

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 708 OF 2006

Cuttack, this the 09th day of September, 2009

Prafulla Chandra Mishra Applicants
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

✓

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOs. 708 OF 2006

Cuttack, this the ~~9th~~ day of ~~September~~ 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

Prafulla Chandra Mishra aged about 58 years, S/o-late
Somanath Mishra, permanent resident of Village/P.O/P.S.-
Saranakul, Dist-Nayagarh. Applicant

By the Advocate(s) M/s. Rajeet Roy,
S.K. Singh,

Vs.

1. Union of India represented thorough its Secretary, Ministry
of Home Affairs, North Block, New Delhi.
2. State of Orissa, represented by Principal Secretary, Home
Department, Orissa Secretariat, Bhubaneswar, Dist-Khurda.

..... Respondents

By the Advocate(s)..... Mr. U.B. Mohapatra, Sr. CGSC
Mr. A.K. Bose, Counsel for State Govt.

O R D E R

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

Challenging Memorandum of Charges dated
30.06.06 (Annexure-A/3) issued to the applicant, an IPS Officer
of the Orissa Cadre, this Original Application has been filed
with the following prayers:-

- “ i) Issue notice to the Respondents.
- ii) Call for the entire record of the departmental
proceeding.
- iii) Quash the Memorandum of charges under
Annexure-A/3.

✓

2. This O.A. has been admitted and notice issued to the Respondents. In response to the notice, a counter reply has been filed for and on behalf of the Respondents, opposing the prayer of the applicant.

3. The facts in brief, according to applicant, are that while working as Special Principal Secretary to Government, Home Department, Government of Orissa, Bhubaneswar he was served with Charges as per Memorandum No.27206/IPS dated 30.06.2006 (Annexure-A/3) in contemplation of initiation of disciplinary proceedings against him. As per the Memorandum, the imputations of misconduct or misbehaviour attributed pertain to the period of his having worked in the capacity of Additional Director General of Police, Special Armed Police, Cuttack. The charges so framed against the applicant are as under:-

"ARTICLE-I

He was nominated as Chairman of the Selection Board, formed for recruitment of Sepoys in the Orissa Special Armed Police, 3rd Battalion, Koraput, which was held at the OSAP 3rd Battalion premises, Koraput during 2001-2002. Shri Prasant Kumar Mohapatra, OPS, the then Commandant, OSAP 3rd Battalion, Koraput, Shri P.S. Ranpise, IPS, the then Superintendent of Police Koraput and Shri M. Garad, the then District Welfare Officer, Koraput were the other three Members of the Selection Board. He acted as such from 16.11.2001 to 26.12.2001. "Interview" was part of the process of evaluation of the suitability of candidates. One of the components of "Interview" was Extra curricular activities" which included awarding marks for

00

“Sports Achievements”. He awarded marks to at least four candidates, all belonging to SEBC category, for “Sports Achievements”, which one of them had. He gave to them all the false marks. All of them have admitted that neither did they possess any Sports Certificate nor produce one at the time of “Interview”. He showed blatant favouritism to them.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoined under Rule-3(1) (2) of AIS (Conduct) Rules, 1968.

ARTICLE-II

That, Shri P.C. Mishra, IPS awarded marks dishonestly for “Sports Achievements” to at least 34 candidates by entertaining ineligible sports achievement Certificates. Such Certificates were entertained to ensure their selection and appointment in an unfair manner.

Thus, he had grossly misconducted himself by not maintaining absolute integrity and devotion to duty as enjoyed under Rule 3(1) (2) of AIS (Conduct) Rules, 1968.

ARTICLE-III

That, in the course of recruitment Shri P.C. Mishra, IPS, being the Chairman of the Selection Board, in connivance with Shri P.K. Mohapatra, OPS, the then Commandant & a Member of Board and the custodian of all the documents of recruitment, dishonestly manipulated the original marks awarded to different candidates under different Columns of the Board Sheet Register and intentionally inflated those marks in respect of as many as 11 favoured candidates to ensure their selection and appointment in the Battalion.

Thus, he had grossly misconducted himself by not maintaining absolute integrity

AO

and devotion to duty as enjoined under Rule 3(1)(2) of AIS (Conduct) Rules, 1968.

4. It is the case of the applicant that the subject matter of charge memo originated out of the FIR lodged by the Deputy Superintendent of Police, Vigilance Cell before the S.P. Vigilance, Cuttack which was registered as vigilance P.S. Case No.26 dated 20.05.2003 (Annexure-A/1). The applicant having preferred Criminal Misc. Case No.1365 of 2003, the Hon'ble High Court of Orissa u/s.482 of Criminal Procedure Code for quashing the said FIR, the Hon'ble High Court of Orissa, as per order dated 12.09.2003 directed "no coercive action shall be taken against the petitioner without prior permission of this Court", (Annexure-A/2). Based on this, the applicant has submitted that the Memorandum of Charge at Annexure-A/3 is against the order of the Hon'ble High Court.

5. The applicant has relied on Rule-3(1)(2) of AIS (Conduct) Rules, 1968 which reads as under :-

"3.General-(1) Every member of service shall at all times, maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service.

(2)-A. Every member of the service shall in discharge of this duties act in a courteous manner and shall not adopt dilatory tactics in his dealing with the public or otherwise".

6. Having regard to the above, the applicant has submitted that the allegations contained in Memorandum of Charge do not attribute about the discharge of duties in a



discourteous manner nor adoption of any dilatory tactics which dealing with the public or otherwise and therefore, provision of Rule -3(2) of AIS (Conduct) Rules, 1968 is not attracted.

7. The applicant has next submitted that the allegations leveled against him are not only vague, unspecific and indefinite, but also evasive and unfounded as those do not disclose clearly and definitely the nature of such allegations by pin-pointing to the misconduct on the part of the applicant.

8. Finally, the applicant, relying on the decision of the Hon'ble Supreme Court, stated that the disciplinary proceedings based on identical allegations with the same set of witness involving complicated question of law and facts should be stayed, besides, the issuance of Annexure-A/3 amounts to double jeopardy, as the disclosure of his evidence in the disciplinary proceedings will seriously prejudice his case in the criminal case.

With these submission, the applicant has sought for the relief, as referred to earlier.

10. Respondents Nos. 1 & 2 have filed their counter separately, opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

11. Heard Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Union of India and Mr. A.K. Boase, Ld. Counsel for the State of Orissa and perused the records.

12. Before considering the matter on merit, it is necessary, to examine as to whether the applicant could be said



"a Person Aggrieved" within the meaning of Section 19 of the A.T. Act, 1985, which, for the sake of convenience is quoted hereunder:-

"Section 19. Applications to Tribunals.- (1)
Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievances.

EXPLANATION.- For the purposes of this sub-section, "order" means an order made-

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any Corporation (or Society) owned or controlled by the Government; or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation (or a Society) referred to in Clause (a)."

13. Having regard to the above two ingredients, we are constrained to hold that the Memorandum of charge at Annexure-A/3 is not an order as such, nor by its issuance prejudice has been caused to the applicant nor the applicant could be said 'a person aggrieved', within the meaning and definition of Section 19 of the AT ACT, 1985. Apart from the above, we find from the records that the applicant, within a two months of issuance of Memorandum of charge (Annexure-A/3) has moved this Tribunal, in a cut and dry method, without



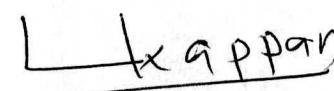
replying thereto, although in Para-5 of this O.A. he has stated to have availed of all the remedies available to him under the relevant service rules. Be that as it may it was incumbent on the part of the applicant to have agitated all those points which he has urged in the present O.A., in response to Memorandum of charge (Annexure-A/3) before the Respondent – Department for their appreciation, who are the best judge in the matter and in the event his grievance having not been redressed, he should have approached this Tribunal. The scope of interference by the Tribunal in the matter of disciplinary proceedings is very limited. The Tribunal can interfere with such matters only when the charges are vague, unspecific and ambiguous or the disciplinary proceedings suffer from any infirmity and/or violation of principles of natural justice or the conclusion arrived at by the Disciplinary Authority is perverse and based on no evidence and/or the decision making process is wrong. Although, the applicant has made a point that the charges leveled against him are vague and unspecific requiring interference by this Tribunal, but as indicated above, he should have agitated this point before the authorities in the first instance before the Department. Having not done so, the applicant has approached this Tribunal directly and unhesitatingly. Last but not the least, we would like to record that as per submission made by the applicant if by the issuance of Annexure-A/3 any coercive action has been taken against him by the Respondents in violation of the order of the

8/

Hon'ble High Court, the applicant, is not remediless to take appropriate follow up action in that behalf.

14. For the reasons stated above, we are not inclined, to go into the points raised by the Respondents in their counters, as it would be a futile exercise and in the circumstances, we hold that the Original Application in its present form is not maintainable and accordingly, the same is dismissed. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER