

10
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.No. 230 of 2008

Cuttack, this the 12th day of November, 2008

Bijoy Kumar Dhal

APPLICANT

Vrs.

Union of India and others

.....

RESPONDENTS

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not?

2) Whether it be sent to the P.B. of CAT or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

11

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

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Cuttack, this the 12th day of November, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

And

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

Bijoy Kumar Dhal, a ged about 59 years, son of late Panchanan Dhal, at present Vice-Chairman, Cuttack Development Authority, Arunodaya Bhawan, Link Road, Cuttack

APPLICANT

Advocates for applicant - M/s Dayananda Mohapatra, M.Mohapatra & S.P.Nath.

Vrs.

1. Union of India, represented through its Secretary, Ministry of Personnel, P.G. & Pension, Department of Personnel & Training, North Block, New Delhi.
2. State of Orissa, represented through the Chief Secretary, at Secretariat Building, Orissa, Bhubaneswar, Dist.Khurda.
3. Special Secretary, General Administratiion Department, At Secretariat Building, Orissa, Bhubaneswar, Dist. Khurda.
4. Member, Board of Revenue & Inquiry Officer,Orissa, Cuttack, At/PO Chandini Chouk, Dist. Cuttack..... RESPONDENTS

Advocate for respondents – Mr.A.K.Bose, Government Advocate
Mr. A.K. Bose, Government Advocate

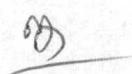
Mr. A.K. Bose, Government Advocate

O R D E R

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant is an I.A.S. officer. While functioning as Additional Secretary to Government and Ex officio Director of Estates in the General Administration Department, he was served with Annexure A/1 Memo dated 19.8.2002 along with articles of charges and statement of imputations. In the

charge sheet it was alleged that while working as Additional Secretary to Government & ex officio Director of Estates, General Administration Department and Member of the Development Plan and Building Permission Committee (DP & BP Committee), he recommended for approval of the plan of Harapriya Apartment over Plot Nos.2727 and 2727/3743 without raising any objection regarding submission of 'No Objection Certificate' from Orissa State Electricity Board (OSEB) and Fire Prevention Officer. He also did not raise any objection relating to the height of the building of 74' against the prescribed limit of 55'. The other charge was that the applicant recommended for approval of the plan of a multistoried building on Plot Nos.110 and 244 of mouza Jayadev Vihar furnished by M/s Amrita Builders and Developers Pvt.Ltd. on 8.9.1998 for and on behalf of Smt.Jahnabi Mishra and Smt. Bidyut Prava Gantayat in the 118th meeting of the DP & BP Committee held on that day ignoring the provisions of the Multistoried Building Regulations, 1998. On receipt of the charge sheet along with the statement of imputations, the applicant filed his statement of defence as per his reply/explanation dated 11.10.2002 (Annexure A/3). However, even after submission of the statement of defence by the applicant and in spite of appointment of one Mr.Santosh Kumar, IAS, Principal Secretary to the Government, Home Department, as the Inquiring Officer on 26.5.2003 (Annexure 4) and a subsequent order re-appointing the said Mr.Santosh Kumar, IAS, in his capacity as Member, Board of Revenue, Orissa, Cuttack, vide order dated 1.6.2007 (Annexure 6), the inquiry proceeding was not concluded. So the applicant was forced to file several



representations to the Chief Secretary of the State requesting to drop the proceedings initiated against him. Finally, he submitted a representation to the Chief Secretary on 11.3.2008. However, still the proceeding having not been finalized and the representations of the applicant having not been answered, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

- “1. To allow the Original Application.
2. To quash/set aside the articles of charges communicated under Annexure 1.
3. To quash and/or set aside the institution of Inquiry and appointment of Inquiry Officers, Respondent No.4.
4. Pending disposal of the Original Application the opposite party No.2 may be directed to consider the representation of the applicant vide Anenxure 8 and further be pleased to direct to drop the proceeding in consideration of the subsequent developments of disposal of proceedings initiated against all other members on self same charges.
5. Any other relief(s) to which the applicant is entitled and as the learned Tribunal deems fit and proper to grant such relief(s) as the case may be.”

2. The Original Application was admitted by this Tribunal on 3.6.2008 directing the Respondents to file counter, if any, in the matter at the earliest. Although Shri A.K.Bose, the learned Government Advocate for the State appeared on the same day of notice to the State, a counter has been filed on behalf of Respondent Nos. 1 to 4 on 14.8.2008. On receipt of the counter, rejoinder to the counter also has been filed on behalf of the applicant on 26.9.2008. The pleadings having been completed, this Tribunal heard the matter in extenso.

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3. Shri Dayananda Mohapatra, the learned counsel for the applicant raised the following contentions to substantiate the case of the applicant. Firstly, the learned counsel contended that the applicant is very much aggrieved as the proceeding is lingering on various pretexts from 2002 onwards. Only because of the pendency of the proceedings, the applicant has lost his chance of promotion to the next higher grade and he has been overlooked by the Departmental Promotion Committee (DPC) and some of his juniors have been promoted without considering the legitimate claim of the applicant. Secondly, the learned counsel submitted that since the proceedings have been continuing from 2002 onwards, the applicant is not in a position to seek his legitimate claim for promotion and has also suffered from mental agony. So the delay in finalization of the proceedings initiated under the provisions of All India Services (Discipline & Appeal) Rules, 1969 is irregular and illegal. Thirdly, the learned counsel submitted that the allegations contained in Annexure A/1 are not based on any valid evidence and that the applicant is not charged for any decision taken by him whereas the decision, if any, as alleged in the charge sheet, was taken by the Committee and the applicant being Additional Secretary to Government and ex officio Director of Estates, G.A. Department, had only acted as a Member of the DP & BP Committee which consisted of six Members having more technical qualification and expertise in the matter. In the backdrop of the facts alleged in the case the applicant had not taken any individual decision in the matter and the decision alleged in the charge sheet was that of the DP & BP Committee, which is clear from the proceedings of inspection of sites

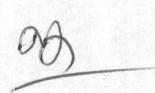


made by the Members of the Committee, dated 29.4.1998. Apart from that, the inquiry report submitted by Sri N.C.Vasudevan, Inquiring Officer & Commissioner-cum-Secretary, Housing & Urban Development Department, in the case of Shri A.N.Roy Choudhury, ex-Architect Member, B.D.A., who was a Member of the DP & BP Committee, would show the role of each Member of the Committee and that of the applicant. From the inquiry report submitted by the said Shri Vasudevan, it is clear that Shri A.N.Roy Choudhury, the Architect Member of the DP & BP Committee has been exonerated of the charges as there was no evidence. Lastly, the learned counsel for the applicant submitted that the charge memo Annexure A/1 itself was misconceived and issued with mala fide intention to harass the applicant and the continuation and/or non-finalization of the inquiry proceedings would make the same clear.

4. Shri A.K.Bose, the learned Government Advocate appearing for Respondent Nos. 2 to 4, relying on the counter filed on behalf of the Respondents, replied to the contentions of the learned counsel for the applicant that the delay in finalizing the enquiry proceedings is not due to the fault of the Government. The applicant is also equally responsible for that as he had approached the Respondents by filing frivolous representations. The learned counsel further submitted that in the statement of defence submitted by the applicant, it was stated by the applicant that he did not place any importance on the matters which did not directly relate to the interests of the General Administration Department and that he being a lone Member of the DP & BP Committee which consisted of six Members, the

irregularities, if any, should not be construed to have been committed by him but by the other Members of the said Committee. In view of this stand taken by the applicant, the charges levelled against him have to be enquired into by the Inquiring Officer in line with the statement of imputations contained in the charge sheet. Further, the learned counsel for the Respondents submitted that the order of this Tribunal quashing of the charges framed against Shri M.Rajamani, one of the Members of the DP & BP Committee, in OA No.180 of 2003 has been challenged before the Hon'ble High Court of Orissa in WP (C) No. 15176 of 2006 which is still pending. It was also submitted by the learned counsel for the Respondents that the charges levelled against the applicant have to be enquired into by the Inquiring Officer and at this stage the Tribunal has no jurisdiction to interfere in the matter. To substantiate these contentions, the learned counsel for the Respondents relied on certain judgments of the Hon'ble Supreme Court.

5. The counter filed by the Respondents has been further answered by the applicant by filing a rejoinder in which it has been stated that the applicant had recommended the plan of the buildings involved in the case fully in consonance with the Regulations of 1993 and the Multistoried Building Regulations 1998. It has also been stated in the rejoinder that the recommendation of the Inquiring Officer for dropping the proceedings initiated against Shri A.N.Ray Choudhury, Architect Member, has been admitted by the Government and that the proceedings initiated against other Members of the DP & BP Committee have also been recommended to be dropped.



6. Having considered the arguments of the learned counsel appearing for either side and perused the records produced by the parties, the question to be decided in this Original Application is whether the applicant is justified in approaching this Tribunal to have the relief sought. It is the trite law that jurisdiction of this Tribunal to interfere with departmental proceedings at the stage of charge is limited and only in rare occasions, the power of this Tribunal can be exercised for that purpose. As per the principles laid down by the Apex Court in various decisions, the interference by Tribunals/Courts, before a final decision is taken in the matter of disciplinary proceedings, would be premature. Unless it is established that serious injustice is caused to the applicant, or the procedure to be followed in the disciplinary inquiry/proceeding has been violated and that the continuation of the proceedings without a final probe in the matter would cause prejudice to such Government employee, this Tribunal has to keep its judicial restraint. To substantiate these approved norms, the learned counsel for the Respondents Shri A.K.Bose, placed reliance on the judgments of the Apex Court in the case of *State of Uttar Pradesh v. Shri Brahm Datt Sharma and another*, AIR 1987 SC 943. In paragraph 9 of the said judgment the Apex Court held that when a show-cause notice (charge) is issued to a Government servant under a statutory provision calling upon him to show cause, ordinarily the Government servant must place his case before the authority concerned by showing cause and the Court should be reluctant to interfere with the show-cause notice at that stage unless the notice is shown to have been issued palpably without any authority of law. In the



light of the above approved principle, we have to consider the arguments of the learned counsel for the applicant.

7. The first two grounds urged by the learned counsel appearing for the applicant are that the issuance of the charge-sheet Annexure A/1 caused much grievance to the applicant and the continuation of the proceedings from 2002 onwards caused great prejudice and injustice to the applicant. In this context, it is seen from the records produced by the applicant that some of the juniors of the applicant have been promoted by the DPC and that only because of the reason of the pendency of the disciplinary proceedings initiated by issuing Annexure A/1 charge sheet, the legitimate claim of the applicant for promotion to the higher grade has been dropped and his case has been kept in the sealed cover. It is also to be noted that the proceeding has started from 19.8.2002, i.e., the date of issuance of the charge-sheet, and it is continuing without any finality. It is also to be noted that the applicant has filed his statement of defence Annexure A/3 or rather the explanation to the charge-sheet on 11.10.2002, whereafter the Inquiring Officer has been appointed. But still on some pretext or the other and not due to any fault on the part of the applicant, the disciplinary proceeding has not been finalized. In this context, the learned counsel for the applicant Shri Mohapatra invited the attention of this Tribunal to the latest judgment of the Apex Court reported in AIR 2006 SC 207, *P.V.Mahadevan v. M.D., Tamil Nadu Housing Board*. In paragraph 16 of the

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judgment the Apex Court held as follows:

“16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment....”

In the above judgment, the Apex Court also relied on an earlier judgment reported in AIR 1998 SC 1833 (*State of Andhra Pradesh v. N.Radhakrishna*). In *N.Radhakrishnan's case (supra)* also the same view has been taken by the Apex Court for quashing a charge sheet issued by the authority. With regard to the above two contentions, the Respondents have not offered any admissible grounds for the continuation of the proceedings except pleading that the delay is only an administrative one. Hence we are of the view that the delay in finalizing the disciplinary proceedings and the prejudice caused to the applicant can be taken as grounds to interfere with the matter.

8. The next contention of the learned counsel for the applicant is that even going by the statement of imputations and the articles of charge as per Anenxure A/1, the charge will not lie against the applicant as he, being the Additional Secretary to Government and ex officio Director of Estates, General

22

Administration Department, was only one of the six Members of the DP & BP Committee and the part played by him was limited. Being such Member, he had only recommended the plan and the application of Harapriya Apartment regarding the buildings to be constructed over Plot Nos. 2727 and 2727/3743. In this context, we have perused Annexures A/2 series which show that all the six Members of the DP & BP Committee had inspected the site in question on 29.4.1998 and approved the plan and application upon their collective satisfaction. It is also to be noted that except the applicant, all the five Members of the DP & BP Committee were having technical knowledge of construction and such other matters relating to planning and the provisions of the Multistoried Building Regulations, 1998 and the BDA Planning & Building (Standard) Regulations, 1993. It is also to be noted that originally charge-sheet was issued only against the applicant. But subsequently, on the interference by the Chief Minister of the State, other Members of the said DP & BP Committee were also charge-sheeted. That means whatsoever decision was taken was not an individual decision of the applicant, but was of the DP & BP Committee after being satisfied that the plan and the application had to be sanctioned in the concerned case. If so, the applicant could not be individually liable for the alleged irregularity/illegality. His interest was only to keep the interests of the General Administration Department of the Government. Hence on the basis of the imputations and allegations levelled against the applicant vide Annexure A/1, he cannot be held to have committed a misconduct so as to face a disciplinary inquiry. In this context, it was also argued by the learned counsel for



the applicant that on the selfsame allegations the charge framed against one of the Members of the DP & BP Committee, namely, Shri A.N.Ray Choudhury, has been enquired into by Shri N.C.Vasudevan, the Inquiring Officer & Commissioner-cum-Secretary, H. & U.D.Department, Government of Orissa, who has recommended that the said Shri Ray Choudhury may be exonerated of the charges levelled against him, which fact has also been admitted by the Respondents in the counter. Shri A.N.Ray Choudhury, being the Architect Member, BDA, Bhubaneswar, was one of the six Members of the DP & BP Committee. The same reasoning can be adopted in the case of the applicant also. But as we have already found that the charge itself is vague and unsustainable, we are of the view that in the light of the statement of defence furnished by the applicant, the authority ought to have dropped the proceedings initiated against him. Hence we are of the considered view that applying the principles enunciated by the Apex Court, the applicant is entitled for the relief sought in this O.A.

9. The third contention of the learned counsel for the applicant is that the allegations contained in Annexure A/1 charge are not based on any valid evidence and it does not show that the decision was taken by the applicant himself. Hence the charge has to be quashed by this Tribunal. This argument has been already considered by us in the previous paragraph and the role of the applicant in the decision making process has also been considered by us.

10. Lastly, the learned counsel for the applicant contended that Annexure A/1 charge-sheet itself was issued with mala fide intention and keeping an

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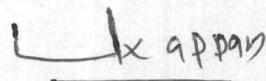
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animosity towards the applicant. In this context, it is to be noted that the similar charge issued against Sri M.Rajamani, Vice-Chairman, Bhubaneswar Development Authority, another Member of the DP & BP Committee, has been quashed by this Tribunal in OA No. 180 of 2003. The same reasoning and yardstick can also be adopted in the matter of the applicant, and we are well justified in finding that the charge-sheet Annexure A/1 issued against the applicant will not stand in the eye of law. In this context, we have further taken note of the judgment of the Apex Court in the case of *Transport Commissioner v. A.Radha Krishna Moorthy*, (1995) 1 SCC 322, in which their Lordships have held that the departmental inquiry even at the preliminary stage may also be available for judicial review in a case where the charges are vague and that jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution of India.

11. In the light of the discussions made above, the Original Application is allowed. Annexure A/1 charge dated 19.8.2002 stands quashed. No order as to costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER