

9
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.852 OF 2002
Cuttack this the 20th day of Dec./2004


Sunakar Pala ... Applicant(s)


- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? x
2. Whether it be circulated to all the Benches of
the Central Administrative Tribunal or not ? x


(J.K.KAUSHIK)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE_CHAIRMAN

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 852 OF 2002
Cuttack this the 20th day of Dec./2004

CORAM;

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI J.K.KAUSHIK, MEMBER(JUDICIAL)
...

Sunakar Pala, 59 years,
Son of late Mani Pala
Vill: Era, PO-Purusottampur
Kendrapara

... Petitioner

By the Advocates

M/s.A.K.Mishra
J.Sengupta
PRJ Dash
D.K.Panda
G.Sinha

- VERSUS -

1. Union of India represented through its
Director, Ministry of Communications,
Department of Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle,
Bhubaneswar
3. Senior Superintendent of R.M.S. 'N' Division,
Cuttack
4. Director of Postal Services, HQ,
Region, Bhubaneswar

... Respondents

By the Advocates

Mr.U.B.Mohapatra, SSC

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, Shri Sunakar Pala (applicant) has challenged the action of the Respondents-Department in not accepting his representation with regard to voluntary retirement from service and for initiation of major penalty proceeding against him on 10.9.2002.

2. It is the case of the applicant that while
- 2

working as Sorting Assistant, H.S.G. I in R.M.S. 'N' Division, Cuttack, he submitted an application dated 14.6.2002 seeking voluntary retirement from service under Rule-48-A of C.C.S.(Pension) Rules. The Superintendent of R.M.S. being the disciplinary authority and immediate controlling authority had recommended the case of the applicant for favour of consideration in so far as his application for voluntary retirement from service under Rule-48-A of CCS(Pension) Rules is concerned. It has been submitted by the applicant that instead of allowing him to retire voluntarily from service, on 28.6.2002, a disciplinary proceeding under Rule-16 of CCS(CCA) Rules, 1965 was initiated against him. While the matter stood thus, Respondent No.3 vide his letter dated 27.8.2002 stated to have dropped the charge-sheet dated 28.6.2002 and at the same time, in the said letter, he pointed out that the serving of charge-sheet under Rule-14 of CCS(CCA) Rules, 1965 on the applicant was under active consideration. Needless to say that on 2.3.2002, the Assistant Director(Staff), office of Respondent No. 2 made a communication directing Res. 3 to serve a charge-sheet under Rule-14 of CCS(CCA) Rules on the applicant under intimation to that office, as a result of which the charge memo dated 10.9.2002(Annexure-10) was served on the applicant. In the time between, by his letter dated 9.9.2002, Res. No.3 had rejected the application of the applicant for voluntary retirement.

3. The contention of the applicant is that while the disciplinary authority is empowered, an

2

consideration of written statement submitted by a charged official to drop the disciplinary proceeding at any stage, it is not open to the higher authority and/or the appellate authority to give any direction to the disciplinary authority in the matter of initiation of disciplinary action; and in this case, the appellate authority, by giving direction to the disciplinary authority to initiate disciplinary action against the applicant under Rule-14 of CCS(CCA) Rules had acted beyond his power and jurisdiction and in the circumstances, the order passed by the appellate authority being illegal and without any authority is liable to be quashed. The learned counsel for the applicant further submitted that such a direction as issued by the appellate authority is violative of the provisions of Rule-13 of CCS(CCA) Rules and accordingly, he prayed before the Tribunal to quash the charges framed against the applicant under Annexure-10 to the O.A. being non est in the eye of law.

4. The Respondents-Department have opposed the prayer of the applicant by filing their counter in detail.

5. We have heard Shri J. Senguta^b, learned counsel for the applicant and Shri U.B. Mohapatra, learned Senior Standing Counsel appearing on behalf of the Respondents and perused the materials placed before us.

6. It reveals from the record that there has been no denial of the fact that the disciplinary authority, i.e., Res. No.3 had passed the following order dated 27.8.2002, which reads as under :-



" Sub : Voluntary retirement case of
Shri Sunaka Pala HSA(HSG-I)
HRO RMS 'N' Division, Cuttack.

Ref: Circle Office letter no.ST/32-
9/99(A) dated 22.8.2002.

In view of instructions contained in
vide Circle Office letter no.ST/32-9/99(A)
dtd. 30.7.2000 charge sheet under Rule-16
issued against Shri Sunakar Pala, HSA(HSG-I)
RMS 'N' Division, Cuttack is being dropped
and formation of charge sheet under Rule-14
is in active process".

7. In his order dated 27.8.2002(Annexure-6), the
disciplinary authority had clearly indicated that he had
taken a decision to drop the charge-sheet framed against
the applicant under Rule-16 of CCS(CCA) Rules at the behest
of the office of Res. No.2. He has also further indicated
that the said Res.2 had also given him direction to
initiate disciplinary proceeding against the applicant
under Rule-14 of CCS(CCA) Rules.

We have also gone through the letter dated
2.9.2002 issued by the Office of Respondent No.2 vide
Annexure-7 to the Original Application, the gist of which
is reproduced below for the sake of clarity.

" I am directed to intimate that
fresh charge-sheet under Rule-14 of CCS(CCA)
Rules-165 as ordered earlier may be served
to the official immediately under intimation
to this office".

8. From this, it would appear that the decision
to drop the charge-sheet under Rule-16 of CCS(CCA) Rules,
the decision to initiate action under Rule-14 of CCS(CCA)
Rules and also the framing of the charges were all
monitored in the office of Respondent No.2, who is the
appellate authority in so far as applicant is concerned.

From the above chronology of events, we

9

are convinced that there is lot of substance in the contentions of the learned counsel for the applicant that the appellate authority did not act within his power, jurisdiction and authority. In this connection, a reference to Rule-27 (2) of CCS(CCA) Rules ~~will~~ be germane to the issue. Under the proviso to Rule-27 (2) it is laid down that " the appellate authority may pass orders confirming/enhancing/reducing/setting aside the penalty. In the instant case, if it was a case of enhancing the penalty, the said appellate authority itself should have held an inquiry under Rule-14 of CCS(CCA) Rules and/or direct such inquiry to be conducted in accordance with the ~~provisions~~ of Rule-14 and thereafter, in consideration of the proceedings of such inquiry and the written statement submitted by the applicant in that behalf could have passed such orders as he would deem fit and proper. In this case, no order enhancing the penalty was passed. In the counter, it has been disclosed ~~that~~ the appellate authority, while considering the matter had come to the conclusion that the gravity of offence committed by the applicant called for disciplinary proceeding under Rule-14 of CCS(CCA) Rules. But no such power has been conferred on the appellate authority under Rule-27 of the CCS(CCA) Rules to derive such a conclusion. In other words, we would like to observe that the appellate authority and/or the authority ~~higher~~ to the disciplinary authority lacks a jurisdiction to intervene in the matter of disciplinary proceedings ~~at~~ its threshold, as has been done herein.


4

To add to this, we would say that if certain disciplinary proceeding is initiated at the dictate of the appellate authority, it would cut across the canons of law laid down in this regard.

Having regard to the facts and circumstances of the case and the rule position governing the field, we have no hesitation to hold that the initiation of the disciplinary proceeding against the applicant vide memorandum dated 10.9.2002 (Annexure-10) is without jurisdiction; and accordingly, the same is quashed/ set aside.

During the oral hearing, we were apprised that in the meantime the applicant has already retired on superannuation from service with effect from January, 2003. Rule-16 proceedings against the applicant has also been dropped by the disciplinary authority by his order dated 27.8.2002. The disciplinary proceeding initiated against the applicant vide Annexure-10 having been stayed by this Tribunal vide our order dated 27.9.2002, it is deemed that no disciplinary case was pending against him at the time of his retirement on superannuation. In the circumstances, all retiral benefits in respect of the applicant be settled accordingly.

The O.A. is disposed of as above. No costs.


(J.K. KAUSHIK)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN 21/11

BJY