

O.A. No. 794 of 2005

Order dated: 18.12.2008

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

The applicant, an employee working under the 2nd Respondent as Technical Assistant, Gr.III, having faced with an inquiry under Rule 14 of the CCS(CCA) Rules, 1965 as per the charge sheet issued to him, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the Disciplinary Authority to allow him to engage a Government employee as his defence assistant, as contemplated under sub-rule (8) (a) of Rule 14 of the CCS(CCA) Rules (hereinafter referred to as "CCA Rules").

2. The applicant has taken two grounds before this Tribunal. Firstly, the applicant contends that as the CCS (CCA) Rules have been adopted by the Respondent organization, he has a right to have the assistance of a Government employee, notwithstanding the amendment brought in the year 1983. The second ground urged by the applicant is that since such a stand was taken by the authorities allowing the employee to be defended by a Govt. employee of an outside organization in the case of Shri Nilamani Das, Jr. Stenographer, D&PE Divn., RRL-Bhubaneswar, the petition filed by the applicant for getting such an assistance from an outside officer should not be rejected as it would amount to violation of Article 14 of the Constitution of India.

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3. The brief facts now before this Tribunal for consideration of the case are that after the chargesheet was issued and appointment of the Inquiring Authority, while the inquiry started, the applicant filed Annexure-A/5 petition before the Disciplinary Authority with a copy to the second Respondent requesting that he might be allowed to get the defence assistance as contemplated under sub-rule (8) of Rule 14 by engaging a Govt. servant outside the Institution. This application though was not outrightly rejected, but as per the counter filed on behalf of the Respondents, it is admitted that such petition has been already rejected. This is also a reason for the applicant to approach this Tribunal.

4. We have heard Mr. K.C.Kanungo, Ld. Counsel appearing for the applicant and Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel appearing for the Respondents.

5. Mr. Kanungo, Ld. Counsel for the applicant contended that since the Institution had adopted Rule 14 of the CCS(CCA) Rules, no inquiry should be conducted against an employee of the Institution with certain modification as per the amendment brought to the bye-laws of the Institution in 1983 in as much as such amendment shall not be effected to the bye-law without the permission of the Govt. of India and the change now brought to the said rule is not applicable to the applicant as such a request was allowed by the Institution in the case of Shri Nilamani Das, Jr. Stenographer, D&PE Divn., RRL-Bhubaneswar.

6. To the above argument, Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Respondents, placing reliance on the counter filed by the Respondents and on Annexure-R/2, contended that the Institution, namely, Council of



Scientific and Industrial Research (hereinafter referred to as "CSIR") is empowered to adopt the Rule with any change or as such. The Ld. Counsel contends that since the Society has adopted sub-rule (8) of Rule 14. of the Rules with certain change regarding assistance of a defence counsel, the applicant has to abide by that amendment, being an employee of the Society. Since the Institution adopted the Rule with certain changes with regard to the employees of the Society or Institution, the applicant under that rule has no right to claim that he should be given a treatment outside the said Rule or the bye-laws. Ld. Counsel for the Respondents also submitted that the stand taken in the case of Nilamani Das is an exception and it cannot be taken as a precedent in the matter of inquiry being conducted against any employee of the Institution.

7. On considering the contentions raised on either side and considering the relevant rules and the bye-laws of the Institution, the question to be decided in this case by this Tribunal is whether the prayer of the applicant should be allowed or not ? Admittedly, the applicant is an employee of the Institution and a chargesheet is now served on him and an inquiry is in progress. At the beginning of the inquiry by the Inquiring Officer, the applicant filed Annexure-A/5 petition for getting a defence assistance from outside the Council, i.e., an officer of some other Central Govt. Office, who is well-versed in the service matters. The first contention of the applicant is that the amendment or the adoption with some change in Sub-rule (8) (a) of Rule 14 is without the sanction of the Govt. of India. We do not find any justifiable reason to accept the applicant's contention

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that the sanction of the Government is a must for making any amendment of the existing bye-law or even adopting the existing CCS(CCA) Rules with regard to the inquiry conducted against the employees of the Institution. Be that as it may, sub-rule (8) (a) of Rule 14 of the CCA Rule has been adopted by the Respondent organization and it should be followed by the Institution. In this context, the contention of the Ld. Counsel for the Respondents is that there was no amendment brought to the bye-laws. We are not in a position to understand that adoption of rule cannot be termed as an amendment, but it can be taken as adoption of existing rule with necessary change in its form and contents. It is the adoption of the CCA Rules with necessary change as far as the right of an employee of the Institution to have assistance of an employee during the inquiry is concerned. If so, as we have already held that such amendment requires no sanction of the Central Govt. as the Institution is empowered to make any amendment to the bye-laws. But here the question is whether it is an amendment or adoption with certain changes. We are of the view that even if it is an amendment, it requires no sanction of the Central Govt., as it will not make any change in the provisions of the bye-laws or the intent of the bye-laws. The second question to be answered is whether the applicant is justified in filing Annexure-A/5 application before the Disciplinary Authority in the light of the stand taken by the Disciplinary Authority in the case of Nilamani Das or not ? In this context, the stand taken in the counter affidavit is that the stand taken in the case of Nilamani Das cannot be taken as a precedent. But we are of

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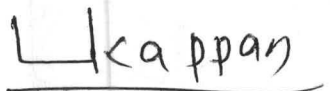
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the view that such a stand should be fortified by reasons and it is the authority to consider whether such a stand can also be taken in the case of the present applicant or not, with a speaking order ^{to} in that effect.

8. In the above circumstances, we are of the view that on the second ground urged by the applicant, this O.A. can be allowed by directing the 1st Respondent to consider Annexure-A/5 afresh within a reasonable time at any rate within 30 days from the date of receipt of a copy of this order and it is also made clear that till such a decision is taken, the continuation of inquiry shall be kept in abeyance and only after taking a decision and conveying the same to the applicant, the inquiry can be re-started. Ordered accordingly.

9. The O.A. is allowed to the extent indicated above. No order as to costs.


MEMBER (A)


MEMBER (J)

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