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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO. 313 OF 1995
Cuttack this the 16th day of April /2004

Batakrushna Jena ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

16/04/04

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO. 313 OF 1995
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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER(JUDICIAL)

...

Batakrushna Jena
Assistant Director (XP)
Office of the C.G.M.T. Orissa
Bhubaneswar - 751 001

... Applicant

By the Advocates Mr.D.P.Dhalasamant

-VERSUS-

1. Union of India represented through
Secretary, Ministry of Communications
Government of India, New Delhi-110 001

2. Member (Services), Telecom Commission,
Government of India, New Delhi-110 001

3. Chief General Manager, Telecommunications,
Orissa Circle, Bhubaneswar-751 001

... Respondents

By the Advocates Mr.S.B. Jena, ASC

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O R D E R

MR.B.N. SOM, VICE-CHAIRMAN: This Original Application has been filed by Shri B.K.Jena, assailing the order dated 22.5.1995 (Annexure-11) passed by the Member, Telecom Commission, Government of India (Respondent No.2) imposing penalty of reduction in the time scale by two stages for a period of four years with direction that the applicant would not earn increment during the period of such reduction and on the expiry of such period the reduction will not have the effect of postponing the

future incrments in his pay. The applicant has prayed for quashing the proceedings instituted against him under Annexure-1 and the orders of punishment vide Annexure-11.

2. We had heard this matter earlier, i.e., during the year 2000, but rejected the application on the ground that the petitioner had not exhausted the statutory remedy before approaching the Tribunal for relief. Being aggrieved, the applicant carried the matter in appeal to the Hon'ble High Court of Orissa in O.J.C.No.12156/2000. The Hon'ble High Court, after hearing the Writ Petition was pleased to hold that "merely because the applicant had not exhausted the statutory remedy it did not oust the jurisdiction of the Tribunal to come into the merits of the case and decide the same" and in the circumstances, the Hon'ble High Court remanded the matter to the Tribunal for fresh disposal on merits. This is how the matter has now been restored to file and heard extensively on merits.

3. The applicant has brought a number of irregularities/ short-comings in the disciplinary proceedings initiated by the Respondents. Firstly, that the charges were proposed by the President, but the charge memo does not indicate that it was issued under the orders of the President. Secondly, that the Inquiring Officer, who was appointed by the disciplinary authority to enquire into the matter had precognition of the case and therefore, was incompetent to be appointed to act as the Inquiring Officer. Thirdly, that the document as listed under

Annexure-III to the charge-memo by which the articles of charge against the applicant were to be proved were taken as exhibits during the inquiry without those being produced theough the competent witness. Fourthly, that four out of five documents were produced by the Presenting Officer and taken as exhibits, but the applicant was kept in dark as to which of the documents was left behind and was not produced at all. This made the inquiry non-transparent and arbitrary. Fifthly, the applicant was never examined by the Inquiry Officer as required under Rule-14(19) of the CCS(CCA)Rules, 1965. Sixthly, that the Presenting Officer had submitted the written brief during the inquiry itself, i.e., on 26.7.1994 and he had stated therein that the written brief was being submitted by him in response to the written brief submitted by the applicant. Lastly, that the regular hearing was completed on the same day it was held, i.e., on 26. 2. 1995, in one sitting which lasted for two hours. He, thus, concluded that these lacunaes as listed above seriously breached the principles of natural justice as the inquiry was held in a most perfunctory manner. It also smacked of arbitrariness.

4. The learned counsel for the applicant had also forcefully submitted the various prodedural irregularities which took place during the inquiry. He submitted repeatedly that the Inquiry Officer was more interested in closing the inquiry in haste rather than to ensure that the applicant was afforded reasonable opportunity to

defend his case. He also pointed out, with reference to Annexure-2, that the I.O. was appointed not by the disciplinary authority as required under Rule-14 of CCA(CCS) Rules, but by the Chief General Manager, Telecom, Orissa Circle, who is an authority subordinate to the disciplinary authority. Similarly, the Presenting Officer was also appointed by the said functionary, i.e., Chief General Manager, whereas under Sub-rule 5(c) of Rule-14 the power is vested with the disciplinary authority. By filing a copy of his letter dated 26.2.1995(Annexure-4) the applicant has brought to our notice that he had raised an objection before the I.O. that the listed documents become documentary evidence within the meaning of the rules only when those are produced through competent witnesses, who are also to explain as to how such documents prove the allegation. It also provides an opportunity to the charged official to cross-examine the witnesses before any document is taken as evidence. But no such facility was afforded and certain documents were taken as exhibits with the approval of the I.O. without being produced through the competent witnesses and to this objection raised by the applicant, no response was available from the I.O. Drawing our notice to Annexure-5 the learned counsel for the applicant tried to show that the I.O. had a pre-determined mind to close the hearing on the same day. The daily sheet had the following recordings:

" New Delhi
26.2.95

Present : Sh.A.Mohanty, P.O.
Sh.B.K.Jena, C.O.
Sh.B.B.Dhal,Def.Asst.

The prosecution has produced four sets of documents which were marked Ex.S.1 to Ex.S.4 and were taken on record. The PO did not produce any prosecution witness. The prosecution case was closed. The charged officer submitted his written statement of defence with a copy to the PO. The CO did not produce any defence document and also did not produce witness. The CO neither offered himself as a witness in his own case nor he volunteered himself to be examined by me rather he submitted a letter mared 'A' which states that neither documentary nor oral evidence has been produced against him by the Presenting Officer. The regular hearing was concluded.

2. The PO submitted his written brief to me to-day with a copy to the CO. The CO is requested to submit his written brief to me on 28.2.95".

Sd/-
(BIRENDRA KUMAR)
INQUIRY OFFICER "

5. From the above recording in the daily sheet, it would be evident that the I.O. had not taken the objection raised by the applicant vide his letter dated 26.2.1995 into account. Secondly, at Para-2 of the daily sheet it was noted by him that the P.O. had submitted his written brief to him on that day but how the P.O. could have done that without first waiting for the inquiry to be completed. By refering to Annexure-6 the learned counsel further pointed out that the Presenting Officer had made patently wrong statement that he had prepared his written brief after going through the brief submitted by the charged official, because, the charged official had never filed any brief before 27.2.1995. He also pointed out that the

I.O. closed the inquiry in great hurry which would reveal well from the fact that the I.O. completed the inquiry within two hours of the sitting on 26.2.1995 and he had allowed only two days time to the charged official to submit written brief, i.e., by 28.2.1995. This type of hastiness in dealing with the inquiry under Rule-14 has to be viewed with mistrust and as mala fide. He also submitted that because the I.O. had precognition about the case it led him to take myopic and partial view of the whole matter and was determined to bulldoze the process of law with pre-conceived notions. It has further been submitted on behalf of the applicant that the allegation that he had 'committed grave misconduct' is misconceived. Nowhere in the charge-memo it has been mentioned as to how the applicant had acted in any manner while functioning as Asst.Director(MN) in the Office of the C.G.M.T., Orissa with any ill motive. It is also the grievance of the applicant that the charge framed against him is fake and instituting inquiry on such fake allegation is unsustainable in the eye of law (Sawasi Singh vs. State of Rajasthan 1986(2) SLR-47 (SC). Finally, he submitted that the order of punishment under Annexure-11 is defective and therefore, the same is liable to be quashed for the following reasons :

i) It did not disclose the date from which it would take effect and the period(in terms of year and month) for which the penalty shall operate; and

ii) The stage in the time-scale (in terms of Rs.) on which the Govt.servant is reduced and the extent (in terms of years and months) to which the period referred to at Item-(i) should operate to postpone the future increments, as laid down under Govt. of India instructions No.12 under Rule-11 of the CCS (CCA) Rules, 1965.

Besides the above, to strengthen his arguments, the learned counsel for the applicant has relied on the following case laws:

i) (1979 S.C.C. (Laws) - 157
Union of India vs. J.Ahmed

ii) 1986 (2) SLR - 47 (SC)
(Sawai Singh vs. State of Rajasthan)

6. The Respondents have denied the allegations by filing a detailed counter. On the facts of the case, they have submitted that the applicant was proceeded under Rule-14 of the Rules for various irregularities committed by him in connection with the purchase of switch board cable, P.V.C. coated thick iron drop wire and cable joint protection. The competent disciplinary authority, i.e., Member(Services) Telecom Board imposed the penalty of reduction by two stages in the time scale of pay for a period of four years with further direction that the official will not earn increment in pay during the period of such reduction and on expiry of such period, the reduction will not have the effect of postponing the future increments of his pay. The punishment order was made effective from the pay of the applicant from the month of May, 1995. They have submitted that the Chief General Manager, Telecom Orissa who was competent under Rule-13(2) of

CCA(CCS) Rules, 1965 to issue the charge memo, he being the authority competent to impose minor penalty specified under the rules and hence is competent to institute disciplinary proceedings against the applicant in order to impose any of the penalties as specified in Clause-V of the Rule-11 of the Rules. They have further stated that the use of the word 'President' in the opening sentence of the memorandum is only a technical/typographical error and that does not in any way defeat the formulation of charges of cannot take away the jurisdiction to punish the Govt. servant by the disciplinary authority. With regard to the appointment of the I.O. no rebuttal is forthcoming from the Respondents and with regard to the allegation that the I.O. had precognition of the case, they have submitted that the allegation is baseless and as the I.O. had not been made Respondent he was not available to offer his comments on the issue . With regard to the allegation about taking all listed documents as exhibits without producing those through the witnesses, the Respondents have submitted that as the I.O. and the P.O. have not been impleaded as parties to this O.A. their comments were not available for consideration. They have also denied the other allegation and have defended the completion of inquiry in a matter of two hours stating that the principles of natural justice were not violated. With regard to technical flaws in passing the order of punishment, the Respondents have submitted that those were nothing by typographical errors

which cannot take away the jurisdiction of the disciplinary authority to punish the Government servant.

7. We have heard Shri D.P.Dhalsamant, the learned counsel for the applicant and Shri S.B.Jena, learned Additional Standing Counsel appearing on behalf of the Respondents and have perused the records placed before us. We have also gone through the written note of submission made on behalf of the applicant and the case laws cited by the applicant in support of his submissions.

8. Several irregularities and procedural inadequacies have been pointed out by the applicant right from the issue of the charge memo to the passing of the impugned order of punishment. We have already enumerated those objections in paragraphs 3 and 4 above. The Respondents in their reply have tried to meet the objections raised by the applicant. However, what remains to be seen is whether they have been able to meet those objections fully. Because the applicant has cited decisions of the Hon'ble Apex Court in support of the objections raised by him and/or the inadequacies pointed out by him or the irregularities committed during the course of the inquiry. With regard to the first objection, i.e., the defect in the charge memo, the Respondents have tried to overcome it by stating that existence of certain typographical mistakes does not make the charge memo invalid.

9. Another allegation is that the appointment of Inquiry Officer and the Presenting Officer was not made by the disciplinary authority, i.e., Member, Services

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(Respondent No.2). This allegation has not been repudiated by the Respondents more than saying that the I.O. and the P.O. having not been impleaded as parties to this O.A., their comments are not available for consideration. We are unable to see the reasonableness in this plea. The question raised by the applicant concerns whether the disciplinary authority had acted within the scope and ambit of law and had followed the procedure as laid down in appointing the Inquiry Officer and the Presenting Officer under sub-rule (2) of Rule 14 and sub-rule (5)(c) of Rule 14 respectively. We are constrained to opine that it was not apt on the part of the Respondents to have stated that it was for the I.O. or the P.O. to say whether the disciplinary authority had appointed them following the correct procedure. But it is the Respondents who are duty bound to state unequivocally and unambiguously that the disciplinary authority had acted strictly in terms of the procedure as laid down under Rule 14 and that there has been no deviation from any provisions of the said Rules at any point of time. Having not been able to answer this question it would go to prove that the disciplinary authority failed to act under the law. The applicant has challenged the appointment of I.O. on the allegation that he was earlier associated with the Inquiry against him in the capacity as Director (Audit) and he did have the personal knowledge of the case. The Respondents have not uttered a single word in response to this specific objection. During oral hearing of the matter it was clarified by the learned counsel

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for the applicant that the I.O. was heading the audit party, which had drafted the audit para on the basis of which the articles of charge have been framed. This fact has not been controverted by the Respondents either during hearing or in the counter filed by them. As the I.O. had precognition of the case and had been associated with the audit party, which went into the matter regarding purchase of certain stores/materials culminating in the present disciplinary proceedings, we are of the view that he should not have been associated with the inquiry in the interest of fairness and justice. Another serious allegation made by the applicant is that the P.O. had taken some documents on record without testifying the veracity of those documents by the independent witnesses and without giving an opportunity to the charged official for cross-examination of those witnesses. All that the Respondents have said in support of the action taken by them in this regard is that those documents having been confirmed by the applicant during inquiry, the objection raised now by the applicant is of no consequence. The applicant has forcefully submitted that by denying him to cross-examine the witnesses, the Respondents have deprived him the benefit of the principles of natural justice and thereby his interest has greatly been prejudiced. To strengthen this argument, the learned counsel for the applicant, Shri D.P.Dhalsamant, referred to the decisions of the Hon'ble Apex Court in the cases of P.S.Gopal Pillai and B.D.Joseph v. Union of India and others reported in AISLJ 1993 (1) CAT 171 and in 1990 (14) ATC 99 respectively. The same views as

expressed in the above mentioned two cases were also taken by their Lordships of the Hon'bleSupreme Court in the case of Central Bank of India v. Prakash Chand Jain, AIR 1969 SC 983.

10. Another grievance of the applicant is that he was not examined by the I.O. as required under Rule 14(18) of CCS (CCA) Rules and that this by itself vitiates the entire proceedings. He has reliedon the decision of the Apex Court in the case of Ministryof Finance and others v. S.B.Ramesh reported in 1998 SCC (Laws) 865 wherein their Lordships held that the Inquiry Officer having not given an opportunity to the applicant under Rule 14(18) of CCS (CCA) Rules committed serious error.

11. Another allegation of the applicant is that the inquiry was completed with undue haste and with an unprecedented speed within a matter of two hours and that the P.O. had submitted his written brief in course of the inquiry. Here also we do not see worthwhile rebuttal forthcoming from the Respondents, more than saying that the principles of natural justice were not at all violated. We are not impressed by the aforesaid averments of the Respondents, because, from the records placed before us by the applicant, we have no doubt that the inquiryw as done in a most perfunctory manner with great haste and in a very unwise manner. It is also the allegation made by the applicant that the P.O. had prepared his written brief before-hand, i.e., before the commencement

of the inquiry and therefore, could submit it as soon as the inquiry was closed by the I.O. on the same day on 26.2.1995. The facts of this matter do not contradict the said allegation and we find it difficult to allow disciplinary cases to be conducted in this casual manner.

12. We have carefully considered the submissions made by the applicant, the objections raised by him and the reply submitted by the Respondents. The learned counsel for the applicant has assailed the charge memo on the ground that it was issued by an authority subordinate to the disciplinary authority and submitted that the same is, therefore, void ab initio. On a perusal of the charge memo at Annexure 1, we note that the Memorandum No.Vig.8/108/93 dated 28.1.1994 was issued by the Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar, by stating that the President proposed to hold an inquiry against Shri B.K.Jena. But nowhere it was stated that the charge memo was being issued by the order of the disciplinary authority, in the instant case, the President of India. It was thus violative of Rule 13 of CCS (CCA) Rules, which lays down that President or any other authority empowered by him by general or speaking order only may institute disciplinary proceedings against any Government servant or direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in

Rule 11. However, the Respondents have in their counter submitted that the provision hasbeen made under Rule 13(2) of the said Rules that a disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11, i.e., minor penalties, may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 11, notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the latter penalties. As the said provision as made under these rules is not under challenge in this O.A., we do not see any merit in this submission.

13. The applicant has also assailed the appointment of I.O. and P.O. by an authority subordinate to the appointing authority. This objection raised by the applicant is valid in law as it has already been decided by the Hyderabad Bench of this Tribunal in A.C.Trivedi v. Soil Survey Officers and another, reported in (1995) 29 ATC 35 and held that under Rules 14(2) and 15(5)(c) appointment of Inquiry Officer and Presenting Officer cannot be made by an authority subordinate to the appointing authority. We are in respectful agreement with the said decision of the Hyderabad Bench.

14. It is also proved from the facts of the case that the Inquiry Officer when working as Director (Audit) of the Respondent Department dealt with the case of purchase of stores, which forms the basis of the charges against the applicant and therefore, there is lot of force in the submission of the applicant that he should not have been associated with the inquiry in terms of D.G. P & T's letter No.201/74-Disc.2/Disc., dated 20.5.1976

which reads as under:

> "The official appointed as inquiry officer should not have associated with any inquiry against the defending official at any earliest stage and should have also not expressed any opinion about the merits of the case. A special care in this regard is absolutely necessary, because, according to the instructions contained in instruction (16) the defending official may submit appeal/petition against the appointment of a particular inquiry officer on the ground of bias."

The applicant in his application at paragraph 4.4 has submitted as follows:

> "That the said Birendra Kumar prior to his present post, was working as the Director of Audit in the office of the Principal Director of Audit, P&T, New Delhi and had dealt with the case and had previous knowledge of the case."

15. In view of the supporting document submitted by the applicant along with his affidavit dated 24.7.2000, the reply at paragraph 10 of the counter by the Respondents is unacceptable and the objection raised by the applicant in this case is sustained as the appointment of the Inquiry Officer, who had previously dealt with the matter was done in contravention of the instructions issued by the Respondent-Department itself. This type of violation of rule needs to be deprecated so as to instill strict adherence to rule of law, without which the society will lapse into chaos and misrule.

16. The allegation made by the applicant that the listed documents were were produced by the Presenting Officer, taken as evidence by the I.O. without those being justified by independent witnesses and thereby the applicant was denied the

opportunity of cross-examination also requires our serious consideration. In reply to this, it has been stated by the Respondents (at paragraph 11) that as the applicant had confirmed during preliminary hearing on 6.1.1995, that he had inspected all the listed documents and at no stage the charged official had questioned the genuineness or otherwise of the prosecution documents, those documents were taken as authentic by the I.O. They have further submitted that the charged officer did not produce any document or defence witness nor did he ever offer witness in his own case, nor he volunteered himself to cross-examine. The aforesaid submissions of the Respondents are not enough to cure the breach of law. It is now well settled provision of law as laid down by the Apex Court in the case of State of Mysore and others v. Shivabasappa Shivappa Makapur, AIR 1963 SC 375, that although the domestic Tribunals exercising the judicial functions are not Courts, but they should not act on any information unless they put it to the party against whom it is to be used and give him fair opportunity to explain it. It has further been ruled that in spite of taking evidence in an inquiry before such Tribunal, the person against whom the charge is made should know the allegation which is made against him so that he might be in a position to give his explanation and he has the opportunity of cross-examining. This principle has since been applied by this Tribunal in several cases, viz., B.V.Joseph vrs. Union of India and others, reported in (1990) 14 ATC 90 and P.S.Gopal Pillai vs. Union of India and others (AISLJ 1993 (1) CAT 171 and in a catena of other cases. In view

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of the above law in this regard, we are of the view that the inquiry was seriously vitiated as the applicant was denied the opportunity of cross-examining the witnesses and thereby denied the protection given under Article 311(2) of the Constitution of India.

17. Similarly, the Inquiry Officer by not examining the applicant as required under Rule 14(18) of CCS (CCA) Rules vitiated the entire proceedings as observed by the Apex Court in a similar issue that was raised in the case of Ministry of Finance and others v. S.B.Ramesh, reported in 1998 SCC (L&S) 865. The inquiry also suffered from another lacuna that it was completed with undue haste and unprecedented speed, within a period of two hours. The Respondents in their counter have not offered any worthwhile explanation in this regard, because such a situation can hardly be explained, being so much covered with arbitrariness and unreasonableness. The inquiry was also vitiated on the ground, as pointed out by the learned counsel for the applicant, that the Inquiry Officer had not taken into account the written brief (Annexure-8) submitted by the applicant in his report under Annexure-9, which contravenes Rule 14(23) of CCS (CCA) Rules. It is also surprising to note that the P.O. submitted his written brief immediately after the conclusion of the inquiry on 26.2.1995. Such an action is not only unexpected but also deserves to be deprecated on the ground of bias and pre-determined action. On the above grounds, we find it difficult to accept the

submission made by the Respondents in their counter that the I.O.'s findings are logical or are based on evidence on record. In fact, the Inquiry Officer did not follow the given procedure under Rule 14 of the Rules; Over and above, the proceedings are vitiated in the absence of reasonable opportunity being given to the applicant and that the findings are based on no evidence. Having regard to these facts and circumstances of the case, we have, therefore, no hesitation to quash the inquiry report dated 2.3.1995. We order accordingly. While quashing the inquiry report, we cannot but observe here that the rules are framed and laws are made only to be followed to create a society free from misdeeds or misdemeanour and to make the society accountable and orderly. The way the basic principles, or the tenets of law have been breached in the present the matter of/disciplinary proceeding, the procedure laid down by the Respondent-Department itself trampled and the constitutional provisions flouted can hardly be tolerated. It is not enough that the objective is good, the mission announced to achieve the objectives also requires to be good in all respects. We are surprised at the carelessness with which the entire disciplinary proceeding was carried out from the point of initiation till its conclusion it has created a genuine doubt in the mind of the applicant of the procedure laid down in the about efficacy/ CCS (CCA) Rules. In view of the above discussions, we are unable to uphold the order dated 22.5.1995 passed by the disciplinary authority.

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18. For the reasons discussed above, this Original Application succeeds. No costs.

19. However, the Respondents are at liberty to take any further action which they may deem fit with regard to fixing responsibility for the mismanagement in purchase of stores in the office of the Chief General Manager, Telecom, Orissa Circle, after following the due procedures laid down in this regard.

16/04/04

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

Bjy