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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 792 OF 2005

(Decided on 28th June 2007)

Shri Ajaya Kumar Sahoo

...Applicant

-Versus-

National Council of Educational Research and Training and others ..Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ? *yes*.
- 2) Whether it be sent to the Principal Bench of the Central Administrative Tribunal or not ? *yes*.

[Signature]
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

[Signature]
(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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(Decided on 28th June 2007)

CORAM:

**THE HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER**

...
Shri Ajaya Kumar Sahoo, aged about 43 years, S/o. Keshab Chandra Sahoo,
L.D.Clerk (under suspension) Regional Institute Education, Bhubaneswar
...Applicant

By the Advocates :

M/s/K.C.Kanungo
Ms.Chitra Padhi
S.Behera

-Versus-

1. National Council of Educational Research and Training, New Delhi represented through its Secretary, Sri Aurobindo Marg, New Delhi-110 018
2. Joint Director and Appellate Authority, National Council of Educational Research and Training, Sri Aurobindo Marg, New Delhi-110 018
3. Principal, Regional Institute of Education, Bhubaneswar, Dist-Khurda, Orissa

By the Advocates :

...Respondents
Mr.B.Dash, A.S.C.

...
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN:

The sequence of events, as revealed from this Original Application, are that the applicant, in course of his employment as L.D.Clerk in the Regional Institute of Education, Bhubaneswar, was placed under suspension with effect from 25.11.2004 (Annexure-A/1) in contemplation of initiation of disciplinary



proceedings against him. In this connection, he was served with a Memorandum containing two Articles of Charge, vide Annexure-A/2 dated 17.12.2004, under Rule 14 of CCS(CCA) Rules, 1965, on the allegation that he had preferred a fraudulent L.T.C. claim. He having denied the charges, the Disciplinary Authority (D.A.), vide order dated 31.12.2004 (Annexure-A/4), appointed one Shri Subash Chandra Rath, O.A.S.-I (Retd.) as Inquiry Officer (I.O.) to enquire into the charges. Accordingly, the I.O. noticed the applicant stipulating the date of inquiry to 17.1.2005 with liberty to engage defence assistant, if any. The applicant, vide his representation dated 8.2.2005 (Annexure-A/6), sought one month's time for engagement of his defence assistant. The I.O., vide Annexure-A/7 dated 8.2.2005, while observing that the charges are very simple in nature and based purely on documentary evidence and after recording the reasons, granted time to the applicant till 22.2.2005 finally to select a defence assistant and requiring the applicant to give in writing the name of defence assistant with full address, the consent in writing of the defence assistant, and the permission of the Head of Office under whom he is working on that date. Again the applicant on 22.2.2005 (Annexure-A/8), expressing his inability in finding out a suitable defence assistant, sought permission to engage a legal practitioner. It is in this background, the reasons recorded by the I.O. are quoted hereunder:

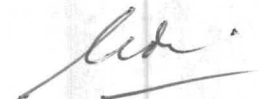
“The charged employee has filed a petition. In the petition he has intimated that he could not find out a Defence Assistant. Therefore, he is constrained to seek permission to engage a Legal Practitioner to defend him.



I informed him that I am not going to give permission for engagement of a Legal Practitioner. Again I repeat that this is a very simple charge. However, I requested him that in view of my refusal to permit him to engage a Legal Practitioner, he is finally given a chance to peruse the originals of the documents. He stated that in the absence of a Legal Practitioner to defend him, it is not possible for him to peruse the documents.

I have given sufficient opportunity to the charged employee to peruse the original document. In view of his final refusal, I have no other choice than to proceed with the examination of prosecution witness. I therefore, adjourn the enquiry to 2.3.2005 at 11.30 a.m. for examination of two prosecution witnesses. On that day the date for examination of remaining prosecution witness will be fixed. I would like to record my request to the Presenting Officer and the charged employee to help me in concluding the enquiry within a shortest possible time”.

2. On receipt of copy of this order of the I.O., the applicant, vide Annexure-A/10 dated 28.2.2005, filed a bias petition before the D.A. with prayer to stay the proceedings and to change the I.O. The D.A. in turn rejected the said petition of the applicant, vide Annexure-A/11 dated 15.3.2005, endorsing copies thereof to the I.O. as well as the Presenting Officer (P.O.). Being aggrieved, the applicant again moved the matter before the D.A. vide Annexure-A/12 dated 24.3.2005 with prayer to forward his bias-petition to the Appellate Authority, who is competent to take decision in that behalf. At this stage, the D.A. vide its Memorandum dated 28.3.2005 (Annexure-A/13) referred the matter to the Appellate Authority (A.A.) and simultaneously stayed the inquiry until further orders. The A.A., by its order dated 26.8.2005/9.9.2005(Annexure-A/14), after recording the reasons, rejected the Review Petition of the applicant directing the inquiry to continue. Thereafter, the I.O., after recording the deposition of P.W.



No.1 in the presence of the applicant, allowed the applicant to cross-examine the witness, to which the applicant declined on that ground that he could not cross-examine the witness without the help of a defence assistant. The I.O., vide order sheet dated 22.5.2005(Annexure-A/15), allowed the applicant time till 30.5.2005 to submit the willingness of the defence assistant and the required information by fixing the date of inquiry to 8.6.2005. The proceedings of the inquiry vide Annexure-A/16 dated 19.7.2005 are quoted hereunder because of the fact that the applicant has not stated anything as to what had happened on 8.6.2006

“The charged employee and his Defence Assistant were absent on the last date. That day the charged employee has sent a petition praying to refrain from holding the inquiry on the ground that orders of even competent authority on his petition dated 14.6.2005 has not been received by him. That day, the Defence assistant was absent.

I adjourned the inquiry to 19.7.2005 at 3.00 p.m. for examination of P.W. with reluctance. I cannot submit myself to the jurisdiction of competent authority indefinitely without any communication from him. If the bias petition is allowed then the entire proceedings is to be conducted de novo so my proceeding with the inquiry does not cause irreparable loss to the charged employee.

So I have proceeded with examination of one P.W. The other two P.Ws who are noticed have not come. They are employees of the East Coast Railway. The Disciplinary Authority has no competency to ensure their attendance. Therefore, I think no useful purpose will be served lingering the proceedings. I close the examination of witness.

I now fix 5.8.2005 at 3.00 P.M. for recording the Defence Statement.

The charged employee is directed to file the list of defence witnesses on that day”.



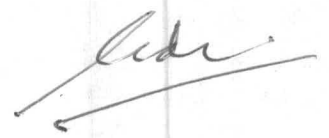
3. On 5.8.2005 the order sheet of the I.O. maintains that the charged employee and the defence assistant are absent. However, allowing time till 9.9.2005 for filing written submission by the applicant, the I.O. observed to submit its report within a reasonable time after receiving the written submission. However, the D.A. forwarded a copy of the inquiry report to the applicant, vide his letter dated 30.9.2005 (Annexure-A/18) giving him 15 days time, to make his representation or submission on the report of the I.O. Just after receipt of the inquiry report, the applicant rushed to this Tribunal seeking the following relief:

“...to admit this application and issue appropriate orders for setting aside Annexure-A/7, Annexure-a/9, Annexure-A/11, Annexure-A/14, Annexure-A/15, Annexure-A/16 and Annexure-A/17 and to issue appropriate order setting aside the report of the Inquiry Officer dated 24.9.2005”.

4. On 10.10.2005 this O.A. came up for hearing on admission and interim orders. The Single Member Bench, while issuing notice to the Respondents on the question of admission, issued the following directions, as an ad interim measure:

“As an ad interim measure, the applicant is hereby given liberty to represent his case/to put up his submission as against the inquiry report which he should do by the end of October, 2005. But the Disciplinary Authority of the applicant should not pass any final order in the disciplinary proceedings without the leave of this Tribunal”.

4.1 Thereafter this O.A. did not see the light of the day till 12.4.2007 when the matter was adjourned to 24.4.2007 on the ground of illness of the learned counsel for the applicant. The Respondents seem to have filed counter to O.A. and

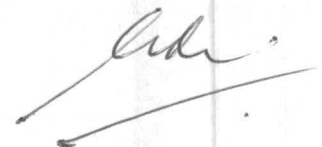


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M.A. 61/06 on 30.1.2006 for vacation of ad interim stay granted by this Tribunal on 10.10.2005. Be that as it may, on 24.4.2007, M.A. 61/06 was adjourned to 30.4.2007 on which date, as mutually prayed by both the learned counsel, the O.A. along with M.A.61/06 stood adjourned to 7.5.2007 for hearing on the point of admission and the continuance of interim order. On 7.5.2007 hearing of the matter was concluded and orders were reserved. It reveals from the record that the applicant has filed M.A. No.312/07 seeking amendment to the O.A. as per the schedule mentioned therein and for modifying the relief to the extent of amendment.

4.2 Respondents in their counter have opposed the prayer of the applicant and as mentioned above, filed a Misc.Application No.61/06 for vacation of the ad interim order granted by this Tribunal on 10.10.2005. The applicant has filed rejoinder, reply to M.A.61/06, besides M.A. 312/07 seeking amendment to the O.A. and a written note of argument.

5. From the pleadings of the parties, the following points emerge for our consideration:

- i) Whether the D.A, without giving due consideration to the written statement of defence of the applicant, vide Annexure-A/3 dated 27.12.2004, appointed the I.O?
- ii) Whether a retired Govt. officer can be appointed as I.O.?



- iii) Whether the enquiry was conducted behind the back of the applicant and ex parte to his prejudice?
- iv) Whether the stage at which M.A. 312/07 filed by the applicant seeking amendment to the O.A. can be allowed?
- v) Whether the Tribunal can intercede in the matter of inquiry?
- vi) Whether the present O.A. is maintainable?
- vii) Whether right to approach this Tribunal has accrued to the applicant?

6. In order to deal with the point No.(i) it is pertinent to go through the written statement of defence, vide Annexure-A/3 dated 27.12.2004(Annexure-A/3), which reads thus:

“Kindly refer to Memorandum No.RIEB-1197, dated 17.12.2004(received by me on 18.12.2004)

I deny the charges framed against me, and desire to be heard in person.

In this connection, kindly refer to my representation dated 6.2.2004 (copy enclosed) wherein I prayed for recovery of the entire amount of L.T.C. advance in suitable instalments from the subsistence allowance that was being paid to me.

In view of the reasons that the entire unhappy event could take place due to extreme extraordinary circumstances under which I was passing my days due to suspension from service and disciplinary proceedings. A lenient view in this matter may kindly be taken and the charge sheet dropped.

I sincerely regret for the unintentional mistake.

I also pray that the order dated 25.11.2004, placing me under suspension may kindly be revoked”.

6.1 Before coming to take a view on the purported written statement of defence vide Annexure-A/3 as quoted above, we would say that suppressio veri is writ large in this O.A. The applicant has not approached this Tribunal with a clean



hand. It is amply clear from Annexure-A/3 dated 27.12.2004 that before he could be placed under suspension vide Annexure-A/1 dated 25.11.2004, he had put up certain representation dated 6.2.2004 to which a reference has been made in Annexure-A/3. He has even not cared to annex this representation to this O.A. Therefore, his integrity cannot be said to be beyond all reasonable doubt.

6.2 However, coming to the point, we would observe that Annexure-A/3 dated 27.12.2004 is reprobation and approbation of the allegations levelled against him. While denying the charges framed against him, he has prayed for recovery of the entire amount of L.T.C. advance in suitable instalments from his subsistence allowance. Therefore, the D.A. was justified in appointing I.O. to enquire into the charges only with a view to complying with the principles of natural justice to which the applicant had so prayed.


7. As regards the appointment of a retired officer as I.O., we have gone through Rule 14(2) of CCS(CCA) Rules, 1965. Rule 14(2) of CCS(CCA) Rules, 1965, reads thus:

“Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the **Public Servants (Inquiries) Act, 1850**, as the case may be, an authority to enquire into the truth thereof”.

(Emphasis supplied)

7.1 Section 3 of the Public Servants (Inquiries) Act, 1850 reads thus:

Authority to whom inquiry may be committed – Notice to accused – The inquiry may be committed **either** to the Court, Board




or other authority to which the person accused is subordinate or to any other **person** or persons, **especially appointed** by the Government, Commissioners for the purpose; notice of which Commission shall be given to the person accused ten days at least before the beginning of the inquiry”.

(Emphasis supplied)

7.2 In support of his contention, the learned counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in *Ravi Malik vs. National Film Development Corporation Ltd. and others* 2006 SC (L&S) 882 as well as the decision of the C.A.T., Guwahati Bench in *Sri Vijay Bhatnagar vs. Union of India & Ors.* 2005(3) ATJ 40.

7.3 We have gone through the decision of the Hon'ble Supreme Court in *Ravi Malik's case (supra)*. As the inquiry in that case was not initiated under the CCS (CCA) Rules, 1965 and the matter relates to a Public Sector Undertaking, the principle decided therein has no application to the facts of the instant case. In so far the decision by C.A.T. Guwahati Bench (*supra*) is concerned, firstly, we find that the entire provisions of Rule 14(2) of CCS(CCA) Rules, 1965 were not taken into account in as much as the Guwahati Bench took note of the power and discretion of the D.A. itself to make inquiry or to appoint an authority to inquire into the truth of any imputation of misconduct or misbehaviour against a Government servant. With due respects to state, the Guwahati Bench lost sight of the provision contained in Rule 14(2) empowering the D.A. to resort to the provisions of the Public Servants (Inquiries) Act, 1850. From a combined reading of the provisions



contained in Rule 14(2) of the CCS (CCA) Rules, 1965 and Section 3 of the Public Servants (Inquiries) Act, 1850, it is clear that the D.A. has the power conferred on him under Rule 14(2) of the CCS (CCA) Rules, 1965, to especially appoint any other person as Inquiry Officer for the purpose of inquiring into the truth of any misconduct or misbehaviour of a Government servant.

7.4 The above view of ours is fortified by the Government of India, Department of Personnel & Training O.M. No.134/1/87-AVD-I dated 15.5.1987 wherein the Ministries/Departments have been allowed to engage retired Government servants of proven integrity as Inquiry Officer in individual disciplinary cases wherever it is not possible to have full-time Inquiry Officer and there is no suitable officer among the existing staff to conduct a disciplinary inquiry. On the basis of this O.M. of the Department of Personnel & Training, the Government of India, Department of Posts, issued a circular No.13/2/87-Vig.III dated 9.12.1988 for appointment of retired Government servants as Inquiry Officer. This circular dated 9.12.1988 was at Annexure R-5 to the counter filed by the Union of India and others in O.A.No. 828 of 2005 (Sri Jagdish Chandra Sethy v. Union of India and others). The relevant portion of the said circular dated 9.12.1988 reads as follows:

“I am directed to circulate herewith a copy of Department of Personnel & Training O.M.No.134/1/87-AVVD-I dated 15.5.87 on the subject noted above and to say that the question of introducing in the Department of Posts the scheme envisaged therein regarding engaging



retired Govt. Servants for conducting oral inquiries in disciplinary cases under the CCS(CCA) Rules, 1965 has been under consideration for past sometime. Although there are full time posts of Inquiry Officers in Deptt. Of Posts, viz., A.D.G. (DI), Delhi and O.S.D. Hyderabad and Bombay, a large number of oral inquiries are reported to be pending in various circles.

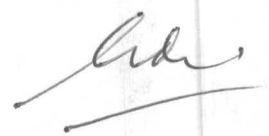
In order to clear the backlog of pending inquiries expeditiously and to ensure that no case suffers delay on this count, it has been decided to introduce forthwith the scheme of engaging retired Government Servants to conduct inquiries in disciplinary cases on honorarium basis in Department of Posts/Circles.

XXX

XXX”

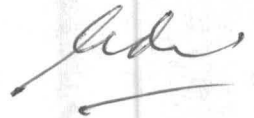
7.5 The aforesaid Government of India, Department of Personnel & Training O.M. No. 134/1/87-AVD.1, dated 15.5.1987 and the entire provisions contained in Rule 14(2) of the CCS (CCA) Rules, 1965 and Section 3 of Public Servants (Inquiries) Act, 1850 were neither brought to the notice of nor were the same considered by the Guwahati Bench of the Tribunal and therefore, the decision rendered by it in *Sri Vijay Bhatnagar (supra)* is per incuriam, with due respects to say so.

7.6 This contention of the applicant has also to fail on another ground. It is the case of the applicant that by memorandum dated 17.12.2004 charges (Annexure A/2) were issued against him. He submitted his written statement of defence on 27.12.2004(Annexure A/3). The D.A., by order dated 31.12.2004 (Annexure A/4), decided to



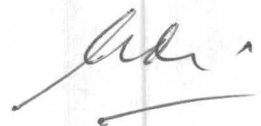
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hold inquiry against the applicant and appointed Shri Subash Chandra Rath, OAS (Retd.) as I.O. Thereafter the inquiry sittings were held. The applicant at no point of time objected to the appointment of Shri Rath, a retired Government servant, as I.O. by making a representation to the D.A. Initially, when he filed the O.A. in 2005, no averment was taken by him regarding appointment of retired Government servant as I.O. Only after the pleadings were completed in the O.A. and the matter was ripe for hearing and final disposal, the applicant filed MA No. 312 of 2007 for amendment of the O.A. incorporating the averments about the irregularity in the appointment of a retired Government servant as I.O. This conduct of the applicant impresses that he is adopting dilatory tactics not only to prolong the disposal of this O.A. but also to drag on disciplinary proceedings on flimsy pretexts at different times.

8. With regard to point No.(iii) as to whether the inquiry was conducted behind the back of the delinquent to his prejudice, we find from the order sheet of the I.O., as quoted above, that all through the applicant on some pretext or the other has not only avoided the inquiry but also refused even to peruse the materials without his defence assistant. Although he was duly noticed by the I.O. at every stage of proceedings, on the date of sitting he never cooperated, for the



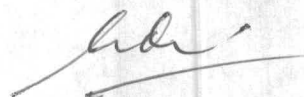
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conclusion of inquiry as per the requirement of rules. Rather, on the date of inquiry, by projecting some ground or the other he went on filing representation after representation before the I.O., D.A. and A.A. with a view to putting a spanner and spokes in the enquiry. This apart, the most vital thing of the matter is that whatever infirmities or lacunae in the conduct of inquiry have been urged by the applicant in the present O.A. should have been urged before the D.A. who is the competent authority to take a view in the matter. The Tribunal cannot monitor the day to day proceedings before the I.O or, for that matter, the D.A. We also do not come across anywhere in the pleadings as to what is that particular opportunity of which he has been deprived, thereby prejudice has been caused to the applicant. Therefore, the contentions of the applicant that he has not been afforded reasonable opportunity by which prejudice has been caused to him and that the inquiry has been conducted behind his back, hold no water.

9. With regard to Misc. Application No.312/07 filed by the applicant seeking amendment to the O.A. which virtually includes amendment to the prayer, we would unhesitatingly say that this is an afterthought and a subterfuge method adopted by the applicant with a view to prolonging culmination of the proceedings, taking advantage of the ad interim stay that was granted by this Tribunal in the year 2005 directing the D.A. not to pass any final order on the disciplinary proceedings without leave. Besides, in this matter the Respondents had filed their counter to O.A. and M.A. 61/06 on 30.1.2006 praying for vacation



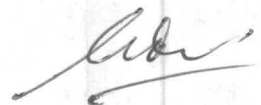
of ad interim stay dated 10.10.2005. It is not known as to what prevented the applicant soon after the receipt of the copies of counter and M.A. to move the Tribunal seeking amendment to the O.A. Rather, he chose to file rejoinder to the counter and reply to M.A. for vacation of stay after more than a year of filing thereof in the months of April and May, 2007 respectively. The question, therefore, arises as to whether at this stage the Tribunal can allow amendment to the O.A. which, in effect, would change the nature and character of the O.A., particularly when the O.A. is taken up for final disposal. Viewed from this angle, our answer to this is in the negative.

10. The next point for consideration is as to whether the Tribunal can intercede in the matter of inquiry and fetter the discretion of the disciplinary authority who is the best judge in the matter. In the instant case the applicant, just on receipt of the copy of the inquiry report rushed to the Tribunal alleging that the inquiry suffered from legal infirmities and therefore, the inquiry report being void was liable to be set aside. The Tribunal, vide order dated 10.10.2005, for the reasons recorded therein, while directing the applicant to put up his submission to the inquiry report by the end of October, 2005, also directed the D.A. not to pass final orders in the disciplinary proceedings without the leave of the Tribunal. The Respondents have stated that the applicant has already filed his reply and accordingly sought leave of the Tribunal to pass final orders thereon. But the fact remains that the Tribunal cannot substitute itself in the place of the D.A. or the



A.A. Further, there is also no cause of action for the applicant to approach this Tribunal. It is well settled in law that suspension is not a punishment. Therefore, what remains is the culmination of the disciplinary proceedings in the matter of passing a final order by the Disciplinary Authority keeping in mind the totality of the attendant facts and circumstances. The exercise of power, jurisdiction and authority by the D.A. or, for that matter, the A.A., conferred on them under the CCS (CCA) Rules, 1965 should not be allowed to be fettered by the Tribunal, particularly at the stage when no order has been made by the said authorities in the disciplinary proceeding. Therefore, it would be far stretching for us if we intercede in this state of affairs.

11. The next point for our consideration is whether the O.A. in its present form is maintainable. The Tribunal, while exercising the power of judicial review, is expected to review the manner in which the decision was made and to ensure that an employee gets fair treatment. But in the instant case there is neither any cause of action within the framework of Administrative Tribunals Act, 1985 and Rules framed thereunder for the applicant to approach the Tribunal nor is the Tribunal left with any scope to judicially review the manner in which the decision has been taken since the entire matter lies within the ambit and swing of the Respondents. The applicant can be said to be aggrieved only when he would be deprived of his legitimate right to which under law he is entitled. As the matter now stands, we find, no right of the applicant has been infringed by the

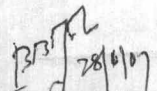



Respondents in any manner whatsoever. Besides, the applicant has approached this Tribunal in a cut and dry method. Therefore, this O.A. ip so facto is not at all maintainable.

12. The last point for consideration is whether right to approach this Tribunal has accrued to the applicant. In view of the points discussed in the preceding paragraphs, we have no hesitation to hold that no such right has accrued to the applicant.

13. Last but not the least, we observe, in the instant O.A. nowhere we can find the applicant to have proved his innocence. Rather, his entire submissions are fraught with technicality around which the present O.A. revolves. Having regard to the facts and circumstances as discussed above, we hold that this O.A. besides being not maintainable is devoid of any merit. Consequently, the ad interim order dated 10.10.2005 stands vacated, granting liberty to the D.A. to pass final orders in accordance with law within a period of one month from the date of receipt of this order.

14. In the result, the O.A. is dismissed accordingly at the stage of admission itself. No costs.


(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN)
VICE-CHAIRMAN