

15

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.42 OF 2010

Cuttack this the 28th day of September, 2012

Banamber Sethy...Applicant

-VERSUS-

Union of India...Respondents
FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi or not ?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

Ale
(A.K.PATNAIK)
JUDICIAL MEMBER

16
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.42 OF 2010
Cuttack this the 28th day of SEPTEMBER, 2012.

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Shri Banamber Sethy, aged about 49 years, Son of late Bihari Sethy, a permanent resident of Village Mauzibeg, Post-Balanga, District-Puri at present working as Inspector of Posts, Malkanagiri

...Applicant

By the Advocates: M/s. G. Rath & D.K. Mohanty

-VERSUS-

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110 001
2. The Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
3. The Director of Postal Services, Bhubaneswar Region, O/o. the Chief Postmaster General, Orissa, Bhubaneswar
4. The Director of Accounts, Mahanadi Vihar, Cuttack-PIN-753 004

...Respondents

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

...
ORDER

A.K.PATNAIK, MEMBER(J): Applicant, who is working as Inspector of Posts, Malkanagiri has filed this Original Application under Section 19 of the A.T.Act, 1985, seeking the following relief.

- i) *To quash the report of the IO along with disagreement notice of the DA under Annexure-A/1.*

- ii) *To quash the order of punishment of the Disciplinary Authority under Annexure-A/3 dated 5.10.2007*
- iii) *To quash the order of the Appellate Authority under Annexure-A/5 dated 07.05.2009 (so far as relates to imposition of punishment of reduction by five states and treating the period from compulsory retirement till reinstatement as non-duty allowing pensionary benefits are concerned);*
- iv) *To direct the Respondents to pay the Applicant all his service and financial benefits retrospectively;*
- v) *To pass any other order/orders as deemed fit and proper.*

1. Brief facts leading to filing of this O.A are that while the applicant was working as Inspector of Post Offices, Puri Division, Puri, disciplinary proceeding was initiated against him under Rule-14 of CCS (CCA) Rules, 1965 vide Memorandum of Charges dated 25.09.2000 for committing certain misconduct as SDI(P), Jaleswar East Sub-Division. He denied the charges for which an enquiry into the matter was conducted. During the course of inquiry, the applicant has stated to have fallen ill and remained on medical leave for two years w.e.f. 10.5.2003 to 13.5.2005. According to the applicant, despite his medical leave having been sanctioned by the authorities, the I.O. proceeded ex-parte and submitted its report on 10.6.2004 holding all the charges proved. On receipt of the said report, the applicant submitted a representation dated 21.8.2004 praying for a de-novo enquiry. The applicant has also averred that the Respondents conducted de-novo enquiry from the last stage of submission of the brief by the C.O. by adopting a novel procedure, although the applicant was on medical leave from the stage of *Ad*

examination of the prosecution documents and witness. Thereafter, basing up on such an inquiry, the I.O. submitted its report holding the charges as stated in Articles-I to III and VIII proved, Articles-IV, V, VI and VII and IX not proved and Article-X of the charge partially proved. The Disciplinary Authority having differed with the findings of the IO in so far as Articles of Charge under IV, V, VI and IX are concerned supplied copy of the report of the IO along with his disagreement notice to the applicant vide letter dated 19.3.2007 requiring him to submit his defence. In response to this, the applicant submitted his written statement on 8.5.2007. While the matter stood thus, according to the applicant, without giving him an opportunity of being heard or even without taking into consideration the specific stand taken by him, the Disciplinary Authority imposed the punishment of compulsory retirement from service vide order dated 05.10.2007. The applicant preferred an appeal against the above punishment order on 12.11.2007. The Appellate Authority In consideration of the appeal vide order dated 07.05.2009(Annexure-A/5) while upholding the order of punishment as imposed by the Disciplinary Authority, ordered as under:

"I, K.V.Sundar Rajan, Chief Postmaster General, Orissa Circle, Bhubaneswar do hereby order that Shri Banambar Sethy, Ex-IPO(PG), Office of the Sr. Superintendent of Post Offices, Puri Division, who is presently under Compulsory Retirement from Service may be taken back into service in the Inspector Posts Grade in the Vth Pay Commission's scale of pay Rs.5500-175-9000/- It is further ordered that the said Sri Sethy's pay be reduced by 5 (five) stages/increments from Rs.7950 to Rs.7050/- in the time-scale of pay of Inspector Posts, i.e., Rs.5500-175-9000/- for a period of 5(five) years with effect from the date he joins service in pursuance of this order. It is further directed that the said Sri Sethy will earn increments of pay during the period of reduction

All

and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. The corresponding scale and stage of pay he is eligible under the VIth Pay Commission may be fixed accordingly. It is further ordered that the period starting from the Sri Sethy's date of relief on compulsory retirement from service upto the date of his joining the Department, will not be treated as duty and he will receive no pay and allowances for this period except the due pensionary benefits he has received since his compulsory retirement and will receive the same till he joins duty".

2. Aggrieved with the above order passed in the appeal, the applicant has moved this Tribunal seeking the relief as referred to above.

3. The Respondents in their counter have submitted that the charges leveled against the applicant having been proved during the enquiry is based on evidence by following the principles of natural justice at every stage of the proceeding and hence the prayer of the applicant as made is baseless and therefore, the O.A. is liable to be dismissed.

4. We have heard Shri G.Rath, learned senior counsel for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel appearing on behalf of the Respondents and perused the materials on record.

5. During the course of hearing Shri Rath, learned counsel for the applicant advanced the following arguments in support of his case.

- i) *Respondents having adopted a novel procedure of de novo inquiry, the report of the I.O. emanating from such enquiry being vitiating is liable to be quashed.*
- ii) *The Disciplinary Authority while issuing disagreement notice on the report of the IO having not taken into consideration the points raised by the applicant in his written statement*

Ans

20

of defence, issuance of such disagreement notice suffers non application of mind and as such, the same being bad in law is liable to be scrapped.

- iii) *The key witness in so far as charge under Article - X is concerned having not called upon to adduce his statement the further proceedings in the matter is violative of the principles of natural justice and as such, the report of the IO as well as finding recorded by the D.A. holding the said charge proved is vitiated.*
- iv) *Although the Appellate Authority is expected of disposing of the appeal within a reasonable time, in the instant case, there has been abnormal delay in disposing of the appeal and in effect, this has caused immense prejudice to the interest of the applicant.*
- v) *The order of the Disciplinary Authority having merged with the order of the Appellate Authority, applicant is entitled to back wages from the date of his relief on retirement till the date of his joining as Inspector of Posts, Malkanagiri.*

6. In response to the point No.(i) as stated above, learned SSC Shri Mohapatra submitted that since the applicant could not attend the inquiry on 17.5.2004 due to his illness, in consideration of his representation, de novo proceeding from the stage of submission of defence statement by the applicant from 17.5.2004 onwards was conducted in order to comply with the principles of natural justice.

7. As regards Point No.(ii) above, learned SSC Shri Mohapatra replied that in the absence of any indication made by the applicant as to which of the points urged by him before the Disciplinary Authority was left out of consideration, the submission made in this regard deserves no consideration.

All

8. In response to Point No.(iii) above, the learned SSC Shri Mohapatra, based on the counter filed by the Respondents submitted that the applicant was supplied with a copy of the depositions of PS-7, DW-1 made before the IO on sittings held while he remained absent in attending the sitting. According to Shri Mohapatra, at no point of time, the applicant has registered any grievance or raised any objection in this regard and therefore, the submission made in this regard is nothing but an afterthought.

9. As regards the delay in disposing of the appeal by the Appellate Authority, as urged by the applicant in Point No.(iv) above, the Respondents, while admitting the same have stated that it was due to the Chief Post Master General, Orissa Circle was in current charge and was not vested with the power to decide appeal and petitions, such a delay has occurred.

10. So far as point No. (v) is concerned, learned SSC Shri Mohapatra submitted that the Appellate Authority having upheld the order of punishment as imposed by the Disciplinary Authority, ordered the applicant to be taken back in service on the point of humane approach. Therefore, the administrative propriety demands that the applicant shall be bound by whatever tenor of the Appellate Order and not beyond that.

11. Applicant has not filed any rejoinder subverting the contention of the Respondents made in their counter.

12. We have considered the submissions made by the learned counsel for the parties and given our anxious thoughts thereon. *All*

13. As regards the arguments put-forth by the learned counsel for the parties as noted above, we do not see any irrationality or incompatibility on the part of the Respondents in conducting de novo enquiry from the stage the applicant could not attend inquiry due to his illness which was too considered by the Respondents only based on the representation made by the applicant. In this connection, we are not in agreement with the learned Senior Counsel Shri G.Rath.

14. So far as point No.(ii) is concerned, there is no iota of doubt that the applicant except making a bald submission has not brought to the notice of the Tribunal any specific point which has been left out of consideration by the Disciplinary Authority while considering the written statement of defence before issuing disagreement notice.

15. On a close scrutiny of the report of the I.O. along with disagreement notice as well as representation made by the applicant in that behalf, we are convinced that hardly there is any flaw or infirmity in the report of the IO or for that matter on the disagreement notice of the DA making the same liable to be quashed. The Disciplinary Authority, while imposing the punishment of compulsory retirement from service on the applicant vide Annexure-A/3 dated 05.10.2007 has critically examined and dealt exhaustively each and every aspect of the matter. In so far as Article-X of the charge is concerned, to the disagreement notice, applicant has stated as under:

That Article X is a mountain of imaginary preposition. The application of Shri S.P.Parida was received on 08.03.200 and the reason of its rejection is available in the file. The check sheet will vividly speak on the score. It is an imaginary proposition by the Disc.Authority that the

Ans

application of Shri Parida was dishonestly and deliberately kept out of record as he secured highest marks among the candidates. So article of Charge No.X has no leg to stand upon".

16. While negating the contention of the applicant, the Disciplinary Authority has recorded as under:

"As per check sheet prepared for the post by Shri Sethy Ext.S-75, names of 16 candidates have been included, but name of Shri Satyaprakash Parida does not find place in the check sheet prepared on 12.03.2000. That Shri Satyaprakash Parida secured 549 marks out of 750 as per Ext S-74, but Amulya Ku.Bhanja the selected candidate secured 434 marks out of 700. Therefore it is evident that the charged official did not include the name of Shri S.P.Parida in the check list with an dishonest motive. So the pleas taken by Shri Sethy are baseless".

17. In the fitness of things and to make the matter more illustrative, relevant portion of the findings recorded by the Appellate Authority vide Annexure-A/5 reads as under:

8. As found in the foregoing discussions, the DA had found all ten charges to be proved beyond doubt and had consequently imposed a penalty of "compulsory retirement from service with immediate effect: in his penalty order in memo no. Vig/11-3 (Balasore)/ 2004 of 05.10.07. There is no discussion in the penalty order as to the quantum or category of penalty which would be appropriate or proportionate to the gravity of the charges proved. However, I find from the foregoing discussions at Para-7 that out of the 10 articles of charge, nine of them stand fully proved while one of them, namely, Article-6, is partly proved. The charges framed and found to be proved are of a grave and serious nature, especially Article-10. It is proved beyond doubt that the Appellant being an officer of Inspector's cadre is guilty of gross and willful insubordination, lacking

Redel

in devotion to duty and had acted in a manner most unbecoming of the Government Servant in violation of Rules 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules of 1964. Even the integrity of the Appellant has come into question in view of the proof of Article-10 of the Articles of Charges. Hence, I feel that the penalty of compulsory retirement from service – a major penalty – was due, well deserved and equitably proportionate to his lapses.

9. Nevertheless, the Appellant has craved for sympathy in view of the members of his family who must also inevitably suffer if the appellant suffers from deprivation of his livelihood in consequence of his compulsory retirement. Since our intention through disciplinary process has also been the rectification and correction and refinement of the conduct of the Governments, I feel that the punishment of termination of career by compulsory retirement of one who has put in over 26 years of service in this Department, may perhaps be modified slightly and its rigors lessened. Keeping this one point in mind, one is inclined to reduce the quantum of penalty slightly and give the Appellant back his job in this Department in the grade has been earlier, in the hope that this mercy shown this time will enable the Appellant to reform himself and set an exemplary example of good conduct and good work culture, in the future. However, I am not inclined to treat the period starting from this date of relief on compulsory retirement unto the date of his joining the Department again, as duty for the reason that his compulsory retirement was duly warranted and was just and equitable to him and that this modification in quantum of penalty is done solely as an act of mercy and for giving him one more chance to rectify himself. The Appellant will therefore receive no pay and allowance for this period except the due pensionary payments he has received since his compulsory retirement and will receive the same till he joins duty. ...” *Ad*

27
18. Viewed from the above, the applicant's plea that the key witness in so far as charge under Article-X is concerned was not examined is out of place in view of the charge leveled as such having been proved by the documentary evidence as referred to above beyond all reasonable doubts.

19. As regards delay in disposal of the appeal, we would like to observe that applicant against the order of punishment preferred appeal vide Annexure-A/4 dated 12.11.2007. If his appeal was not considered and disposed of by the Appellate Authority within a reasonable time as alleged, nothing prevented him from approaching this Tribunal seeking remedy of his grievance at an appropriate time. For the reasons best known, applicant slept over the matter for about one and half years when the Appellate Authority issued order vide Annexure-A/5 dated 7.5.2009 modifying the punishment order as imposed by the Disciplinary Authority. Viewed from this angle, applicant's contributory ~~to~~ delay cannot be ruled out.

20. As regards applicant's plea that the order of the Disciplinary Authority having merged with the order of the Appellate Authority, he is entitled to back wages from the date of his relief on compulsory retirement till the date of his joining in service, we would like to note that the Appellate Authority having affirmed the punishment order as imposed by the Disciplinary Authority, based on humane approach, modified the punishment of compulsory retirement from service with certain direction as quoted above. In the circumstances, we cannot hold that the applicant is lawfully entitled to back wages for the period in question as claimed by him based on the order of the Appellate Authority. In this regard, we are at one with Shri Mohapatra that the *Adel*

11

applicant is bound by the tenor of the order of the Appellate Authority and not beyond that.

21. For the reasons aforesaid we are not inclined to grant any relief to the applicant.

22. However, if so advised, the applicant may make a representation to the competent authority regarding his due pensionary benefits from the date of his relief on compulsory retirement till the date of his joining the Department and in case such a representation is filed, the Respondents will consider the same and issue a reasoned and speaking order, keeping in view the order of the Appellate Authority within a period of thirty days from the date of receipt of such representation under intimation to the applicant.

Ordered accordingly.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

BKS


(A.K. PATNAIK)
JUDICIAL MEMBER