey the order of the PO, CGIT, BBSR and, therefore, issuing the charge sheet by the PO, CGIT, BBSR he has acted as a judge of his own action which is not permissible in law. On the other hand, learned counsel appearing for the Respondents has vehemently opposed to aforesaid stand by stating that delay and laches so also estoppels cannot come into play in this case because the authority is competent to take away the service of such employee who had obtained appointment by fraud at any point of time. It has been contended that if the applicant has anything to say he can say so in course of enquiry or before the authority while considering the report of the IO but he is estopped to challenge the charge sheet. Similarly it has been contended that if the applicant has any grievance in regard to issuing the charge sheet by the PO, CGIT, New Delhi he should have stated so before the next higher authority instead of straightaway approaching before this Bench in the present OA.

6. Heard learned counsel for both sides and have carefully gone through their pleadings and materials on record.

7. In the statement of imputation in the memorandum of charges issued to the applicant the allegation regarding to Article – III is as follows:

“That Sri Dash (now under suspension) was functioning as CPIO having taken over charge from Sri B. K. Barik, Ex-CPIO from 25.01.2018 onwards. He was in such capacity till his suspension i.e. 18.12.2018.

On receipt of an application from RTI Applicant Sri Natraj A and forwarding letter from Ministry of Labour and Employment, New Delhi information was furnished to the said RTI applicant on 12.09.2014 & 21.09.2014. Such information furnished to him was not apparently based on any official record/document. The said information appears to have been maligning the reputation of an ex-employee of this office for which he made a representation to the Secretary to the Govt. of India, for furnishing such information failing which his wife would seek a redressal in judicial forum for a compensation. The said representation was transmitted to the PO, CGIT for taking necessary action. Accordingly, a copy of the representation was sent to Sri Dash on 23.08.2018 for taking necessary action at his end as he was designated CPIO. Again on 01.10.2018 he was issued with a memo for taking necessary action at the earliest on the representation and to furnish certain clarification including if any action is taken on the issue of withdrawal or correction of the information furnished to Sri Natraj A. On 29.10.2018 he was issued with a memo to issue corrigendum or to furnish correct information to RTI applicant with a copy to Sri Barik and Mrs. Barik to avoid future legal complicity in the matter. In his reply dated 18.12.2018 Sri Dash refused to comply the direction of his authority taking a vague plea for which he was issued another memo no. 672/2018 dated 18.12.2018 to comply the direction during the course of the day. But, Sri Dash expressed his inability in writing to comply the direction. Such action and conduct of Sri Dash is prejudicial and detrimental to the interest of the state; it is inconsistency or incompatible with discharge of his duty to his master; and it was wilful insubordination and disobedience of a reasonable order of his authority and it was a deliberate negligence of duty amounting to misconduct as prescribed in Rule 3 C (23) of CCS (Conduct) Rules, 1964.”

8. The inquiry officer in her inquiry report had made discussion and analysis about the materials with regard to Article III and her findings are as follows:

“I have considered the submissions of the parties and perused the records. In my considered view and under the provisions of the RTI Act, 2005 with Rules made there under, first appeal lies with the appellate authority who is senior in rank to the CPIO and thereafter the 2nd appeal to the Central Information Commission, New Delhi. The CPIO had no authority and jurisdiction to issue

corrigendum or cancellation of earlier information issued four years back by the then Presiding Officer, CGIT. It is seen that the Charged Officer has responded by way of submission of replies to the memos of the Presiding Officer issued on administrative ground and not as authority under the RTI Act 2005. The charged officer being subordinate in rank to the Presiding Officer has no statutory power to withdraw/correct or modify the information which was supplied by his higher authority.

Section 21 of the RTI Act, 2005 provides:-

Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rules made there under.

Further Section 23 of the RTI Act, 2005 provides:-

Bar of jurisdiction of courts

No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise by way of an appeal under this Act.

There is no provision in the RTI Act providing for review/recall or modifying the information once supplied except by way of appeal provided u/s 19 of that Act.

The Presenting Officer was not able to show any statutory provision to justify the direction of the Presiding Officer, CGIT to the Charged Officer to withdraw/recall or modify the information supplied by the previous Presiding Officer, CGIT in 2014, i.e. 04 years back. Had the Charged Officer carried out the direction of the Presiding Officer, CGIT it would have been beyond his official capacity as the CPIO and violation of the law. In my view, the Charged Officer had not committed any misconduct as prescribed in Rule 3 (C)(23) of CCS (Conduct) Rules, 1964.

From the above analysis it was concluded that the Charge No. III is also not established."

9. Thus from the above materials it is seen that the present Presiding Officer, CGIT had issued the memos in question to the applicant in respect of the article III of the charges. The said article is regarding the violation of the instruction of the present Presiding Officer and thereby the applicant exhibited insubordination and disobedience of the direction of the Presiding Officer, CGIT who himself has acted as disciplinary authority in this case. The presiding officer has issued the disagreement note dated 20.11.2020 after finding that the charges made against the applicant are proved although the inquiry officer in her report dated

14.07.2020 submitted that the allegation as made against the applicant in the disciplinary proceeding are not proved. Thus it is clear case of violation of principle of maxim *Nemo judex in causa sua*. The Presiding Officer, CGIT could not have acted as disciplinary authority and by issuing disagreement note in question, thereby he has acted as judge of his own cause. The matter should have been left to be decided by one ad-hoc disciplinary authority which could have been appointed by the appropriate authority of the department and the present presiding officer should have made correspondence in this regard.

10. There are two fundamental principle of natural justice. First principle is *Audi alteram partem* that no person should be punished without giving opportunity of being heard. Second principle *nemo judex in causa sua* i.e. no one should be judge of his own cause. In the present case the second fundamental principle of natural justice has been violated by none other than Presiding Officer of CGIT who is expected to be well aware of the fundamental principle of natural justice.

11. It was strenuously submitted by learned counsel for the applicant that the copy of inquiry report was not supplied to the applicant and for the best reasons known to the disciplinary authority the copy of the inquiry report along with the disagreement note of the disciplinary authority and show cause notice issued by the disciplinary authority vide annexure A/19 series were served on the applicant at the same time on 20.11.2020, although inquiry report was already submitted by the inquiry officer much earlier i.e. 14.07.2020.

12. The further principle of law is that justice should not only be done but should manifestly appear to have been done. It is immaterial as to whether the Presiding Officer of the CGIT who has acted as disciplinary authority in this case

was actually biased against the applicant or not. The likelihood of bias by him against the applicant in the circumstances as discussed above cannot be ruled out. Therefore in view of the violation of principle of natural justice, serious prejudice has been caused to the applicant in order to effectively defend himself in the departmental proceeding in question. By no stretch of imagination it can be argued that this is not the appropriate stage for interference by this Tribunal and it cannot also be argued that the Tribunal should not interfere at this stage and wait till the matter is reached by awarding appropriate punishment or by exonerating the applicant in the departmental proceeding in question, since there is glaring defect in the procedural formalities by violation of principle of natural justice which cannot be overlooked even at this stage. Therefore the notice dated 20.11.2020 vide Annexure 19 (a) and disagreement note issued by the Presiding Officer acting as disciplinary authority are quashed and set aside. The matter is remanded back to the Respondent No. 1, so that appointment of one adhoc disciplinary authority can be considered and the said disciplinary authority shall apply his own mind and take necessary steps in accordance with law after considering the inquiry report and after giving due opportunity to the applicant to put forth his case.

13. The OA is allowed to the extent above but in the circumstances without any order to cost.

(TARUN SHRIDHAR)
MEMBER (A)
(csk)

(SWARUP KUMAR MISHRA)
MEMBER (J)