

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 916 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

28

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 2nd 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

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J):

Applicant, Shri B.B.Khatua, a retired officer belonging to Indian Police Service has filed this O.A. seeking the following relief:

- “(i) Quash the order of penalty Annexure-15 and consequently the departmental proceeding under Annexure-1.
- (ii) 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. and 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 in brief are that the applicant, while working as Commandant, 2nd Battalion, Jharsuguda, was served with a Memorandum of Charge as per Annexure-1 dated 14.10.1999 alleging certain misconducts to have been committed during his incumbency as Commandant, O.S.A.P., Ist BN., Charbatia. In reply thereto, the applicant as per Annexure-A/2 dated 21.12.1999 requested the Principal Secretary to Home Dept., Govt. of Orissa to allow him to explain the facts personally before the Government and for dropping the charges. Be that as it may, the applicant



retired from service w.e.f. 31.10.2000 and the inquiry officer having been appointed, the applicant as per Annexure-A/3 dated 9.2.2001, requested for supply of the referred documents for preparation of defence. While the matter stood thus, as per order dated 22.02.2001, the Government of Orissa again appointed another Inquiry Officer under Rule 8(2) of All India Services (D&A) Rules, 1969 and also the Presenting Officer as per order dated 4.10.2000. Again as per order dated 31.5.2001 (Annexure-A/5) the formerly appointed I.O. was reappointed, who conducted the inquiry and submitted its report dated 4.1.2002 holding the charges proved (Annexure-11/1). The applicant on being asked to show cause against the proposed punishment as well as written explanation to inquiry report, as per Annexure-A/12 dated 3.4.02 made his written submission. However, the applicant has been awarded the punishment of 10% cut in pension for a period of 5 years as per Annexure-A/15 dated 19.09.2005, which is impugned herein and sought to be quashed.

3. Per contra, the Union of India (Res.1) and State of Orissa (Res.2) have filed separate counters justifying their action. Submitting that there has been no violation of the principles of natural justice and that the charges levelled against the applicant having been proved after affording all reasonable opportunities, the

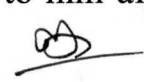


O.A. is devoid of merit and therefore, the same is liable to be dismissed.

4. The applicant has filed rejoinder to the counter and also note of submission. In the written note of submission the applicant has assailed that the proceeding against him is vitiated on the ground of non-supply of exhibited documents; non-examination of Defence Witnesses (D.Ws.), delay of four years in initiating proceedings, etc. The applicant has submitted that there has been no financial irregularity committed by him nor the charges levelled amount to gross misconduct. The applicant has also submitted that there has been no sanction of the Govt. of India for conducting the proceedings after the retirement of the applicant.

5. We have heard Shri S.K.Rath-1, Ld. Counsel for the applicant, Shri U.B.Mohapatra, Ld. Sr. Standing Counsel for the Union of India and Shri A.K.Bose, Ld. Govt. Advocate for the State of Orissa and perused the materials on record.

6. The main relief sought by the applicant, as quoted above, is to quash the charge sheet at Annexure-A/1 and the penalty under Annexure-A/15. So far as quashing of Memorandum of charges is concerned, it is to be noted that the applicant has nowhere stated that the charges levelled against him are vague, unspecific and/or indefinite. But the applicant has taken a plea that the charges were framed and issued to him after four years of the



32 ✓ date of occurrence of the alleged misconduct. The learned counsel for the applicant has cited AIR 2006 SC 207, P.V.Mahadevan v. M.D., Tamil Nadu Housing Board in support of his contention that since there has been delay in initiating departmental proceedings against the applicant, the proceedings so initiated are vitiated. It is the case of the Respondents that there is no legal bar in initiating proceedings after lapse of four years. This has not been refuted by the applicant by citing any instruction issued by the Government putting an embargo on the initiation of disciplinary proceedings after four years of the date of occurrence of any misconduct. As revealed from the records, the applicant in his reply (Annexure-A/2) dated 21.12.1999 to the Office Memorandum has never agitated anything about the so called delay in initiating proceedings nor has he ever stated therein that the charges are vague, ambiguous or unspecific, before the competent authority who is the best judge in the matter. Viewed from this, the prayer of the applicant for quashing the Memorandum of charges at Annexure-A/1 is devoid of merit. The facts and circumstances in P.V.Mahadevan's case (supra) before the Hon'ble Apex Court were that there was delay of ten years in initiating disciplinary proceedings against the appellant from the date of alleged lapses. But here is a case where the departmental proceedings have been initiated against the applicant four or five years of the date of

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1037
alleged misconduct committed by the applicant. The applicant has not been able to establish before us that for the aforesaid delay he has been prejudiced in any manner. There being no inordinate delay in initiating the proceedings against the applicant herein, we are of the view that the ratio decidendi laid down in P.V.Mahadevan's case (supra) is not applicable.

7. As regards the prayer for quashing the order imposing penalty on him as per Annexure-A/15, it would be profitable to quote hereunder the Articles of charges levelled against the applicant.

“Shri B.B.Khatua, IPS while posted as commandant, O.S.A.P., Ist BN., Charbatia from 7.8.91 to 29.02.96, changed the date of birth of Jamadar, Suresh Chandra Mohanty, S/o Gunanidhi Mohanty from 1.7.1939 as properly recorded in Service Book to 7.4.1940 by issuing Battalion Order No. 480, dt. 18.4.1995 without approval of Government. As per the Government orders, the change of date of birth was beyond his power as Commandant, as it needed prior approval of the government. Moreover, change of the date of birth of any employee on the verge of retirement is prohibited as per existing Government orders. As a result of this misconduct on the part of Shri B.B.Khatua, IPS, the said Jamadar Suresh Ch. Mohanty, S/o Gunanidhi Mohanty continued in Government service for six months beyond the age of superannuation and the Government has been defrauded of an amount equivalent to the dues Shri Suresh Chandra Mohanty has already got and likely to get in future.

Thus Shri Khatua has acted in a most irresponsible manner and his conduct is highly suspicious.”



3

The applicant submitted his explanation to the Memorandum of charge, which, however, having not been acceded to by the Govt., an inquiry was conducted and the inquiring officer submitted its report holding the charges proved. The applicant having been asked to submit his defence statement to the report of the I.O., he did file the same, in consideration of which the Disciplinary Authority, i.e. President of India, imposed punishment of 10% cut in pension for a period of five years as per Annexure-A/15, which is impugned herein.

8. It is the settled principle of law that the scope of interference by the Court/Tribunal in the matter of disciplinary proceeding is very limited. The Court/Tribunal can interfere with the matter only when the conclusion arrived at is perverse or based on no evidence or the proceedings suffer from principles of natural justice. Although the applicant in the O.A., rejoinder and note of arguments has alleged the proceedings conducted by the departmental authorities is in violation of the principles of natural justice as the delinquent had not been afforded reasonable opportunity to defend his case, but all those matters, in the first instance, should have been agitated before the Disciplinary Authority. We find from the written statement of defence that the applicant has not raised any of the points, which he has urged in the present O.A., before the Disciplinary Authority, who is the best



judge in the matter. The Tribunal, while sitting on judicial review of the decision made by the Disciplinary Authority, who is a quasi judicial authority, is expected to see as to whether the points which were urged by the delinquent have been duly considered and in the circumstances, the applicant should not have brought those facts in the O.A. which were not within the magnitude of consideration by the Disciplinary Authority. This apart, we find that it is not a case of no evidence nor the decision making process is wrong needing interference by the Tribunal.

9. In the result, the O.A. is dismissed. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)