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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

O.A. No.221 of 2007

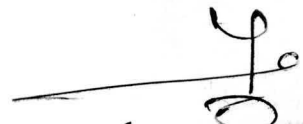
Anadi Charan Behera ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yp*
2. Whether it be circulated to all the Benches of the CAT or not? *yp*


(M.R. MOHANTY)
VICE-CHAIRMAN

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

In the Matter of:

O.A. No.221 of 2007

Anadi Charan Behera ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

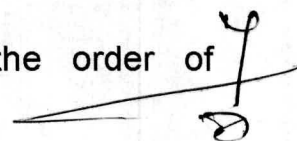
For Applicant: : Mr.Dillip Ku. Mohanty, Counsel.

For Respondents: Mr.U.B.Mohapatra, SSC.

ORDER

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

Applicant in this Original Application filed under
section 19 of the Administrative Tribunals Act, 1985 has
called in question the validity/legality of the order of

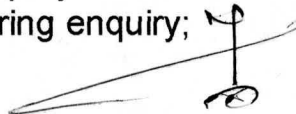


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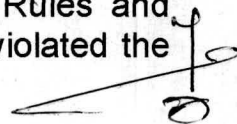
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punishment dated 11.08.2004 (Annexure-A/4) of withholding of two increments of pay without cumulative effect passed by Disciplinary Authority as also the order dated 30.04.2007 (Annexure-A/6) of the Appellate Authority in rejecting his appeal on the following grounds:

- (i) The order of Disciplinary Authority is not in accordance with Rules inasmuch it did not deal with the case records in other words is a non-speaking order;
- (ii) Memo of charge dated 13.02.2001 was issued without citing the list of documents or witness whereas during enquiry the IO took note of documents produced by PO and examined witness without giving him any opportunity to contradict and testify the veracity of such document and cross-examine the witness;
- (iii) Statement recorded during enquiry was not supplied to the Applicant, as provided under the rules; nor the applicant was informed in writing prior to commencement of the enquiry;
- (iv) No opportunity was afforded to him either to examine the PO; or IO at the end of the enquiry. He was not examined by the IO during enquiry;



- (v) Statement of Shri P.Tripathy, Assistant Director of Census operations Orissa was obtained behind his back and utilized against him without affording him opportunity to cross examine Shri Tripathy;
- (vi) Though Tahasildar and ADM of Malkanagiri were the vital witnesses neither their views were obtained nor had they been called to adduce the evidence during enquiry;
- (vii) IO took note of the written brief submitted by PO without insisting supply copy of the same to the Applicant nor was he allowed opportunity to submit written statement;
- (viii) The word '**without cumulative**' being silent in the Rules, imposition of the same is beyond the scope and jurisdiction of the authority;
- (ix) Imposition of such punishment without any finding of misconduct grossly disproportionate;
- (x) The date of retirement of Applicant is 29.02.2008. As such, though the punishment of withholding of increment without cumulative effect will seriously affect the pension and pensionary benefits of the Applicant, the enquiry as conducted in the present case was not made in accordance with the procedure laid down under sub rules (3) to (23) of Rules and thereby the Respondents have violated the



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- 4 -

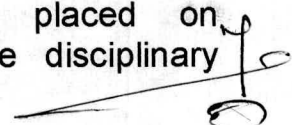
Rules embodied under Rule 16 (1-A) of CCS (CCA) Rules, 1965.

2. Learned Counsel for the Applicant has, therefore, heavily stressed that since there was gross miscarriage of justice in the decision making process, the order of punishment as also the order of Appellate Authority need be annulled.

3. It is case of Respondents, both in their counter as also during hearing, submitted that –

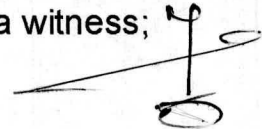
(a) As the applicant did not follow the standing instructions, while working with Tahasildar, in regard to delimitation of Blocks and assigning enumeration block numbers for the house listing operation of 2001 census and shown carelessness, irresponsibility and negligence in his official duties, he was issued with minor penalty the charge-sheet under Rule 16 of CCS (CCA) Rules, 1965;

(b) Though in Rule 16 proceedings, there was no necessity of holding enquiry in the manner provided/followed in Rule 14 proceedings and in all fairness of things and in order to give minimum requirement of natural justice, an enquiry was conducted in the matter and after considering the materials placed on record/report of the IO, the disciplinary



authority came to the conclusion that the applicant deserves to be imposed with the present punishment which was also confirmed by the Appellate authority. As such there was no wrong in any of the orders warranting interference of this Tribunal;

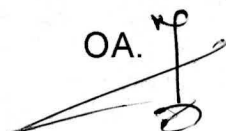
- (c) The order of disciplinary authority is no way contrary to Rules and it is well speaking order;
- (d) Along with the order of the disciplinary authority to hold enquiry a list of documents was supplied to applicant;
- (e) As per Rule 14 (15) of CCS (CCA) Rules, 1965 it is the prerogative of the Inquiry Authority to allow the PO to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recalled and reexamined any witness. On receipt of list of prosecution witness IO summoned the witnesses and they were examined and cross-examined on the date fixed;
- (f) Statements recorded during enquiry was duly endorsed by applicant but could not be supplied to Applicant as he did not ask for it;
- (g) Applicant did not ask to examine the PO; moreover the PO is not a witness;



- (h) Statement of Tripathy was recorded in presence of applicant and he was also cross examined by applicant on 25.03.2003;
- (i) Applicant did not ask the presence of the ADM and Tahasildar during enquiry;
- (j) IO never refused the request of applicant to supply copy of statement of the only witness and written brief of PO. Applicant was afforded opportunity to submit written brief but he failed to do so;
- (k) Retirement benefit will follow the past deeds and misconduct of the applicant. The punishment imposed is covered under Rule 11 and 12 of the CCS Rules, 1965 and the same was absolutely commensurate with the gravity of offence of Applicant.

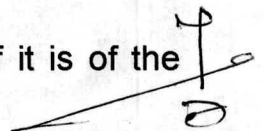
4. Lastly it has been submitted by Senior Standing Counsel appearing for the Respondents that there being absolutely no procedural irregularity in the matter of conducting the enquiry, and since minimum requirement of the principles of natural justice have strictly been adhered to, there remains hardly any scope for this Tribunal to interfere in the matter. He has, therefore, prayed for dismissal of this

OA.



5. Going through the above contentions of the Respondents, it is necessary to record that it is not for the delinquent employee to ask for written brief of presenting Officer. In case copy of the brief of the Presenting Officer is not given to the delinquent Government Servant, it will be like hearing arguments of the PO at the back of Government servant and principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the presenting Officer. This view gained support from the decision of the Government of India as communicated in G.I., MHA (DP & AR) OM No. 11012/18/77-Est.(A) dated 2nd September, 1978 and DG P & T Letter No. 153/14/78-Disc.II dated 30th November, 1978.

6. Similarly, it is not in dispute that the inquiring authority may, in its discretion, allow the PO to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and reexamine any witness during enquiry but only if it is of the



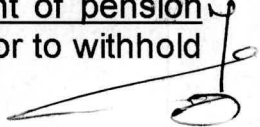
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- 8 -

opinion that the production of such evidence is necessary in the interest of justice. New evidence shall not be permitted or called for; nor any witness shall be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally. But the report of IO is silent so far as necessity of permitting the PO to introduce new evidence and witness not included in the list originally.

7. As a whole it is seen that though present punishment will affect the pension and pensionary benefits of applicant, the enquiry has not been conducted in the manner provided in sub rules (3) to (23) of Rule 14 of CCS (CCA) Rules, 1965. Rule 16 (1-A) of CCS (CCA) Rules, 1965 reads as under;

“(1-A)Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold



increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include –

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefore."

8. Thus, even in a minor penalty proceedings, the authorities ought to have proceeded strictly in accordance with procedure prescribed under Rule 14 (3) to (23) of CCS (CCA) RULES. In the present case the authorities did not follow the rigid procedure, as prescribed under Rule 14 (3) to (23) of CCS (CCA) Rules, 1965 and yet they imposed a

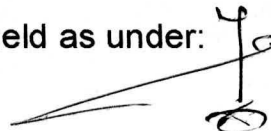
penalty which is going to adversely affect the pension of the Applicant.

9. Neither in the enquiry, nor the Disciplinary Authority nor the Appellate Authority examined the matter pertaining to following of the procedure prescribed under Rule 14 (3) to (23) as required under Rule 16 (1-A) of the CCS (CCA) Rules, 1965 and, as such, the entire proceedings have been vitiated.

10. On a careful study of this case, one is reminded of an observation of the Apex Court rendered in the case of **Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan**, (2003) 1 SCC 197, as under:-

"An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

Also, in the case of **Comptroller and Auditor General of India v. K.S. Jagannathan**, 1986 (2) SLJK 1 (SC), the Hon'ble Apex Court held as under:

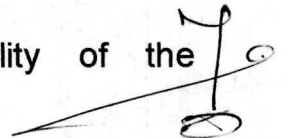


"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a Writ of mandamus or a writ in the nature of mandamus or to pass orders and given necessary directions where the Government or a public authority has failed to exercise or has wrongly exercise the discretion conferred upon it by a statute or a rule or a policy decision of Government or has exercised such discretion *mala fide* or in irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such case and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and given directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

While rendering the decision in the case of
Council of Civil Service Union v. Minister for Civil Service (



reported in 1985 AC 374) Lord Diplock proclaimed that administrative action is subject to control of judicial review on three heads such as '*illegality*', '*irrationality*' and '*procedural impropriety*'. For that '*doctrine of proportionality*' is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and consideration in this case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a rule of permissible priorities. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no pick and choose, the selective applicability of the

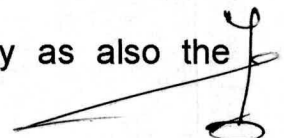


Government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a 'sledgehammer to crack a nut'. As has been said many a time 'where paring knife suffices, battle axe is precluded'. Equally the well recognized principles are that the Courts/Tribunals may not interfere with the decision of the authorities but certainly, they have the power to interfere if in the decision making process there has been miscarriage of justice.

11. It is seen that though the Applicant has raised all the points in his appeal, the appellate authority rejected the points stating as under:

"WHEREAS the undersigned has considered the points made by the Appellant and come to the conclusion that the points raised by Shri Behera in appeal are not substantiated by the facts on record. No procedural irregularities have been committed and he has given ample opportunity to defend himself...."

On a microscopic examination of the matter, it does not look that the Disciplinary Authority as also the



30

14

Appellate Authority have looked to the matter closely and, therefore, there are no option except to quash the order of the Disciplinary Authority dated 11.08.2006 (Annexure-A/4) as also the appellate Authority dated 30.04.2007 (Annexure-A/6) and remand the matter to the Disciplinary Authority for giving fresh consideration in the matter in accordance with Law/Rules. In the result, this Original Application stands allowed and the order of penalty under Annexure-A/4 dated 11.08.2006 and the Appellate Order under Annexure-A/6 dated 30.04.2007 are quashed. The matter is remanded back to the Disciplinary Authority. There shall, however, be no order as to costs.


(M.R. MOHANTY)
VICE-CHAIRMAN