

9

O.A.No. 47 of 2007

Yudhisthir Mohanty	.....	Applicant
Vrs.		
Union of India and others	.....	Respondents

Order dated 18/5 July 2007

The applicant, while working as Data Entry Operator in EDP (GPF)-4 Section of the office of the Accountant General (A&E), Orissa, Bhubaneswar, was issued with Memorandum dated 29.12.2005 (Annexure A/1) by the Disciplinary Authority proposing to hold an inquiry against the applicant u/Rule 14 of the CCS (CCA) Rules, 1965. Along with the Memorandum dated 29.12.2005, the statements of articles of charge and of imputation of misconduct in support of the articles of charge framed against the applicant and the list of documents by which the articles of charge were sought to be sustained were also furnished to the applicant. The applicant was directed to submit, within 10 days of the receipt of the said Memorandum, a written statement of his defence and also to state whether he desires to be heard in person. He was also informed that inquiry would be held only in respect of those articles of charge as are not admitted and therefore, he was to specifically admit or deny each article of charge. The applicant, by his letter dated 4.1.2006 (Annexure A/2), while denying the charges framed against him and desiring to be heard in person, requested the Disciplinary Authority to supply the copies of the listed documents by which the charges were proposed to be sustained, to enable him to furnish the written statement of defence against the charges. The Disciplinary Authority, by order dated 13.4.2006 (Annexure A/3), appointed an Inquiry



Officer to enquire into the charges leveled against the applicant. Copy of this order was duly communicated to the applicant. The Inquiry Officer, by letter dated 21.12.2006 (Annexure A/4), gave notice to the applicant that he would hold preliminary hearing on 28.12.2006 and required him to attend the proceedings either alone or accompanied by his Defence Assistant on the said date. Thereafter the applicant, by his representation dated 23.12.2006 (Annexure A/5), drawing the attention of the Disciplinary Authority to his letter dated 4.1.2006, contended that due to non-supply of the copies of the listed documents he was unable to submit his written statement of defence and that the order appointing the Inquiring Officer before submission of the written statement of defence should be withdrawn. He also requested for supply of copies of the listed documents. To this, the Disciplinary Authority, by memorandum dated 10.1.2007 (Annexure A/6), while intimating the applicant that he had denied the charges vide his letter dated 4.1.2006 in response to the charge sheet issued against him and that he would have ample opportunity to go through the documents as listed in Annexure III of the charge sheet during the course of regular inquiry, directed the applicant to cooperate with the Inquiry Officer and Presenting Officer for early completion of the proceedings. Thereafter the Inquiry Officer, by letter dated 31.1.2007 (Annexure A/7), gave notice to the applicant that the preliminary hearing in the disciplinary case would be held on 14.2.2007 and required him to attend the proceedings. Soon after receipt of the letter dated 31.1.2007 (Annexure A/7) from the Inquiry Officer, the applicant approached this Tribunal by filing the present O.A. on 8.2.2007 for



quashing Annexure A/3, the order dated 13.4.2006 passed by the Disciplinary Authority appointing the Inquiry Officer to inquire into the charges leveled against the applicant. He has also prayed for quashing the statement of imputations (Annexure II to the charge memo) and for a direction to the Disciplinary Authority to supply him copies of the documents listed in Annexure III to the charge memo and consider the written statement of defence to be submitted by the applicant after being supplied with the copies of the listed documents.

2. By order dated 2.2.2007, the Tribunal while directing issuance of notices of admission to the Respondents, directed that the enquiry proceeding should not be carried. This interim order of stay of the disciplinary proceeding is continuing till date.

3. The Respondents have filed an objection to the interim prayer as well as a counter in which they have stated about the charges leveled against the applicant. As regards non-supply of the listed documents to the applicant and appointment of Inquiry Officer, they have stated that as the applicant denied the charges in his reply dated 4.1.2006 and his statements during the personal hearing on 19.1.2006 were not convincing, it was not at all felt necessary to supply copies of the documents to the applicant and the Inquiry Officer was appointed to inquire into the charges by order dated 13.4.2006. They have contested the statement of the applicant that there has been violation of Rule 14(5) of the CCS (CCA) Rules, 1965.



4. From the above it is seen that the main grievance of the applicant is that due to non-supply of the listed documents by which the charges are required to be substantiated, he has been denied reasonable opportunity to meet the charges against him in an effective manner and that before submission of written statement of defence and consideration thereof by the Disciplinary Authority, the order appointing the I.O. is bad and liable to be quashed.

5. The Tribunal, while exercising the power of judicial review, is expected to review the manner in which the decision was made and to ensure that in the disciplinary proceedings the delinquent employee gets fair treatment. But in the instant case there is neither any cause of action within the framework of Administrative Tribunals Act, 1985 and Rules framed thereunder for the applicant to approach the Tribunal nor is the Tribunal left with any scope to judicially review the manner in which the decision has been taken since the entire matter lies within the ambit and swing of the Respondents. The applicant can be said to be aggrieved only when he would be deprived of his legitimate right to which under law he is entitled. As the matter now stands, we find no right of the applicant has been infringed by the Respondents in any manner whatsoever and the Disciplinary Authority by Memorandum dated 10.1.2007 (Annexure A/6) intimated the applicant that he would have ample opportunity to go through the documents as listed in Annexure III of the charge sheet during the course of regular inquiry. Yet, the applicant has approached the Tribunal, appearing to be in a cut and dry method.



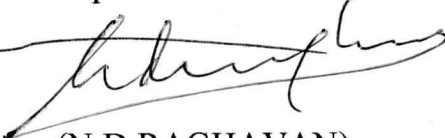
13

6. In course of the hearing on the question of admission and continuance or otherwise of the interim order of stay, the learned counsel for the applicant also submitted for disposal of the O.A. with a direction to the Disciplinary Authority to supply copies of the documents (listed in Annexure III to the charge memo) to the applicant with an opportunity to him to file effectively his written statement of defence and thereafter require the Inquiry Officer to proceed with the inquiry, to which the learned Additional Standing Counsel appearing for the Respondents did not have any objection.

7. In the facts and circumstances of the case and in consideration of the above submission of the learned counsels for both parties, I think ends of justice would be met if a direction is issued to the Disciplinary Authority to supply copies of the documents (listed in Annexure III to the charge memo) to the applicant, within 15 (fifteen days) from the date of receipt of copy of this order, with an opportunity to the applicant to file written statement of defence within 15 (fifteen) days from the date of receipt of the copies of the said documents and thereafter the Inquiry Officer is to proceed with the inquiry.

Ordered accordingly.

8. In the result, the Original Application is disposed of at the stage of admission itself, with the observation and direction supra. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN