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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A.NO. 915 of 2005

Cuttack, this the 20th day of January 2010

Sri Brundaban Bihari Khatua .....

Applicant

Vrs.

Union of India and others .....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL  
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Cuttack, this the 20th day of January 2010

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

And

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

.....

Sri Brundaban Bihari Khatua, aged about 65 years, son of late Bisikesan Khatua, At/PO Baragarh, Dist. Baragarh, at present Retired Commandant 2<sup>nd</sup> Battalion, Jharsuguda, At/PO/Dist.Jharsuguda  
..... Applicant

Advocate for the applicant - Mr.S.K.Rath-1

Vrs.

1. Union of India, represented through its Secretary, Ministry of Home Affairs, New Delhi.
2. Principal Secretary to Govt., Home Department, Government of Orissa, Bhubaneswar.
3. Union Public Service Commission represented through its Secretary, Dholpur House, Sahajan Road, New Delhi.....Respondents

Advocates for Respondents - Mr.U.B.Mohapatra, SCGSC  
Mr.A.K.Bose, Government Advocate

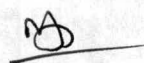
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ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief:

- “i) Quash the order of penalty of 25% cut on pension on permanent basis under Annexure-18



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- and consequently the Departmental Proceeding under Annexure-1;
- ii) Direct the Respondents to sanction full pension and disburse the same along with other retirement benefits to the applicant with interest at the rate of 12% per annum from the date of retention till the date of payment.
  - iii) This Hon'ble Tribunal may be pleased to grant consequential relief in directing Respondents to open the seal cover and promote the applicant from the date immediate junior namely Deba Prasad Das was promoted to the post of D.I.G. & I.G. of Police; and also be pleased to direct them to grant consequential financial benefits and pensionary benefits accordingly in revising the same."

2. The facts leading to filing of this O.A. are as follows:

The applicant is a member of Indian Police Service (IPS). While working as Commandant, OSAP, 1<sup>st</sup> Battalion, Charbatia, he was issued with Memorandum of Charge as per Annexure A/1 dated 29.6.1995 for having misconducted himself in course of his incumbency as Superintendent of Police, Mayurbhanj. However, a fact finding inquiry into the allegations was held and the Inquiry Officer directed the applicant to file written briefs by 11.10.2000. According to the applicant, the proceeding was closed on 24.10.2000. The applicant as per Annexure A/14 submitted his written briefs on 9.11.2000. According to the applicant, there was no further proceeding thereafter. The applicant on 31.10.2000 retired on superannuation. While the matter stood thus, the applicant all on a sudden received Annexure A/15 Memo dated 18.10.2001 wherein he was called upon to explain as to why he should not be suitably punished for his lapses proved during enquiry. The

  
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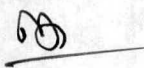
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applicant submitted showcause/explanation as per Annexure A/16 dated 18.11.2001 whereafter the applicant was awarded penalty of 25% cut in his pension on permanent basis by the Ministry of Home Affairs, Government of India's letter dated 19.9.2005 communicated to the applicant through various communications as per Annexures A/17, 17/1 and 18, which are impugned herein.

The grounds urged by the applicant for the relief sought are as under:

- (i) The proceeding has not been initiated as per rules in as much as it was so initiated after lapse of seven years, i.e., on 29.6.1995 against a cause of action which arose in the year 1988.
- (ii) The documents based on which the charges were framed had not been supplied to him.
- (iii) Request for change of Inquiry Officer was not acceded to.
- (iv) There was violation of principles of natural justice.

3. Respondent No.1, the Secretary to Government of India, Ministry of Home Affairs, has filed a counter. The sole point urged by Respondent No.1 is that the applicant has approached this Tribunal without preferring appeal against the punishment order and therefore, the O.A. being not maintainable, is liable to be dismissed.





4. Respondent NO.2 by filing a detailed counter has opposed the prayer of the applicant. It has been stated that the charge memo under Annexure A/1 was issued enclosing the statement of articles of charges and other particulars basing on which the articles of charges were proposed to be sustained. The applicant having requested to supply documents relating to charges, necessary steps were taken to allow the applicant to peruse the relevant documents on which the articles of charges had been framed and if necessary, to take extracts therefrom. The applicant had also communicated as per his letter dated 6.10.1995 to come to the office of the Deputy Secretary and G.A. Vigilance on 11<sup>th</sup> and 12<sup>th</sup> October, 1995, but could not come due to preoccupation and deputed one Manmohan Pattnaik to receive the above documents on his behalf. It has been submitted that since the applicant wanted the documents to be verified by another man, the Department could not be faulted with nor can it be said that there has been violation of the principles of natural justice. However, the balance documents, as evident from Annexure A/6, are stated to have been supplied to the applicant to defend his case. Regarding change of Inquiry Officer, it has been submitted that since there was no valid ground nor was there any disclosure of the nature of prejudice to be caused, the applicant's request in that regard had rightly been turned down. It has been stated that adequate opportunities had been provided to the applicant to defend his



case and there being adherence of rules in every sphere of the proceedings, the punishment as imposed should not be interfered with.

5. By filing a rejoinder, the applicant has made the same submissions as in the O.A. In the matter of procedural irregularities, the applicant has submitted that the disciplinary authority had not supplied the relevant documents nor did he apply its mind as per rules. It has been submitted that non-specification of documents amounts to denial of reasonable opportunity. The applicant has also urged the following points:

- “(i) No opportunity granted to file written statement to charge memo.
- (ii) Appointment of three Enquiry Officers, namely, Dillip Rath, S.K.Pradhan, S.Das never communicated order of appointment.
- (iii) Enquiry Officers not granted adjournment, examined unutilized witnesses, not examined listed witnesses, evidence of witnesses members of selection Committee are totally brushed aside by Enquiry officer.
- (iv) After retirement Enquiry was conducted but no sanction from Union Govt. obtained as per Rule 8 of Pension Rules.”

Besides, the following irregularities have also been urged:

- “(i) Preliminary Enquiry conducted as per guideline No.1. The copy of the report of N.R.Das not supplied nor N.R.Das was examined by the Enquiry Officer. But the report is relied upon.
- (i) The charges as in Annexure 1 dated 29.6.95 never specified documents relied upon nor documents are accompanied.
- (ii) As per guideline No.4 neither Enquiry Officer not conducting officer followed the same. So this Tribunal may verify the records.
- (iii) No document was supplied before Enquiry and also during the enquiry by the conducting officer.



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- (iv) The applicant submitted written defence to enquiry officer before report is prepared on 9.11.2000 (Annexure 14) but no such finding available in the enquiry report."

6. We have heard the learned counsel for the parties and perused the records.

7. On the following allegations the memorandum of charge had been served on the applicant:

- "i) While he was working as S.P., Mayurbhanj, he conducted interview of 123 candidates sponsored by the local Employment Exchange against 35 vacancies for the posts of Constables and 2 posts of Women Constables, but he published a list of 26 selected candidates with 4 candidates in the waiting list on 27.5.88 and he again published another list of 53 candidates on 29.5.88. While evaluating the answer papers, he kept the column for G.K. paper blank and obtained the signature of other Members of the Board on 27.5.88.
- ii) While he selected candidates securing less marks in the first list of 26 candidates, he did not select other candidates securing more marks and subsequently assigned them lower position in the select list.
- iii) He did not follow the rules of reservation, while appointing candidates against 32 vacancies. He also appointed two women candidates as Woman Constables though there was no vacancy.
- iv) On verification of answer papers it was found that some candidates were allowed to answer English papers later, as the ink in some answer papers differed from one question to another.
- v) He appointed the candidates as Constables without sending them to Chief Medical Officer for their medical examination."

8. It is the case of the applicant that as he was not supplied with the documents, he was unable to submit his show-cause/reply to the charge memo and therefore, the inquiry ordered thereafter is bad in law as it violated the principles of natural justice. We have considered this vital

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aspect. Admittedly, the applicant had not been supplied with the documents for the purpose of making a reply to the charge memo. But the fact remains, the Respondents, by ordering enquiry, had extended the scope of defence to prove his innocence and thereby it cannot be said that ordering the said inquiry was prejudicial to the applicant. As regards the change of I.O., we are not convinced that the applicant had urged any valid grounds in that behalf and therefore, rightly his request was turned down. As regards supply of documents, admittedly there was no hesitation on the part of the Respondents and as revealed from the records, it was the applicant, who wanted those documents to be verified, perused and/or received by one Manmohan Pattnaik as his representative. This attitude shows as to how much conscious and careful the applicant was and on that score, even if the documents were not supplied, it was due to the negligence on the part of the applicant. Be that as it may, the applicant had been supplied with rest of the documents as per Annexure A/6, which is not disputed. It is to be noted that although the applicant has stated time and again that documents having not been supplied, the proceeding is vitiated, we are at loss to understand as to what the particulars of those documents which having not been supplied, the principles of natural justice have been violated. Besides, the applicant has nowhere stated as to how he has been prejudiced by the non-supply of those so called documents. Viewed from this, if by non-supply of any

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
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document no prejudice has been caused, it cannot be said that there has been violation of the principles of natural justice.

9. As regards the supply of copy of preliminary enquiry report, we would say that it is not the case of the applicant that based on the preliminary enquiry report, the charges levelled against him have been proved. It is the settled position of law that preliminary enquiry is held only to arrive at a decision as to whether a prima facie case has been made out to initiate disciplinary proceedings against a delinquent. Therefore, by not supplying copy thereof to the applicant, the principle of natural justice cannot be said to have been violated, particularly when the findings therein have not been utilized while conducting a fact finding enquiry.

10. On the point of delay in initiating disciplinary proceedings, the applicant has not produced any document based on which such a right accrues on him. Therefore, the plea of the applicant is baseless. We have gone through Annexure A/14 dated 9.11.2000 written briefs submitted by the applicant against the allegations made in the memorandum of charge dated 29.6.1995 and Annexure A/16 dated 18.11.2001 representation against the findings and report of the Inquiry Officer and proposed penalty with reference to Memo dated 18.10.2001. We are not convinced that the points or grounds urged in the O.A. were urged before the disciplinary authority, extending the scope of consideration of each and every aspect of the matter by the disciplinary authority while exercising

  
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the power of a quasi-judicial authority. In the circumstances, the Tribunal on judicial review is not expected and/or cannot go beyond the scope and extent of the grounds which were not urged by the applicant in Annexure A/16. In other words, in disciplinary matters the Tribunal is to consider such facts and grounds which had been urged before the disciplinary authority or appellate authority, as the case may be, but erroneously considered or left out of consideration. Be that as it may, nowhere the applicant has made out a case that the charges levelled against him are vague, unspecific and based on no evidence. It is also not the case of the applicant either before the disciplinary authority or before the Tribunal that the charges proved against him are based on no evidence, thereby rendering the decision making process vulnerable.

11. In this background, we have also taken into consideration the points urged in the rejoinder as quoted above. In this regard, we are of the view that all those points have been met for the reasons discussed above, while answering all the points in issue in the negative.

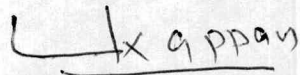
12. We have also gone through the affidavit filed by the applicant which does not throw any light to take a view in favour of the applicant. However, we have gone through the decisions reported in AIR 2007 SC 2860, Bongaigaon Refinery & P.C.Ltd. and others v. Girish Chandra Sarmah, AIR 2006 SC 207, P.V.Mahadevan v. M.D., Tamil Nadu Housing Board, and 102(2006)CLT 606, State of Orissa v. Basanta Kumar Mishra and another, cited by the learned counsel for the applicant

  
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to buttress his contentions regarding liability of the applicant as Chairman of the Selection Committee as well as delay in initiating the disciplinary proceedings against the applicant. As regards the liability of the applicant as Chairman of the Selection Committee, the decision relied on by the applicant in Bongaigaon Refinery's case(supra) is of no avail in view of distinct facts and circumstances of the case. In other words, the facts and circumstances in Bongaigaon Refinery's case(supra) are not similar to the facts and the circumstances of the present case in as much as it has been conclusively proved in the enquiry that it was the applicant in particular who had committed the irregularities in the selection process. As regards the applicability of the decisions in P.V.Mahadevan's case (supra) and Basanta Kumar Mishra's case (supra) to the case in hand in the matter of delay in initiation of disciplinary proceedings, having gone through the said decisions, we are of the view that those decisions emanated from a different context not akin to the present one and therefore, the ratio decidendi laid down therein is not applicable.

13. For the reasons discussed above, the O.A. is dismissed being devoid of merit. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER