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O.A.NO. 01 OF 2007

Order dated 25th January 2007

The case of the applicant is that she joined the office of the Accountant General (A&E), Orissa, Bhubaneswar, in the post of Clerk on 20.01.1989 and was promoted to the grade of Accountant on 29.09.1995. She was served with article of charge on 02.09.2002 by Respondent No.3, the disciplinary authority, under Rule 14 of the Central Civil Services (CCA) Rules, 1965 (hereinafter referred to as the 'CCA Rules'), with the imputation that she had applied to the Staff Selection Commission, got selected and appointed as a Clerk in the Scheduled Caste candidature on the basis of a Scheduled Caste Certificate obtained by her on false declaration and that the said Certificate having been cancelled by the issuing authority and the appeal preferred by the applicant having been dismissed by the appellate court, the applicant was stated to have wrongly secured the appointment against a post reserved for Scheduled Caste community thereby violating Rule 3(1)(i) and (iii) of the Central Civil Service (Conduct) Rules, 1964. The enquiry was conducted and the applicant took part in the same. The Inquiry Officer, on analysis of the materials collected during the enquiry, submitted his report on 27.3.2005 (Annexure A/13) finding the applicant guilty of getting employment on the basis of wrong Scheduled Caste Certificate. The disciplinary authority, by memorandum dated 19.4.2005/21.4.2005,



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furnished the copy of the enquiry report to the applicant who was required to submit her representation on the enquiry report in writing within 15 days of receipt of the said memorandum.

2. Instead of filing her representation/submission on the enquiry report, the applicant filed O.A.No.556 of 2005 before the Tribunal on 27.6.2005 challenging the enquiry report and the article of charge. The Tribunal, by order dated 4.7.2005, disposed of the said O.A. with the following observations:

“Having heard the rival parties, we are of the view that the application is premature. The applicant should, in the first instance, take the opportunity of filing her show-cause stating why action should not be taken against her and whatever else she wants to submit, in opposition to the report of the IO and also other objections that she has raised in this O.A. Such an approach is commended not only in the interest of the litigant but also in the interest of rule of law. We, therefore, direct the applicant to file her written representation as called upon by the disciplinary authority by his Memo dated 21.4.05 (Annexure A/12) by 22.7.05 and on receipt of the same, the disciplinary authority should finalize the disciplinary proceedings by issuing a speaking and reasoned order. After receipt of the order of disciplinary authority, if the applicant is still aggrieved, he would be well advised to approach the appellate authority for relief. In case her grievances are not attended to by the appellate authority she would be at liberty to approach this Tribunal seeking



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redressal of her grievance. In case, in the meantime the disciplinary authority has already passed the order, the said order will remain stayed allowing the applicant 45 days time to file appeal before the appellate authority which should be disposed of within sixty days of the receipt of the appeal filed by the applicant."

3. The applicant filed her representation on the enquiry report on 17.7.2005 and the disciplinary authority (Respondent No.3), in consideration of the evidence/materials available on record, the enquiry report, and the applicant's representation, by order dated 5.12.2006 (Annexure A/18) imposed on the applicant the punishment of dismissal from service with immediate effect.

4. The applicant, without filing the appeal against the punishment order passed by the disciplinary authority, has filed this Original Application on 2.1.2007 with a prayer to set aside the punishment order (Annexure A/18) and the article of charge (Annexure A/1), the enquiry report (Annexure A/15) and to direct the Respondents to reinstate her in service.

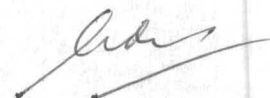
5. The applicant in paragraph 6 of the O.A. has stated, inter alia, that the appellate authority (Respondent No.2) has already recorded his opinion in paragraph 3 of the Caveat Petition (Annexure A/19) to the effect that the applicant was guilty of the charge framed against her, she has been deprived of the remedy of appeal and that the said appellate



authority having already come to the conclusion about the guilt of the applicant, he would not be competent to dispose of the appeal, even if preferred by her. The sum and substance of the reasons shown by the applicant for her not preferring the statutory appeal against the punishment order, vide paragraph 6 of the O.A., is that she did not get a scope for preferring appeal for due adjudication by the appellate authority and that is the reason why she has approached the Tribunal in this O.A. for quashing the punishment order (Annexure A/18) as well as the article of charge, enquiry report, etc.

6. We have heard Ms. Chitra Padhi, the learned counsel appearing for the applicant, and Mr.B.Dash, the learned Additional Standing Counsel appearing for the Respondents, and have perused the pleadings of the applicant.

7. It has been stated by the applicant in paragraph 5 of the Original Application and also as submitted by the learned counsel appearing for her during the hearing on the question of admission that the punishment order (Annexure A/18) passed by the disciplinary authority being not a speaking and reasoned order, cannot be said to have been passed in compliance with the order passed by the Tribunal in the earlier OA No.556 of 2005; that the documents asked for were not supplied to her; that her request to engage a legal practitioner to act as defence assistant was rejected; that the presenting officer failed to produce the



oral and documentary evidence by which the article of charge was proposed to be sustained; that the Inquiry Officer was biased against her; and that the Inquiry Officer conducted the enquiry proceeding contrary to rules. Besides, the applicant has cited different circulars and judicial pronouncements in support of her grounds attacking the disciplinary proceedings as well as the punishment order.

8. Section 20(1) of the Administrative Tribunals Act, 1985 provides as follows:

“A tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.”

We do not find any extraordinary reason to admit this application as the applicant has not exhausted her departmental remedy under the relevant service rules for redressal of her grievances. In this view of the matter, the application filed by the applicant is not maintainable. The apprehension of the applicant that since the appellate authority himself has filed a Caveat Petition before the Tribunal with the averment adverse to the applicant, there is hardly any scope of her appeal, if preferred, being dealt with in its proper perspective, is misconceived in as much as the averments in the Caveat Petition cannot and do not take the character of findings to be recorded by an appellate authority while considering and deciding the appeal preferred before him under the rules.



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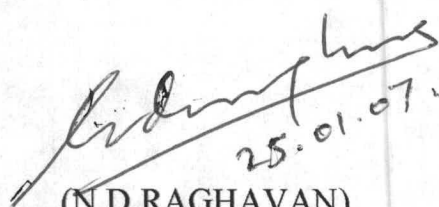
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9. In this view of the matter as well as in the light of the ratio decidendi in the case of *Punjab National Bank vs. O.C. Krishnan* in AIR 2001 SC 3208, at page 3209 (Para 6 end), it is open to the applicant to prefer an appeal against the order of punishment (Annexure A/18) and in the appeal to be so preferred she is free to raise all the grounds and contentions with regard to the alleged illegalities and irregularities committed by the Inquiry Officer, or the Presiding Officer, or the Disciplinary Authority in the conduct of the proceedings and in passing the punishment order, as raised in the present O.A. We hope and trust that in the event of such an appeal being preferred by the applicant, it will receive due, fair and impartial adjudication by the appellate authority as well as in accordance with law and without prejudice or bias in any manner, though we are surprised to note such authority himself as caveator before us !

10. With the above observations, the Original Application is rejected as being not maintainable.

13/12/25/11/17
(B.B.MISHRA)
MEMBER(ADMN.)


(N.D.RAGHAVAN)
VICE-CHAIRMAN
25.01.07.