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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NO.522 OF 2007
Cuttack this the 13th day of September, 2010

Ishwar Sharan Katarha ... Applicant

-VERSUS-
Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to Principal Bench of the Tribunal or not ?

(M.R.MOHANTY)
VICE-CHAIRMAN

(C.R..MOHAPATRA)
ADMINISTRATIVE MEMBER

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ORIGINAL APPLICATION NO.522 OF 2007

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CORAM:

HON'BLE SHRI M.R.MOHANTY, VICE-CHAIRMAN
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Ishwar Sharan Katarha, aged about 49 years, S/o. Daulat Ram Katarha,
Ex.Principal, M.I.T.I., Choudwar, Dist-Cuttack

Applicant

By the Advocates: M/s.B.S.Tripathy-I, A.Mishra & L.M.Patra
-VERSUS-

1. Union of India represented by the Secretary, Ministry of Labour & Employment, Directorate General of Employment & Training, New Delhi-110 001
2. Director General/Joint Secretary to Govt. of India, Directorate General of Employment & Training, New Delhi-110 001

Respondents

By the Advocates:Mr.U.B.Mohapatra, SSC

ORDER

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER:

The above Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the order of the President imposing the punishment vide order dated 4.5.2006 (Annexure-15) and the order at Annexure-17 dated 5.1.2007 passed by the same authority, and further relief for direction to Respondents to treat the period of suspension of the applicant from 1.4.2003 to 14.04.2006 as period spent on duty for all purposes and to release the unpaid salary component with all other allowances not paid to the applicant for the aforesaid period with interest.

2. We have heard the learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents.

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3. It is an admitted fact from either side that the applicant was served with a charge memo dated 9.5.2003(Annexure-2), which reads as under:

- “i) That the said Sh. I.S.Katarha while functioning as Principal/Dy.Director, MITI, Choudwar went to Chennai Central during the month March, 2001 with another person without obtaining the approval of the competent authority and met Sh. Jaya Prakash J S/o.Sh.Jayaraman (who was selected for appointment to the post of Vocational Instructor (Metrology & Engineering Inspection) with another person and introduced himself as Shri Bhupan Prasad Das and the other person as Mr.Hussain, posting as Investigating Officers from MITI, Choudwar. There he demanded money in the name of the Principal, MITI, Choudwar for giving the appointment to Shri Jaya Prakash J.
- ii) That the said Shri I.S.Katarha made an intentional delay in sending appointment letter to Sh. Jaya Prakash J on one pretext or the other”.

The applicant requested the Director for supply of the documents vide his letter dated 21.5.2003. The said request was rejected on 6.6.2003, which reads as under:

“Shri I.S.Katarha is informed that the disciplinary proceedings against him have been initiated with the approval of the Competent Authority and as per rules. The request of Shri Sahu for providing material/documents cannot be acceded to, as per the Government of India instruction No.25 under rule 14 of the CCS(C&A) Rules, 1965, wherein it has been specifically mentioned that “the delinquent officer need not be shown documents at this state to enable him to prepare his defence statement in reply to charge sheet. ...While rejecting the requests for inspection of documents, it may be explained to the delinquent officers that they would get full opportunity to inspect the listed documents during the course of enquiry”.”

Subsequently, the applicant submitted his representation to the charge memo vide his representation dated 20.06.2003 denying the charges. The Disciplinary Authority appointed Shri H.Somasundaram, Director, A.T.I., Hyderabad as Inquiring Officer to enquire into the charges leveled against the

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 applicant vide order dated 5.8.2003. The applicant was allowed to participate in the inquiry.

The inquiry was completed and the Inquiry Officer submitted its report holding the charges proved against the applicant. The applicant submitted written argument of defence in brief vide his letter dated 29.12.2004(Annexure-12) wherein he had raised all the legal grounds and objections.

Before any order could be passed, the Disciplinary Authority sought advice from the UPSC and upon receipt of the advice from the UPSC, the disciplinary authority passed orders on 4.5.2006(Annexure-15) imposing penalty, the relevant portion of which reads as under:

“And whereas a copy of the Inquiry report was sent to CVC for their 2nd stage advice. On receipt of 2nd stage advice from CVC, a copy of the Inquiry Report along with a copy of the 2nd advice was sent to Shri I.S.Katarha for submission of representation, if any, vide O.M.No.DGE&T-C-13011(6)/2001-VFTA dated 8.12.2004.

And whereas Shri I.S.Katarha submitted his representation on 28- 29.12.2004

And whereas the records of the inquiry were forwarded to Union Public Service Commission for their advice and the Commission tendered its advice vide their letter No.3/1/77/2005-SI dated 03.04.2006(copy enclosed).

Now, therefore, taking into consideration the facts and circumstances of the case, the advice of UPSC and all other aspects relevant to the case, the Disciplinary Authority observes that sequence of all the evidence prove beyond doubt that the charges against Shri I.S.Katarha stands proved. The Disciplinary Authority, therefore, feels that end of justice would be met in this case if the penalty of reduction in his pay be two stages

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for a period of three (3) years with cumulative is imposed on Shri I.S.Katarah".

The applicant submitted his appeal dated 14.7.2006(Annexure-16) being aggrieved by the orders of the Disciplinary Authority. The appeal runs into five pages. The authority which had imposed the penalty, i.e., the Director considered the said appeal under Rule 29-A of CCS(CCA), Rules, 1965 and rejected the prayer of the applicant as under:

"Whereas after considering the findings of the Inquiring Authority, the relevant records, facts and circumstances of the case, the Disciplinary Authority, agreeing with the findings of the Inquiry Authority and advice of the UPSC, imposed on Shri I.S.Katarah, the penalty of reduction of pay by two stages for a period of three (3) years with cumulative effect vide this Directorate General's order No.C-13011(6)/2001-VFTA dated the 4th May, 2006;

Whereas aggrieved by the said penalty order of the Disciplinary Authority, Shri I.S.Katarah preferred a review petition dated 14th July, 2006 to the President under Rule29-A of CCS(CCA) Rules, 1965 praying to expunge the order of penalty;

Whereas all the grounds taken by Shri I.S.Katarah in his review petition were considered by the President and he came to a conclusion that there was no new fact or material/evidence which has the effect of changing, the nature of the case and interfering with penalty already imposed on Shri I.S.Katarah vide order dated the 4th May, 2006;

Now, therefore, having regard to the above findings, the President rejects the petition filed by Shri I.S.Katarah and orders accordingly".

4. It is the case of the applicant that the Respondent, i.e., the Director has not complied with Rule-15(2- A) of CCS(CCA) Rules, 1965 and that the penalty imposed does nowhere exist under Rule11(v) of CCS(CCA) Rules. The misconduct as referred to in the charge memo is not a misconduct as held by the Hon'ble Supreme Court in the case of Kalara vs. Project & Equipment

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reported in AIR 1984 SC 1361, and the impugned order of penalty passed by the Director, is liable to be quashed because that is not in accordance with Rule 15 of CCS(CCA) Rules and that the order under revision is also not a speaking order as no reasons are assigned. Hence, the order under revision dated 5.1.2007 is also liable to be quashed.

5. The Respondents vehemently opposed the O.A. and supported the orders of the Disciplinary Authority and the Revisional Authority. In their counter, they have stated that the departmental proceedings is in accordance with Rule 14 of CCS(CCA) Rules. The applicant was given ample opportunity in the inquiry, a copy of the CVC advice along with inquiry report was supplied to the applicant. As contended by the applicant that the orders of the Disciplinary Authority is illegal, the Respondents have denied the same. According to Respondents, the advice of the UPSC is mandatory requirement and after considering the representation and all relevant materials produced during the inquiry, the UPSC advised imposition of penalty, whereafter the Disciplinary Authority, on consideration of all the relevant facts and circumstances of the case, including the advice of the UPSC, imposed the penalty of reduction of pay by 2 stages for a period of 3 years with cumulative effect on the applicant. Orders had been passed by the order and on behalf of the President with the approval of the competent authority. The Review Petition under Rule-29 A has been decided by the Director and issued the order, there is no illegality or irregularities in passing the order. When no appeal lies against the order passed by the President under Rule-22(1) of

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CCS(CCA) Rules, 1965, the President has powers to review any order passed earlier. Hence, the petition submitted by the applicant under Rule 26 was examined and order reviewed under Rule 29-A.

In respect of request of the applicant to treat the period of suspension as duty, as per provisions of FR-54(b), where a Government servant under suspension dies before the conclusion of the disciplinary proceedings or the disciplinary authority is of the opinion that the suspension was wholly unjustified, the period of suspension shall be treated as period spent on duty. In all other cases, the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specific purpose and if a Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant. In the present case when the major penalty has been imposed upon the applicant, the suspension of the applicant was found wholly justified, his request was not acceded to. The penalty imposed on the applicant is commensurate with the gravity of offence committed by him and proved during inquiry. Hence the O.A. is liable to be dismissed.

6. We have carefully considered the submissions made by the learned counsel from either side and perused the pleadings on record. As contended by the applicant that the impugned order is illegal against law being not in accordance with Rule-15 of CCS(CCA) Rules. Rule-15 deals with action on

inquiry report.. For the purpose of clarity the relevant portion of Rule-15 is extracted hereunder:

“15. Action on the inquiry report:

- (1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.
- (2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.
- (2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules(3) and (4)”.

We have extracted above the reasoning given by the Disciplinary Authority vide order dated 4.5.2006. The said order does not speak about the reasoning. the Disciplinary Authority shall consider the representation submitted by the applicant and record its findings before proceeding further in the matter as specified in sub-rule 2A of Rule 15. (underlined by us). In the impugned order the authority has given the reasons that copy of the 2nd advice of CVC was served on the applicant. The applicant submitted his representation, that the UPSC advice was also tendered and the Commission

tendered its advice, the copy was also served on the applicant. The reasoning given by the authority reads as under:

“Now, therefore, taking into consideration the facts and circumstances of the case, the advice of UPSC and all other aspects relevant to the case, the Disciplinary Authority observes that sequence of all the evidence prove beyond doubt that the charges against Shri I.S.Katarah, stands proved. The Disciplinary Authority, therefore, feels that end of justice would be met in this case if the penalty of reduction in his pay be two stages for a period of three (3) years with cumulative is imposed on Shri I.S.Katarah”.

The said reason is not a cogent reasoning based on the charge memo, the objections raised in the representation regarding supply of documents and to record the defence witness, the findings of the inquiry officer in its report and the written statement of defence made thereon.

7. We have carefully examined the penalty imposed on the applicant. The penalty reads as under:

“...penalty of reduction in his pay be two stages for a period of three (3) years with cumulative is imposed on Shri I.S.Katarah”.

In the above backdrop, it is relevant to quote hereunder Rule-15(4) which reads as under:

“(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant".

We have carefully examined the rule position and the penalty imposed on the applicant, but we do not find any such penalty under Rule-11. Seeing the observation made in the order of the Disciplinary Authority, we are of the view that the Disciplinary Authority has not followed Rule-15(2) A and Rule 11 of CCS(CCA) Rules. Accordingly, the orders of the Disciplinary Authority is not a reasoned order and there being no application of mind, the same is liable to be quashed.

8. The applicant preferred an appeal, that has been considered under Rule-29 A of CCS(CCA) Rules. We have carefully examined the order dated 5.1.2007 passed as a measure ^{of} review. But we do not find that any of the legal points raised by the applicant in his appeal petition has been dealt therein while rejecting his appeal.

The Director is a quasi judicial authority. Being the Appellate Authority, he is to decide the matter before it by assigning the reasons, as held by the Hon'ble Supreme Court as under:

"The respondent, i.e., the Appellate Authority has to consider the case of the applicant as a quasi judicial authority as per the decision of the Hon'ble Supreme Court in the case of Ram Chandra v. Union of India reported in 1968(2)SLR-608, Apparel Export Promotion Council v. A.K.Chopra reported in 1999 SCC(L&S) 405 and Narinder Mohan Arya v. United India Insurance Co.Ltd reported in

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(2006)4 SCC 713. The appellate authority must give reasons even while affirming the order of the Disciplinary Authority. In our opinion, an order of affirmation need not contain elaborate reasons, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming or reversing or modifying the order of the Disciplinary Authority. The purpose and disclosure of reasons is that the people must have confidence in the judicial or quasi judicial authorities, unless the reasons are disclosed, how can a person know whether the authority has applied its mind or not ? Also, giving of reasons minimizes chances of arbitrariness. Hence it is an essential requirement of the rule of law that some persons at least in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation. The reasoned order should be in accordance with the judgment of the Hon'ble Supreme Court reported in 2004(7)SCC 431 Cyri Lasrado(Dead) By Lrs. And Others v. Juliana Maria Lasrado & Another".

9. For the reasons mentioned above, we are of the view that the orders impugned are not sustainable as held by the Hon'ble Supreme Court supra and also under Rule 15 and 11 of CCS(CCA) Rules, 1965. Accordingly, those impugned orders(Annexures-15 and 17 dated 4.5.2006 and 5.1.2007 respectively) are quashed.

10. When the applicant has established his case for quashing the impugned orders, per contra, the respondents are not justified in supporting the said orders. Taking into consideration the submissions made from either side, we are inclined to remand the matter to the Disciplinary Authority to pass fresh

orders by exercising the powers vested in him under Rule-15 of CCS(CQA) Rules, within a period of three months from the date of receipt of this order.

With the above observation and direction, this O.A. is allowed in part.

No costs.

Mohanty
13/09/10
(M.R.MOHANTY)
VICE-CHAIRMAN

Mohapatra
(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER