

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 402 OF 2006

Cuttack, this the 6th day of August, 2009

Surendra Kumar Verma Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

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

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

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Sri Surendra Kumar Verma, aged about 40 years, S/o-Purna Singh Verma, Indra Nagar, Second lane, New Mukti School, At/P.O.- Similiguda, Dist-Koraput. **Applicant**

By the Advocate(s)..... M/s. D.P. Dhalsamanta,
P.K. Behera,
Vs.

1. Union of India represented thorough its Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-110 001.
2. Director, Central Soil & Water Conservation Research & Training Institute, 218, Kaulagarh Road, Dehradun, Uttaranchal-248195
3. Head of Centre, Central Soil & Water Conservation Research & Training Institute, Research Centre, Datia, Madhya Pradesh-475661.

..... **Respondents**

By the Advocate(s)..... Mr. S.B. Jena

O R D E R

(ORAL)

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

The applicant challenges the punishment order dated 01.10.01 (Annexure-A/4) by which his pay has been reduced to lower stage of Rs.4100/- in the pay scale of Rs.4000-100-6000/-. The said order has also been confirmed by the

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appellate authority. Hence, he has prayed in the O.A. as follows:-

- “(8.1) That the Charge-sheet dated 10/11.08.1999 (Annexure-A/1) be quashed.
- (8.2) That the order of punishment dated 01.10.2001 (Annexure-A/4) and the order dt.30.03.05 of the Appellate Authority (Annexure-A/8) be quashed.
- (8.3) That any other order/orders as deemed fit and proper be passed to give complete relief to the applicant.”

2. The material facts, which are relevant for consideration of this O.A., are as follows:-

While working as T-2 Overseer under the Central Soil & Water Conservation Research & Training Institute, the applicant was served with a Charge Memo dated 10/11.08.03.1999 (Annexue-A/1) alleging that he committed misconduct under Rule 3(iii) of the CCS Conduct Rule, 1964. On receipt of the charge memo, the applicant filed a written statement denying the allegations leveled against him. Therefore, an inquiry was conducted by the Inquiry Officer who submitted the report holding the charges as proved. Accepting the said inquiry report, the Disciplinary Authority passed an order of penalty of reducing the pay of the applicant to a lower stage. Against the said order, the applicant also filed an appeal before the Appellate Authority. The Appellate Authority considered the appeal and rejected the appeal confirming the order passed by the Disciplinary Authority. However, the applicant filed O.A. No.862/04 before this Tribunal

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challenging the appellate order as well as the order passed by the Disciplinary Authority. On hearing the O.A., as per the order dated 26.10.04 this Tribunal by setting aside the appellate order, directed the Appellate Authority to consider the appeal of the applicant on merit, notwithstanding the delay, and pass a reasoned and speaking order within a specified time. Thereafter, the present appellate order has been passed by the Appellate Authority. Under the above circumstances, the applicant filed this present O.A. challenging both the punishment order as well as the appellate order.

3. The O.A. has been admitted by this Tribunal and notice has been ordered. Consequent upon receipt of the notice from this Tribunal, a counter has already been filed for and on behalf of the Respondents. The stand taken in the reply statement is that as the applicant has committed the misconduct alleged against him as per charge memo, the order passed by the Disciplinary Authority is justified and the Inquiry Officer has considered all the evidence in extenso and come to the conclusion that all the charges levelled against the applicant have been proved. It is also the stand taken in the reply statement that the Appellate Authority has also considered the order passed by this Tribunal even after the remand made by this Tribunal and confirmed the order and it requires no interference of the Tribunal at all.

4. Heard Mr. D.P. Dhalsamant, Ld. Counsel for the applicant, Mr. S.B. Jena, ld. Counsel for the Respondents and perused the materials placed on record.

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5. The main contentions now raised by the applicant are as follows:-

(a) The charges levelled against the applicant are vague and hence the charge memo itself has to be quashed by the Tribunal.

(b) The Inquiry Officer has not considered the evidence adduced before him in its true perspective and the conclusion arrived at by him is based on his surmises and not based on any material evidence. Apart from that, the Inquiry Officer has not examined the real victims of the alleged misdeeds of the applicant to prove the charge levelled against him.

(C) The Disciplinary Authority also has not considered the evidence accepted by the Inquiry Officer. Reading of the order passed by the Disciplinary Authority would show that Disciplinary Authority has not gone into the findings entered by the Inquiry Officer and has also not applied its mind to come to the conclusion that the applicant has committed the misconduct alleged against him.

6. In reply to the above contentions, the Ld. Counsel for the Respondents, relying on the reply statement, submits that the inquiry has been conducted by the Inquiry Officer after following the principles of natural justice and there is no violation of any rules regarding procedures of inquiry. Hence the contentions raised by the applicant are not tenable.

7. On our anxious consideration of the contentions raised by the Ld. Counsel on either side and on perusal of the

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records, we have to decide whether the contentions raised by the applicant are tenable or not. Before we take a view on this question, we have to consider the charge memo first. As per Annexure-A/1 charge memo dated 10.08.99 it is alleged as follows:-

"Article-I"

- a) That the said Shri Surendra Kumar, T-2 (Overseer) while functioning official duty in CS&WCR&TI, Research centre, Dattia on 09.12.1998 abused Miss. Kirti Rathore in obnoxious language in office premises and threatened Miss Rathore to withdraw complaint against him (Exhibit No.1, 1(a)).
- b) On 4.12.1998 Shri Surendra Kumar abused and threatened Shri Tridev Chaturvedi, LDC (Exhibit No.1(b))

Thus he is charged for violating CCS Conduct Rule, 1964, Rule 3 (iii)

Article-II

- a) While functioning as T-2 (Overseer) in aforesaid office, Shri Surendra Kumar displayed utter disdain to the orders of his superiors (Exhibit No.2, 2(a) & 2 (b)).
- b) On 05.11.98 left headquarters without prior permission of competent authority for attending the main office (Exhibit No.2-c).
- c) Lacking punctuality towards his duties (Exhibit No.2(d) to 2(f)).

Thus he is charged for violating CCS Conduct Rule, 1964, Rule 3 (iii)

Article-III

While functioning as T-2 (Overseer) in aforesaid office, Shri Surendra Kumar made false complaint with the ulterior motive for

shifting his headquarters from Bajru Watershed to main office (Exhibit No.3, 3(a) to 3(c))

Thus he is charged with the violating of CCS Conduct Rule, 1964, Rule as under:

- a) He acted unbecoming of Govt. Servant Rule 3(iii)
- b) His act/conduct is prejudicial to the reputation of the master.
- c) The act/conduct of the servant makes it unsafe for the employees to retain him in service
- d) The servant is abusive and he disturbed the peace at the place of his employment/office.
- e) According to recent guidelines of Supreme Court the act as per article-1 amounts to harassment of lady employees."

It is also to be noted that as per the statement of imputation of misconduct in support of the articles of charge, the following allegations have been levelled against the applicant:-

" a) On the same day i.e. 09.12.98 at about 2.00 p.m. (Exhibit No.1) when Miss Kirti Rathore, Jr. Stenographer was passing in front of office Shri Surendra Kumar who was standing in sunshine abused her with very vulgar, filthy and unparliamentarily language. This amounts to harassing a woman worker in a working place. This is in contravention of the guidelines prescribed by the Supreme Court in Vishaka and others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384). Apart from this, to cover up his mistake he marked his attendance in Bajni Watershee. Shri Surendra Kumar alongwith a local advocate visited the residence of Miss Kirti Rathore on 22.12.98 at about 8.30 P.M. (Exhibit No.1(a) and threatened her with dire consequences if she does not withdraw the

complaint. This threatening was given by him in front of her brother.

- b) That during the aforesaid period and while functioning as T-2 (Overseer in the aforesaid office, the said Shri Surendra Kumar stopped Shri Tridev Chaturvedi, LDC on 04.12.98 at about 19.15 hours (Exhibit No.1 (b) near Gugoria Dharmshala, Bihariji Road, Datia while going home and abused and used filthy and unparliamentary language and drawn the name of Dr. Sharma, Sh. Nair and Miss Kirti Rathore
- c) He also threatened Shri Tridev Chaturvedi that he will implicate him in false case under Harijan Act. This resulted in Sh. Tridev chaturvedi lodging a complaint with the Superintendent of Police, Datia, a copy of which was endorsed to the Head, Central Soil & Water Conservation Research & Training Institute, Research Centre, Datia.

Thus he is charged for violating CCS Conduct Rule, 1964, Rule 3 (iii)."

A reading of the above charges and the imputation of misconduct would show that the charge itself is not clear as to in what way or what is the real intention of the officer of the Department to give such a charge against the applicant. There is no allegation against the applicant in the charge memo that he has committed such misconduct alleged against him even though it is stated in the charge that on 09.12.98 he abused one Miss Kirti Rathore in obnoxious language. The 2nd charge against the applicant is that on 05.11.98 the applicant left Headquarters without prior permission of the competent authority, and the 3rd charge is to the effect that the applicant

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made false complaint with ulterior motive for shifting his Headquarters from Bajni watershed to Main Office. After going through the entire charge, we are not in a position to find out the exact allegation or motive against the applicant. That apart, with the above charge, the Inquiry Officer was actually confused as to how could the evidence be taken. In this context, it has to be noted that none of the victims, who are alleged to have been rebuked in obnoxious language and threatened by the applicant, has been examined in the inquiry. It may not be necessary to examine such witnesses if they have given signed statements and such statements are proved during the enquiry. As per the judgements of the Hon'ble Supreme Court, it is very clear that if an allegation is against a lady, it is very important to examine the woman in the inquiry to prove that actually she was annoyed by the use of any such word or gesture. In the above circumstances, the non-examination of the victim lady has vitiated the inquiry report. It is also to be noted that though the Inquiry Officer relied on certain documents, each such document would only show the presence of the applicant in the office at the relevant time. The alleged complaint filed by Miss Kirti Rathore was relied on by the Inquiry Officer without examining her in the inquiry. In this context, it is also to be noted that though it is not necessary to reproduce the words or the language, filthy or otherwise, used by the applicant, yet it should be proved by the victim. In the circumstances, we are of the view that the

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charge itself is a vague and it cannot be considered a charge at all.

8. With regard to the inquiry report, we are of the view that the Inquiry Officer has not considered the evidence properly. The Inquiry Officer, only after reading the charge only, came to the conclusion that "the benefit of doubt goes in favour of Miss Rathore as Shri Surendra Kumar was present and might have uttered obnoxious language/ abused to Miss Kirti Rathore". Apart from that, the Disciplinary Authority come to the conclusion at Paragraph (c) as follows:-

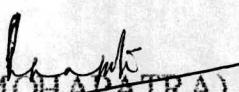
"On the basis of the examination available documents, it was found that Shri Surendra Kumar was not maintaining punctuality as he was marked absent by the officers during their visits."

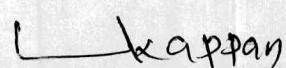
9. This conclusion is also not based on any charge except some vague allegation in Charge No.2. Further, it is to be seen that the Inquiry Officer came to a definite conclusion that the applicant was not at all interested to work and he was making false complaints, one after another, to get his place of duty changed from Bajni Watershed to Main office. This is based on extraneous consideration and not based on real charge against him. In the above circumstances and in view of the discussion made above, we are convinced that the inquiry report has to be quashed by this Tribunal with regard to the findings entered by the Disciplinary Authority. The Disciplinary Authority has not considered the representation of the applicant in full length. It is clear from Annexure-A/5 that the

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Disciplinary authority has simply accepted the inquiry report made by the Inquiry Officer. We have already held that the Inquiry Report cannot ^bacted upon and hence the same is liable to be quashed. We accordingly quash the inquiry report also. In the light of the discussion made above, we are of the view that both the charge memo as well as the orders passed by the Disciplinary Authority and Appellate Authority have to be quashed by this Tribunal. We are doing so. However, taking into consideration the written statement of defence filed by the applicant and the stand~~s~~ taken by him therein and the allegations made against the applicant, we are not holding that the applicant is free from any allegation. If so, we are directing the Respondents to frame a fresh charge on the basis of the complaint filed by Miss. Kirti Rathore and in other matters. In the light of the above findings, we are also directing the Respondents to complete the proceedings within a reasonable time, at any rate within six months of the receipt of the copy of this order. Ordered accordingly. The O.A. is allowed to the extent indicated above. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER