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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 46 of 2011
Cuttack, this the 5th day of May, 2016

V.Bhaskar Rao Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
Member (Admn.)


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

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

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

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V.Bhaskar Rao,
aged about 51 years,
Son of V. Janamya,
Village- Kadjala, P.O. – Palasa,
Dist- Srikakulam (A.P.)
At present serving as Safaiwala,
Qr. No. 2R-68, A.R.C. Charbatia,
PO- Charbatia, PS- Choudwar, Dist- Cuttack.

..... Applicant

By the Advocate(s) - M/s. S.S.Panda, S.Mallick, D.C.Rout

-Versus-

Union of India represented through

1. Director General of Security,
Aviation Research Centre (Cabinet Secretariate),
Block-V, R.K.Puram, New Delhi.
2. Special Secretary (A.R.C.),
A.R.C. Head Quarter, Block-V (East),
R.K.Puram, New Delhi.
3. Deputy Director (Admn.),
Aviation Research Centre,
At/Po- A.R.C. Charbatia,
Dist- Cuttack- 754028.
4. Asst. Director (Admn.),
Aviation Research Centre,
At/Po- A.R.C. Charbatia,
Dist- Cuttack- 754028.

..... Respondents

By the Advocate(s).....Mr. S.Patra

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ORDER (ORAL)**A.K.PATNAIK, MEMBER (JUDL.):**

The order under Annexure-A/9 dated 09.11.2010 passed in a Disciplinary Proceedings under Rule 14 of the CCS (CCA) Rules, 1965 by the Disciplinary Authority and the order under Annexure-A/11 dated 3rd December, 2010 passed by the Appellate Authority in rejecting the appeal preferred against the order of the Disciplinary Authority under Annexure-A/9 dated 09.11.2010 have been challenged by the applicant in this Original Application filed under section 19 of the A.T. Act, 1985 seeking the following reliefs:

- “ i) Quash the impugned order of compulsory retirement issued by the Respondent No.3 at Annexure-9 and rejection order passed by the appellate authority respondent no.2 at Annexure-11;
- ii) Direct/order that the applicant shall be re-instated to his service with all consequential service and monetary benefits.”

2. The grounds set forth by the applicant in support of the aforesaid relief are as under:

- (a) In the article of charges, it was stated that the applicant appeared in public place i.e. in front of the Quarters No. 2R/67 of Shri Jayaram Barik after consuming liquor during office hours afternoon session on 15.01.2010 and misbehaved Shri Barik and used abusive and vulgar languages in a state of intoxication whereas in Annexure-3 i.e. the list of documents, an application dated 13.1.2010 of Shri Jayaram Barik was relied upon. This establishes that when the allegation of misconduct alleged to have been

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committed on 15.01.2010 how could Shri Jayaram Barik made the allegation two days prior i.e. on 13.01.2010. On 13.01.2010 the applicant was on leave and hospitalized. So question of consuming liquor during office hour does not arise. This establishes that the entire allegation made in the charges are false and baseless;

- (b) The charge sheet was issued by the Assistant Director who was the disciplinary authority in so far as the applicant is concerned. The IO and PO were also appointed by the order of the Assistant Director. However, the order of punishment was issued by the Deputy Director (Admn.) who is not the disciplinary authority and is subordinate in rank of the Disciplinary Authority i.e. Assistant Director that too, the punishment of compulsory retirement was imposed on the applicant without due application of mind viz; without considering the statement of defence and the report of the enquiry in its proper perspective;
- (c) The allegation leveled against the applicant was outside the purview of discharging the official duties and as such, based on the said incident, even if it is taken to be true, punishment should not have been imposed on him;
- (d) The applicant was residing in Qr. No. 2R/68. There are other quarters in the same colony. The allegation against the applicant was that he appeared in public place in front of Qr. No. 2R/67 is false. The front of Qr.No. 2 R/67 is the front of



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Qr. No. 2R/68 where the applicant was residing. Therefore, the place where the incident occurred even if it is taken to be true cannot be treated as a public place.

- (e) During the course of enquiry, the applicant was not afforded opportunity to cross examine the prosecution witness but the enquiry officer unilaterally recorded that the applicant declined to cross examine. This aspect of the matter was specifically pointed out by the applicant in his appeal but the same lost site of the appellate authority;
- (f) As per the provision of Rule 27 of the CCS (CCA) Rules, 1965, the appellate authority was under obligation to deal with all the grounds taken by the applicant in his appeal. On a cursory glance over the appeal preferred by the applicant as well as the order of the appellate authority, at no stretch of imagination it can be said that the order of the rejection of the appeal of the applicant can pass test of reasonableness;
- (g) No opportunity of being heard was afforded by the Appellate Authority before rejecting the appeal of the applicant.

3. Despite adequate opportunities being granted to the respondents and despite due appearance on their behalf by the learned Additional CGSC, for the reasons best known, no reply was filed by them. However, at the closure of the hearing, the learned Addl.CGSC filed a written note of submission which would be dealt into at the



appropriate place.

4. Mr. S.S.Panda, the learned counsel for the applicant, by placing reliance on the grounds taken and stated as above and the documents enclosed thereto has stated that there being no opportunities from the side of the Respondents by way of filing any counter, the applicant is entitled to the relief claimed in this OA. Per contra, Mr. Patra the learned Addl.CGSC appearing for the Respondents submitted that the applicant joined as a Safaiwala, in ARC Charbatia on 24.4.1981. On the basis of a complaint received from his neighbours and on the basis of the medical report from ARC Hospital, he was suspended on 15.01.2010 for consuming liquor during office hours and abusing his neighbour one Jayaram Barik in a public place i.e. in front of Qrs No. 2R/67. So on the basis of the complaint a departmental enquiry was instituted against him in which after giving due opportunity to the applicant was held by the IO that the charge of taking alcohol during office hour as proved. On the basis of the findings of the IO the disciplinary authority awarded the punishment of compulsory retirement from government service w.e.f 09.11.2010. The applicant submitted appeal before the appellate authority on 24.11.2010 against the punishment awarded to him by the Disciplinary authority. The appellate authority after taking into consideration all details which includes the defence of the applicant did not find any merit on his appeal and accordingly rejected the same. It has been stated that there being no injustice caused to the decision making process of the matter and the punishment was imposed after following due process of rules and principles off natural justice, this OA is liable to

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be dismissed.


5. Admitted position is that the charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issue by the Assistant Director (Admn.) on 05.4.2010 in which the allegation against the applicant was that "the applicant appeared in public place i.e. in front of Qtrs No. 2R/67 of Shri Jayaram Barik, Barber after consuming liquor during office hours i.e. afternoon session of dt. 15.1.2010 and misbehaved with Shri Jayaram Barik, Barber and used abusive and vulgar language in a state of intoxication. Whereas in the list of documents the application of Shri Jayaram Barik, Barber is stated to be of dated 13.1.2010. The applicant denied the charge levelled against him vide his application dated 11.5.2010 addressed to the Assistant Director (Admn.) who upon consideration of the defence of the applicant decided to enquire into the matter and accordingly vide order dated 20.5.2010 appointed the IO and PO to proceed with the enquiry. The IO in his report held taking the alcohol during office hour proved but in so far as the allegation of misbehaving Shri Barik in an intoxicated condition was held not proved. One of the grounds taken by the applicant that during the enquiry he was not allowed to cross examine the witness examined during enquiry. The enquiry report also does not show that any opportunity to the above extent was allowed to the applicant but he declined to do so. However, after considering the report of the IO and the defence of the applicant submitted to the report of the IO the Deputy Director (A) vide order dated 09.11.2010 imposed the punishment of compulsory retirement on

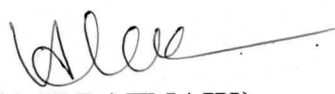
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the applicant. Then the applicant preferred the appeal to the Special Secretary (ARC), ARC Headquarters, New Delhi who in his order dated 3rd December, 2010 rejected the appeal of the applicant. It appears that the appellate authority while considering the appeal did not examine the fact that when the Assistant Director (Admn.) who is admittedly senior in rank to Deputy Director (Admn.) initiated the proceedings, considered the defence of the applicant and appointed the IO and PO imposition of the punishment by the Deputy Director (Admn.) is sustainable in the eyes of law. Further it appears when the charge sheet was issued on the complaint of Shri Barik and the incident was of dated 15.1.2010 how Shri Barik made the complaint on 13.1.2010. Further allowing opportunity of being heard is one of the cardinal principles of natural justice which as it appears has not been granted by the Appellate Authority.

6. In view of the above, we quash the order of the appellate authority dated 30.12.2010 under Annexure-A/11 and remit the matter back to the appellate authority to consider the points discussed above and pass appropriate order after affording the applicant an opportunity of being heard within a period of two months from the date of receipt of a copy of this order.

7. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


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