

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.395 of 2010
Cuttack, this the 21st day of March, 2011

Muralidhar Sahoo Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*.
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*.

A.K.
(A.K.PATNAIK)
Member(Judl)

C.R.
(C. R. MOHAPATRA)
Member (Admn.)

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 395 of 2010
Cuttack, this the 21st day of March, 2010

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Muralidhar Sahoo, aged about 63 years, S/o.Late Nilamani Sahoo,
At-Tangi, Malhasahi, Po-Kotasahi, Dist. Cuttack.

.....Applicant

By legal practitioner: M/s.K.K.Dash, S.K.Swain, C.K.Nayak, Counsel
-Versus-

1. The Secretary to the Government of India, Ministry of Communication and IT Department of Telecom, New Delhi.
2. Government of India, Department of Telecom, O/o. the Controller of Communication Accounts, Orissa Telecom Circle, Bhubaneswar-751 001.
3. The Telecom District Manager, BSNL, Bhawanipatna, At/Po/Dist. Bhawanipatna.
4. DET (P&A), Office of Telecom District Manager, Bhawanipatna, At/Po/Dist. Bhawanipatna.
5. Deputy General Manager (Admn.), O/o. CGM (BSNL), Orissa Circle, Bhubaneswar-751 001, Dist. Khurda.

....Respondents

By legal practitioner: Mr.S.B.Jena,ASC & Mr.R.N.Pal,ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

Since 24.4.1965, while the Applicant was working under DOT as Lineman (Annexure-1), got absorbed in the BSNL w.e.f. 01-10-2000. While the Applicant was working as SI (O), Beltukuri in the District of Nuapara, due to investigation, inquiry, trial of criminal offence registered under section 409/477 (A), IPC read with Section 13 (c) and 13(2) of Prevention of Corruption Act, 1988, in exercise of the power conferred under sub Rule 1 of Rule 10 of CCS (CC&A) Rules, 1965, the

L

applicant was placed under suspension vide order under Annexure-2 dated 16.9.2006. The matter was tried in TR Case No.68/4 of 1999/95 in the Court of CBI, Bhubaneswar. The Learned Judge, CBI convicted the Applicant for the offence and this order was challenged by the Applicant in the Hon'ble High Court of Orissa in CRLA No. 273 of 2006. The Hon'ble High Court of Orissa vide order dated 26.6.2006 admitted the case, granted the bail to the applicant and called for the LCR from the lower court. The Hon'ble High Court of Orissa, vide order dated 26.6.2006 has also stayed the realization of fine imposed by the Trial Court till disposal of the Appeal and according to the Applicant the matter is subjudice before the Hon'ble High Court of Orissa. While the matter stood thus, for the conviction order passed by the Learned Judge, CBI, Bhubaneswar, Respondent No.4 in order under Annexure 4, dated 29.8.2007 dismissed the Applicant from service with effect from 19.5.2006 i.e. with effect from the date the applicant was placed under suspension. This order of dismissal in Annexure-4 is called in question by the Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 on the following grounds.

That the order of punishment of dismissal can be imposed on an employee under Rule 14 of CCS (CC&A) Rules, 1965 and therefore, the punishment ought to have been imposed only after following the prescribed procedure under the Rules which have been framed in consonance with the provisions under Articles 309 and 311 of

L

the Constitution of India. Having not done so, the order of dismissal dated 29.8.2007 in Annexure-4 suffers from arbitrariness, actuated with *mala fide* and being violative of and repugnant to the principles of natural justice and contrary to the Rules, the same is liable to be set aside. Further stand of the Applicant is that in the meantime, on reaching the age of superannuation, he retired from service on 31.7.2007. As per the circular dated 21.7.2009 even after imposition of the punishment of dismissal he was entitled to pension and pensionary benefits. But despite repeated representations, his grievance for payment of pension has not been settled by the Respondents and for such delay in payment of his rightful and legitimate dues he has been suffering since then. Hence by filing this OA, the Applicant has prayed to quash the impugned order under Annexure-4 dated 29.8.2007 with prayer to direct the Respondents to sanction his pension and other pensionary benefit payable to the applicant from the date of his actual retirement and also to direct the Respondents to release the differential salary and other cash benefits payable to him from the date of dismissal to the date of retirement on superannuation.

2. In the counter filed by the Respondents it has been contended that as per the letter No. 318-12/2008-Pen(T) dated 21-07-2009, the absorbed employee of BSNL are entitled to retirement benefits for the service rendered under Government even if they are dismissed/removed from service after their absorption in BSNL for misconduct during service in BSNL. But in the present case the date of

R

• filing of charge sheet is 30.12.1994 by the CBI, SPE, Orissa Branch, Bhubanswar. Hence, it is clear that the misconduct was committed by the applicant during DOT period but not in BSNL period. They have admitted the date of absorption in BSNL as 01-10-2000. The offence committed by the applicant relates to the period from 08.05.1991 to 25.08.1992 i.e. during the period when the applicant was continuing under DOT. The applicant was placed under suspension in exercise of the power available under CCS (CC&A) Rules and he was punished by applying the provision available under Rule 19(i) of the CCS (CC&A) Rules, 1965. Hence according to the Respondents, the circular 21.7.2009 has no application to the case of the Applicant and as such, he is not entitled to any benefit as long as the punishment of dismissal stands.

3. In regard to the contention of the applicant that the punishment of dismissal without holding any enquiry or giving any opportunity is not sustainable, it has been contended by the Respondents that when the order of conviction of the applicant for proved serious act of omission and commission under section 409/477 (A), IPC read with Section 13 (c) and 13(2) of Prevention of Corruption Act, 1988, Article 311 (2) is not attracted. This apart, in absence of any prejudice caused by not giving him prior notice before passing the order of punishment and that in absence of any pleading as to how he would have improved his case had he been given opportunity prior to issuing the order of punishment when admittedly he was convicted by the appropriate court of

law, merely on ground of non-issuance of any notice the punishment order is not liable to be set aside. Accordingly, Respondents prayed for dismissal of this OA.

4. Having heard the rival submission of the parties, perused the pleadings of the respective parties with reference to rules and perused the materials placed on record.

5. Rule 19(i) is a special provision available with the authority to impose the punishment of dismissal/termination on certain contingency and conviction in criminal offence is one of such grounds. Grant of opportunity before imposing any punishment provided in the Rules^{as} in consonance with the provisions made in Article 311 (2) of the Constitution of India. At the same time, the proviso (a) to Article 311 (2) of the Constitution lays down that this proviso will not be applicable to the persons who are dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Applicant has been convicted by the appropriate court of law for a serious criminal offence under Section 409/477 (A), IPC read with Section 13 (c) and 13(2) of Prevention of Corruption Act, 1988. Imposition of punishment without giving any opportunity for conviction under prevention of Corruption Act came up for consideration before the Hon'ble Punjab and Harayana High Court in the case of **State of Punjab v Harbans Lal**, 2005 (I) SLR 760 wherein while setting aside the order of the lower court it was held by the Hon'ble Punjab and Harayana High Court that

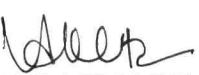
where an employee is convicted on a criminal charge the mandate given in Article 311 (2) of the Constitution will not apply and that the employee having been found guilty and convicted on the charge of Prevention of Corruption Act and under Section 161 IPC which is an offence of serious nature there cannot be any other punishment than dismissal. In the case of **Municipal Committee, Bahadurgarh v Krishan Behari**, 1996 (1) SLR 432(SC) in paragraph 4 of the decision it was held by the Hon'ble Apex Court Article 311 (2) (a) is attracted in serious offences. In an offence of serious nature involving corruption, there cannot be any other punishment than dismissal. Sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large. It is the ~~act of~~ ¹ gravity of offence that is relevant. In so far as noncompliance of the principle of natural justice is concerned, we would like to rely on the observation of the Hon'ble Apex Court in the case of **Punjab National Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16 in which it was held by Their Lordships as under:

“the principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising there under is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

6. Law is well settled that the Tribunal while exercising its jurisdiction cannot sit as an appellate authority over the acts and deeds of

the authority and seek to correct them and doctrine of fairness evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. In view of the above, we are of the view that in the absence of pleading how non-observance of natural justice prejudice the applicant and had he been given opportunity how the thing would have changed, we hold that not issuing any show cause notice to the applicant prior to imposing the punishment under Rule 19(i) especially when the applicant was convicted under Prevention of Corruption Act, cannot be a valid ground for challenge.

7. Since there is no other cogent reason stated by the applicant in support of his prayer, there is no occasion for the Respondents to rebut in their counter or in course of hearing and that the two grounds having been held not sustainable in the eyes of law, this OA is held to be without any merit and is accordingly dismissed by leaving the parties to bear their own costs.


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)