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O.A. No. 202 of 2009  
Pradeep Sagar Mohanty ... Applicant  
Versus  
UOI & Ors. ... Respondents

Order dated 12~~th~~ October, 2009.

C O R A M  
THE HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER (J)  
A N D  
THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (A)  
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Applicant is a Senior Technician Grade II Mechanical Department, Captive Power Plant (CPP), NALCO. He having been issued with a charge sheet under Annexure-A/22 asking him to furnish his reply to the charges levelled therein and the order under Annexure-A/23 appointing IO to enquire into the allegation has filed this OA praying to quash the orders under Annexure-A/22 & a/23 on various grounds. Respondents filed their counter trying to justify the charge sheet under Annexure-22 and the subsequent order appointing EO and PO for detailed enquiry into the allegations. They have also prayed for dismissal of this OA being premature one. Applicant by filing rejoinder more or less reiterated his stand taken in the OA.

2. Heard Mr. J.K. Khuntia, Ld. Counsel appearing for the applicant and Mr. Biswanath Rath, Learned Counsel for the Respondents and perused the materials placed on record. Charge sheet under Annexure-A/22 reads as under:

“You are hereby charge sheeted by committing the following major misconduct as per company's Certified Standing Orders which are as under:



25(B)(i) - Willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

25(B)(xiv) - Writing of an anonymous or pseudonymous letters, Criticizing superiors of the company and making false reports regarding misconducts of the colleagues etc;

25(B)(xx) - Habitual breach of any Standing Order or any law applicable to the establishment or any rule made there under.

25(B)(xxxiv) - Intentionally giving false informant, Prejudicial to the interest of the Management.

The above charges are based on the following allegations:-

That you have been issued vide letter reference No. CHR/NE-28949/1438/2008 dated 3<sup>rd</sup> May, 2008 to cooperate with the enquiry officer to facilitate the fact finding enquiry on your complaint to Central Vigilance Commission. However, you did not cooperate fully to the enquiry officer;

That from time to time you have written anonymous or pseudonymous letters to different quarters criticizing superiors, indicating that six numbers of senior officers of Nalco have indulged in unfair practice and in scam of cores and cores of rupees.

That in past you have breached the standing order provision of the company and the law applicable to the establishment and the rule of the company made there under for which you have been penalized in the past as per Certified Standing Orders of the Company.

That you have given false information of writing anonymous/pseudonymous letters prejudicial to the interest of the Management. The above Act constitutes major misconduct under Company's Certified Standing Orders as stated above.

You are hereby directed to submit your written explanation to the above charges within 72 hours of the receipt of this charge sheet failing which it will be presumed that you have no explanation to offer and further necessary action as per the provisions of the Company's certified standing orders will be taken against you."

On receipt of the explanation dated 26.12.2008 of the applicant to the above charges, the Respondents issued order for holding enquiry under Annexure-A/23. It reads as under:



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"We are in receipt of your explanation dated 26.12.2008 in response to the charge sheet issued to you vide No. CPP/Mech/4759/2008 dated 18.12.2008. After careful examination of your explanation, it is found unsatisfactory. As such, it is felt necessary to conduct an enquiry in to the charges levelled against you.

Shri P.K.Das, Ex-General Manager (Admn.) has been appointed as Enquiry Officer and Shri N.Behera, Sr.Manager (HRD) of CPP as Presenting Officer to represent the case on behalf of the management.

You are, therefore, advised to attend the domestic enquiry before the Enquiry Officer on receipt of notice from him to defend the charges levelled against you. You will be given all reasonable opportunities for presenting your self to prove honesty."


3. On perusal of the charge sheet it reveals that apart from quoting various provisions of the rule/standing order of the Company in general no specific charge has been made out against the Applicant. Further there is no statement of imputation giving details in support of the charges framed. It is further seen that the charge sheet contains the penalty already imposed and undergone by the Applicant on previous occasion for some other incident. On the whole the charge sheet at Annexure-22 gives an impression that it has been framed in a very lackadaisical manner without due application of mind. It is cardinal principle of natural justice that person who is proceeded against is entitled to know details of the case, evidence in support thereof and should have fair opportunity to defend his case before any adverse decision is taken. Therefore, the charge sheet must be distinct, unambiguous and supported by document and must not be sketchy, vague and unspecific as in the instant case. The justification or explanation furnished in

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the counter by the Respondents cannot validate the charge sheet which is ab initio void being unspecific. This is because, it is trite law that public orders, publicly made, in exercise of a statutory power cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.

4. When the factual scenario of this case is examined in the background of the legal principles set out by the Hon'ble Apex Court in the case of DIG V.K.A.Swaminath (1996) 11 SCC 498 it cannot be held that the charge under Annexure-A/22 and the inquiry proposed at Annexure-23 are sustainable in the touch stone of judicial scrutiny. Hence both the charge sheet under Annexure-22 and the order appointing EO and PO under Annexure-23 are hereby quashed. However it is ordered that quashing of the charge sheet shall not preclude the Department from issuing a fresh charge sheet.

5. In the result, with the observation and direction made above, this OA stands allowed. There shall be no order as to costs.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)