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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.316 OF 2008

Cuttack this the 13th day of August, 2010

...
Rohit Kumar Nayak...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 ?

C.R.MOHAPATRA
(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

G.S.
(G.SHANTHAPPA)
JUDICIAL MEMBER

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CUTTACK BENCH:CUTTACK

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CORAM:

THE HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER
AND

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

...
Sri Rohit Kumar Nayak, aged about 37 years, S/o. Mohan Nayak, at present at near
Bank Colony, P.R.Peta, Jeypore, Dist-Koraput, Orissa

...Applicant

By the Advocates:M/s. K.P.Mishra, S.Mohapatra,,T.R.Pripathy & I.P.Dwibedi
-VERSUS-

1. Union of India represented through it's Secretary to the Ministry of Home Affairs, Government of India, Security Division (NCB Section), Lok Nayak Bhawan, New Delhi
2. Director General, Narcotics Control Bureau, Ministry of Home Affairs, Wing No.5, W.B.No.1, R.K.Puram, New Delhi
3. Deputy Director (Administration), Narcotics Control Bureau, Sector-1, R.K.Puram, New Delhi

...Respondents

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

ORDER

HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER:

1. The above Original Application has been filed challenging the legality and propriety of the order dated 1.8.2002(Annexure-A/11) passed by the Disciplinary Authority and the order dated 7.3.2008(Annexure-A/17) passed by the Appellate Authority and it is has been prayed for direction to the Respondents to reinstate the applicant into service with immediate effect with all consequential monetary benefits.
2. We have heard Shri K.P.Mishra, learned counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents.
3. It is an admitted fact from either side that the applicant was chargesheeted vide charge memo dated 13.9.2001, which reads as under:

Article-I



That the said Shri Rohit Kumar Nayak while functioning as Technical Assistant in NCB Hqrs, New Delhi during the period Nov, 2000 proceeded on 3 days casual leave w.e.f. 15.11.2000 to 19.11.2000 with permission to avail Sunday and Gazetted Holidays. Accordingly, he was supposed to join his duty on 20.11.2000. He has not joined his duties since then inspite of repeated instructions from this HQ and has been sending medical certificates seeking extension of leave.

As per the latest medical certificate issued by the Chief District Medical Officer, Koraput, Shri Rohit Kumar Nayak was advised 15 days rest wef 16.6.2001 to 1.7.2001. He was expected to report for duty on completion of the recommended rest on 2.7.2001. Shri Roit Kumar Nayak vide his application dated 26.6.2001 has intimated that he will be resuming his duty on 16.7.2001. Shri Rohit Kumar Nayak has neither joined his duty as intimated by him on 15.7.2001 nor there has been any further communication regarding his unauthorized absence from duty till date".

4. Annexire-A/3 is the list of documents (total 1 to 10), but witness was not listed. The applicant did not submit his representation to the charge memo, because he was on medical leave and he submits that he did not receive the charge memo. The Disciplinary Authority appointed Shri A.K.Dey, Assistant Director(Gen)NCB, Headquarters, New Delhi as Inquiry Officer vide order dated 1.12.2001. The I.O. conducted the inquiry and submitted his inquiry report without findings. The operative portion of the inquiry report reads as under: (Page 36 of O.A.)

"After going through all the official communications as per Annexure-I to XI referred to above, it is evident that Sh. Nayak has not only failed to comply with the instructions issued from this Hqrs. To join duty but also willfully absenting from duty without any valid reasons/permission from the competent authority w.e.f. 02.07.2001 to till date. Disobedience of orders to rejoin duty within the specific period would afford good & sufficient reasons for initiating disciplinary action under Rule 14 of CCS (CCA) Rules, 1965".

5. The Disciplinary Authority imposed the penalty considering the charge memo and the findings of the I.O. in the inquiry report supra. The applicant was served with a notice dated 17.4.2002 in which it is stated that after careful consideration of the inquiry report (copy enclosed) the Disciplinary Authority has provisionally come to



the conclusion that Shri Rohit Kumar Nayak is not a fit person to be retained in service/the gravity of the charge is such as to warrant the imposition of a major penalty and accordingly proposes to impose on him the penalty of removal from service. The applicant did not submit his representation. He contended that he did not receive the said notice.

6. The Disciplinary Authority imposed the penalty of removal from service with immediate effect from 1.8.2002 vide order dated 1.8.2002(Annexure-A/11). The order reads as under:

“WHEREAS Shri Rohit Kumar Nayak, Technical Assitant, NCB HQ, New Delhi has been found absenting himself from duty without permission since 2nd July, 2001 which is a gross negligence in the discharge of official duties with a dishonest motive under sec 3 (3) Rule 14 of CCS (CCA) Rules, 1965.

AND WHEREAS it is considered that the conduct of the said Shri Rohit Kumar Nayak, Technical Assistant is such as to render his further retention in public service undesirable and the gravity of the charge is such as to warrant the imposition of a major penalty of removal from service.

AND WHEREAS Shri Rohit Kumar Nayak was given an opportunity of personal hearing and offering his written representation on the proposed penalty.

AND WHEREAS the said Shri Rohit Kumar Nayak has neither appeared in person before the undersigned nor submitted any written representation against the proposed penalty.

NOW, THEREFORE, in exercise of the powers conferred by Rule 12 of CCS (CCA)Rules, 1965, the undersigned hereby removes the said Shri Rohit Kumar Nayak, Technical Assistant from service with effect from 01.08.2002”.

7. The applicant was served with a letter dated 3.9.2003 in which an amount of Rs.4765/- towards pay and allowances with effect from 1.11.2000 to 21.12.2000 has been paid to him by Demand Draft. The applicant has subsequently challenged the orders of removal from service passed by the Disciplinary Authority in an appeal dated 19.1.2006 (Annexure-13). The Appellate Authority has passed the order dated 9.5.2006, which reads as under:



"Please refer to your letter of appeal dated 19.1.2006 on the subject cited above.

In this regard, it is informed that the competent authority considered your appeal, examined various connected documents and did not find any reason to accept your appeal".

8. The applicant did challenge the said order of the appellate authority in O.A.No.704/06 before this Tribunal. The Tribunal quashed the orders of the appellate authority, remitted the matter to the appellate authority for fresh consideration. The said O.A. was allowed in part on 5.12.2007. While passing the order, the Tribunal, in Para 6 of the order observed as under:

"As mentioned above, the contention of the applicant that he has not been informed of the date fixed for the inquiry has not been denied by the respondents in their counter reply. There is nothing before us to show that applicant was informed of the date fixed for the inquiry. Without informing the charged official of the date of inquiry fixed for, holding ex parte inquiry amounts to denial of opportunity to the charged official to defend his case. Since the order of the appellate authority has not been sent to the charged official, it is also not known whether the appellate authority has considered this aspect.

We, therefore, quash and set aside F.No.11/1(1)/99-Estt. Dated 9.5.2006 (Annexure-A-14 to the O.A.) passed by the 3rd respondent and direct the appellate authority to communicate the speaking order to the applicant within two months from the date of receipt of copy of this order".

9. Subsequently the applicant submitted his additional grounds of appeal vide Annexure-A/16. The appellate authority has passed the order on 7.3.2008 by assigning the reasons and dismissing the appeal on confirming the orders of the disciplinary authority, the operation portion of which reads as under:

"Shri Rohit Kumar Nayak was given a personal hearing by the Director General, Narcotics Control Bureau on 22.2.2008 wherein he declared that he was in receipt of all the papers and could not respond as he had met with an accident and was having backbone problem, which is again at variance with the various medical certificates submitted by him.

I have examined all the available records and also various Memos/notices/letter issued to him and found that there is no merit in the representation. His averments made are after thoughts and therefore, I reject his claim for re-instatement".



10. It is the case of the applicant that the impugned inquiry was conducted without giving an opportunity of being heard, without notice, the ex party inquiry is illegal, there being no finding of the inquiry officer in the inquiry report, the said illegal inquiry report has been considered by the disciplinary authority which passed a cryptic order without following Rule-14(3)(ii)(b), Rule-14(4), 14(5), Clause(c) and Rule 14(20). The Appellate Authority has not considered the observation of this Tribunal, hence, the inquiry report, orders of the disciplinary authority and the appellate authority are illegal and the applicant is entitled to relief as prayed for.

11. The Respondents have vehemently opposed the O.A. and have supported the disciplinary proceedings initiated against the applicant. They have also supported the orders passed by the disciplinary authority and the appellate authority. According to them, the appellate authority has exercised his powers under Rule 27(2) of CCS (CCA), Rules, 1965. The applicant was served with a charge memo, the case of mental illness is fabricated one, he was well aware of the situation when he himself in his leave application for the period from 15.11.2000 to 17.11.2000 stated the reasons as attending to some personal work purportedly to look after his ailing grand mother. In his appeal on 19.1.2006 he has stated that due to neurological problems he was to rush to a neurologist on 31.11.2000. During the personal hearing on 22.2.2008 the applicant explained the Director General, NCB that he met with an accident and was having backbone problem.

12. A memo dated 17.4.2002 was sent to the applicant enclosing a copy of the inquiry report giving him an opportunity of making representation which he may wish to make against the penalty proposed. He did not reply to this, he acknowledged the order of removal by claiming and receiving all the terminal benefits. After the termination order dated 1.8.2002 and after availing of the entire terminal benefits, the



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 applicant after a period of about three and half years filed a representation against the order of termination. Hence the orders of termination dated 1.8.2002 as has been passed by the disciplinary authority is as per law.

13. The charge memo was sent to the applicant in the address given by him as per his service records. The notice before passing the order of punishment, copy of inquiry report were also sent to the applicant. When the applicant did not respond to the charge memo an ex parte inquiry was held. When the applicant did not reply to the inquiry report, the disciplinary authority imposed the penalty of removal from service for which he is competent. The proceedings of the inquiry and the order passed by the disciplinary authority are in accordance with the rules there is no infirmity or illegality in the order, accordingly the O.A. is liable to be dismissed.

14. We have carefully considered the submissions made from either side and also perused the pleadings available on record and written short note of argument filed by the applicant on 10.8.2010. We have examined the charges in which the witness' was listed in the list of witnesses. The learned counsel for the respondents submits that since the inquiry officer has perused the list of documents those belong to the applicant, the inquiry officer proceeded to record his findings on the documents. The Respondents admit that no list of witness was enclosed along with the charge memo and no witness was examined in the enquiry proceedings. Rule-14(3), Claus(ii)(b) relates to the list of witness. Rule 14(3) is extracted hereunder:

“(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up –

- (i) the substance of the imputations of misconduct or mibehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each of article of charge, which shall contain –



- (a) a statement of all relevant facts including any admission or confession made by the Government servant;
- (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained".(underlined by us)

15. Rule 14(4) deals with the service of such article of charge. Rule-14(5)(c) deals with appointment of Presenting Officer. Rule-14(20) says that "if the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiring Authority may hold the inquiry ex parte. Rule 14(23)(i) says that "after the conclusion of the inquiry, a report shall be prepared and it shall contain –

- (a) the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and reasons therefore".

Rule-14(23)(ii) deals with as under:

The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include –

- (a) the report prepared by it under Clause(f);
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry".

16. We have carefully considered the pleadings, the charge memo and the rule extracted above. We find that the charge memo was sent to the applicant without the



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list of witness. Presenting Officer was not appointed. Witness has not been examined.

The Respondents have stated that the charge memo was sent to the applicant, but no acknowledgement for having the charge memo been served on the applicant is supported in the reply statement. The Presenting Officer was not appointed who presents case in respect of articles of the charge and the ex parte inquiry was held. As the inquiry report prepared by the I.O. has not been prepared as per Rule 14(23)(i), as extracted above, the same is not sustainable in law. There is no finding of the I.O. on the article of charge framed against the applicant. The I.O. has not submitted his finding along with the report prepared in accordance with Rule 14(23). No witness was examined. Hence no oral evidence was produced in the course of inquiry. Since the Inquiry Officer did not comply with the requirement of Rule 14(23), we are of the view that the inquiry report is illegal and not in accordance with the requirement of Rule 14. Though the applicant has not challenged the memo of charge, the memo of charge is not in accordance with Rule 14(3)(ii)(b).

17. We have carefully examined the orders of the disciplinary authority. Rule 15(1) deals with action on the inquiry report. Rule 15(i) reads as under:

“(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”.

18. We have also carefully examined the orders of the disciplinary authority which is extracted above and Rule 15(1) supra and applied to the facts of the case. The disciplinary authority has not complied with the Rule 15(1) and 15(2)(A), the authority has to consider representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rule (3) and (4).



19. When the inquiry report is illegal, the disciplinary authority has imposed penalty of removal based on the report of the Inquiring Authority, hence we are of the view that the disciplinary authority has not complied with Rule-15(1) and (2-A) of CCS(CCA) Rules. The Disciplinary authority has powers to drop the proceedings. In view of the judgment of the Hon'ble Supreme Court in the case of Mahavir Prasad vs. State of U.P. (AIR 1970 SC 1302), the reasons to be recorded in writing before imposing penalty. Since the disciplinary authority has not complied with Rule 15 of CCS(CCA) Rules and the judgment supra, we are of the view that the order of the disciplinary authority is not sustainable in the eye of law.

20. The applicant challenged the orders of the disciplinary authority before the appellate authority. When the appellate authority has passed a reasoned order on the direction of this Tribunal, the observation made in Para-6 in O.A.No.704/06 has not been complied with and powers vested on him under Rule 27(2) of CCS(CCA) Rules has not been exercised. When the appellate authority has not considered the procedures followed by the I.O. and the Disciplinary Authority, we are of the view that the orders of the disciplinary authority is also illegal which is not sustainable in law, accordingly, the orders of the appellate authority is liable to be quashed.

21. Since the Respondents have not complied with Rule14, 15 and 27 of CCS(CCA) Rules, the entire departmental proceedings against the applicant is liable to quashed. Accordingly we quash the orders of the disciplinary authority and the appellate authority including the inquiry report though it is not challenged.

22. We direct the disciplinary authority to exercise the powers vested in him under Rule 14 "if it is of the opinion that he is to take a decision where the inquiry has to be conducted based on the memo of charges, he can proceed under Rule 14 or can drop the proceedings. Before dropping the proceedings he is to pass a reasoned order.



When the list of witness is not enclosed along with the charge memo, the disciplinary authority ought to have exercised its powers under Rule 14 and proceeded with the inquiry. We direct the disciplinary authority to take decision, whether the charge memo is in accordance with Rules, if he feels, the proceedings under Rule 14 of CCS(CCA) Rules has to be initiated, he has to proceed in accordance with Rules. The Respondents contended that the applicant has received the terminal benefits. Hence, he does not deserve to reinstatement. The learned counsel for the applicant submits that the applicant is prepared to refund the legitimate amount to the Government. We have considered the submissions from either side. Since we quash the order of penalty and the order of the appellate authority, we direct the Respondents, i.e., Disciplinary Authority to reinstate the applicant and ask him to refund the amount what is payable by him to the Government as he has undertaken to refund the amount.

23. The applicant has made out a case for grant of relief as prayed in the O.A., the Respondents have not justified to support their case based on the rule position as extracted above, the disciplinary authority is directed to take a decision regarding service of the applicant from the date of removal till the date of ~~reinstatement~~ ^{reinstatement} in accordance with rules.

24. With the above observations and directions, the O.A. is allowed in part. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(G.SHANTHAPPA)
JUDICIAL MEMBER