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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 188 of 2012
Cuttack, this the 10th day of August, 2015

Parsuram Senapati

..... 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.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 188 of 2012

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Parsuram Senapati
Aged about 43 years
S/o. late Brajabandhu Senapati
Vill-Sudha Sarangi
PO-Brahman Sarangi
PS-Balianta
Dist-Khurda
State-Oridha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo, Ms.C.Padhi
R.C.Behera

-VERSUS-

Employees' Provident Fund Organization represented through

1. Addl. Provident Fund Commissioner(AP & OR)
Zonal Office
Andhra Pradesh & Odisha
3-4-763, Barkatpura
Hyderabad
Andhra Pradesh
2. Regional Provident Fund Commissioner
Employees Provident Fund Organization
Regional Office
Bhavishyanidhi Bhawan'Unit-IX, Janapat
Bhubaneswar-751 022
Dist-Khurda
Odisha

...Respondents

By the Advocate(s)-Mr.S.S.Mohanty



ORDER**A.K.PATNAIK, MEMBER(J)**

Sum and substance of the matter is that on 17.09.1993 applicant was appointed as a Lower Division Clerk in the Office of the Respondent No.2. While working such, he had been on leave. After expiry of his leave, when applicant reported for duty on 23.09.2011, instead of his joining report being accepted, Respondent No.2 served on him a show cause notice dated 20.09.2011 on the proposed punishment of 'dismissal' from service. Being aggrieved, he filed OA No. 658 of 2011 before this Tribunal and this Tribunal vide order dated 30.09.2011 directed the Respondent No.2 to allow the applicant to join his duty. After joining duty, applicant submitted a representation on 07.10.2011 to the show cause notice dated 20.09.2011 requesting some more time to submit an exhaustive reply. But Respondent No.2, without considering his request for time to submit an exhaustive representation, imposed punishment of 'dismissal' from service vide order dated 12.10.2011. Thereafter, on 20.10.2011, applicant submitted an appeal to Respondent No.1 which, however, was rejected vide order dated 03.02.2012. It is the case of the applicant that being despondence^t by the said action of the Respondent Nos. 1 & 2, he has filed the instant OA in which he has prayed to quash the order of punishment of dismissal from service imposed by the Disciplinary Authority i.e. Respondent No.2 vide order dated 12.10.2011, the order of the Appellate Authority i.e. Respondent No.1 dated 03.02.2012 and to direct the Respondents to pay the applicant all his service and financial benefits retrospectively, thereby holding that the applicant



is deemed to have been continuing in service with effect from 12.10.2011. The grounds urged by the applicant in support of his claim are as under.

2. It is the case of the applicant that the impugned orders at A/4 and A/6 cannot stand the scrutiny of law since he was not provided reasonable opportunity to put up his defence against the proposed punishment of 'Dismissal from Service' vide A/1. Representation of the applicant at A/3 containing the reasons such as non-availability of records, mental disturbance of the applicant due to not allowing him to join and that the serious illness of his natural father was to be considered by Respondent No.1 in fair and judicious manner. Even Respondent No.2 could probe into the matter about the genuineness of the difficulties/constraint of the applicant. Therefore, rejection of his representation on the ground that the applicant wanted to prolong the issue for one reason or the other was an irrelevant consideration. According to applicant by not allowing him to join duties and taking advantage of his presence in the office, serving show cause notice at A/1 gives a delicate hint of the preconceived mind of Respondent No.2. Proviso incorporated to Rule 15(i) of EPF Staff (CC&A) Rules, 1971 enables an employee to make a representation on the proposed penalty which is purportedly to control the unbridled discretionary powers of the Disciplinary Authority. It has been submitted that order of conviction dated 29.08.2011 of the Special Judge, CBI, Bhubaneswar is not the end in itself. Applicant has a right to avail the opportunity of appeal in the higher forum and accordingly, the Criminal Appeal against the order of conviction having been admitted by the Hon'ble High Court of



Orissa, there was no reason not to allow time to the applicant to put up an effective representation against the proposed punishment of dismissal from service and impose punishment with undue haste. As regards the orders of the appellate authority, it has been contended that the same is perverse, arbitrary and illegal since the appeal has not been considered as per the provisions under Rule 23(2) of the Rules. According to applicant, he had not filed any representation on merit assailing the proposed penalty and secondly, where there was no defence available, the appellate authority did not have any scope to consider the order at A/4 and therefore, it cannot be said that the appeal has been disposed of in terms of Rule-23 of the Rules.

3. On the other hand, Respondents by placing on record all the connected materials along with the counter have strongly refuted the stand taken by the and consequently, have opposed the relief sought and prayed for dismissal of the O.A being devoid of any merit. According to Respondents, in the CBI Case No. RC 15 (A) 17 instituted against the applicant for misappropriation, the Learned Special Judge, CBI, Bhubaneswar vide order dated 29.08.2011 convicted the Applicant U/s 120-B/420/114/418/468/471/477A IPC & Sec. 13(2) r/w. 13(1) (d) of PC Act, 1988. The Applicant was on leave for a period of fifteen days from 30.08.2011. Instead of joining duty after expiry of the said leave period, he went on extending his leave upto 22.09.2011. He reported for duty on 23.09.2011 but his joining report was not accepted in view of the verdict in the CBI case instituted against him. However, as per Rules and in compliance with the principles of natural justice, a notice was served on him on 23.09.2011 to show



cause as to why his services not be dismissed in view of the order of conviction passed by the Learned Special Judge, CBI, Bhubaneswar. Instead of submitting his reply to the said show cause notice, he filed OA No. 658 of 2011 before this Tribunal and in compliance of the order dated 30.09.2011, he was allowed to join duty on 03.10.2011. It has been stated that instead of submitting his reply to the show cause notice, he has again prayed to allow him 30 days time to submit his reply vide representation dated 7.10.2011. As the competent authority felt that by repeatedly praying for time virtually, applicant wanted to prolong the issue, after lapse of a period of fifteen, applicant was dismissed from service vide order dated 12.10.2011 of the competent authority. Applicant thereafter, submitted an appeal and in consideration of the same, the appellate authority rejected the appeal in a well- reasoned order dated 03.02.2012. It has been stated that as there was substantial compliance of the rules and principles of natural justice, more so, when the order of dismissal was passed after his conviction by the competent court of law on the charge of corruption and misappropriation, hardly there is any scope for the Tribunal to interfere in the matter. In this connection, the Respondents have also placed reliance on the decision of the Hon'ble Apex Court in the case of **K.C. Sareen Vrs CBI Chandigarh** reported in AIR 2001 SC 3320 to buttress their stand which lays down that when a public servant is convicted on a corruption charge, he/she is not entitled to hold the public office.



4. Heard Mr.K.C.Kanungo, Learned Counsel for the Applicant and Mr. S.S.Mohanty, Learned Special Counsel appearing for the Respondent- Department and perused the records.

5. Learned Counsel for the Applicant with reference to the averments made in the Original Application as also in the rejoinder pin pointed his arguments that against the order of conviction dated 29.08.2011 of Learned Special Judge, CBI, Bhubaneswar, Criminal Appeal (Crl. Appeal No. 520 of 2011 & Misc. Case Nos. 1430/2011 & 1428/2011) has been preferred before the Hon'ble High Court of Orissa and by the order dated 13.09.2011 of the Hon'ble High Court of Orissa, applicant was released on bail and the fine imposed upon him was suspended. However, by placing documentary evidence in support of his illness applicant had prayed for some more time to submit his reply to the punishment notice issued by Respondent No.2. But without intimating anything on the said request of the applicant, Respondent No.2 imposed on the applicant punishment of dismissal from service, which de hors the provision embodied in Rule 15 (i) of the EPF (Staff (CC&A) Rules, 1972 as it is provided therein that the Disciplinary Authority before awarding penalty is under legal obligation to consider the representation of the concerned employee on the penalty proposed in the show cause. It has been stated that the provision made in Rule 15 of Rules, 1971 is the replica of the provision made in Rule 19 of CCS (CC&A) Rules, 1965 and Rule 14 of the Railway Servants (D & A) Rules, 1968. The imposition of punishment on an employee based on the order of conviction in a Criminal Case without giving adequate opportunity to show cause, came up for consideration before the Hon'ble Apex



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Court in the cases of **Union of India and others Vrs P.Chandramoiulil and others**, 2004 SCC (L&S) 530, para -3 and **Union of India and Others Vrs Sunil Kumr Sarkar**, AIR 2001 SC 1092, para -8 wherein after analyzing details of the matter, the Hon'ble Apex Court categorically held that proper opportunity was to be given to an employee before passing any order. In this case though a show cause notice was issued to the applicant, he prayed for time due to his personal difficulties including the illness of his father, but the Respondent No.2, without intimating anything on the said request issued the order of punishment and, as such the same is not tenable being opposed to the cardinal principles of natural justice. Further, it has been submitted that though this fact was lucidly and elaborately stated by the applicant in his appeal, the appellate authority without considering this vital aspect of the matter rejected the appeal only by quoting the order of the Disciplinary Authority in verbatim which is not the aim and object of the Rules empowering the appellate authority to consider the appeal nor does it stand of the legal maxim *audi alteram partem*. Hence he has passionately prayed for the relief claimed in this OA.

6. Per contra, Mr.Mohanty, Learned Counsel appearing for the Respondent-Department while seriously refuting the personal acquisition made by the applicant (viz; pre set mind of the authority etc) has submitted that the order passed by the Respondent No.2 as confirmed by Respondent No.1 is just and proper and, therefore, no interference in the matter is warranted. In this context, it was contended by him that Rule 15 of Rules, 1971 provides for giving an opportunity of making representation on the penalty proposed to be



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imposed. In the present case, opportunity for making a representation was provided to the applicant and as he failed to submit his reply to the said show cause, action as deemed fit & proper was taken after expiry of fifteen days time period. However, this aspect of the matter was raised by the applicant in his appeal and the appellate authority after taking into consideration such fact vis-à-vis the records, upheld the order of the Respondent No.2 in a well reasoned order. In order to justify the order of punishment, Mr. Mohanty has once again taken the support of the decision of the Hon'ble Apex Court in the case of K.C.Sareen (supra) and accordingly has prayed for dismissal of this OA.

7. We have considered the arguments advanced by Learned Advocates appearing for the respective parties and perused the records. The point for consideration in this Original Application is whether Respondent No.2 is justified in passing the order of dismissal in keeping with the order of conviction passed by the Learned Special Judge, CBI, Bhubaneswar so also the order of the Appellate Authority, i.e. Respondent No.1 upholding the punishment of dismissal from service as imposed by the Disciplinary Authority. For this purpose, we would like to quote hereunder the contents letter addressed to the Regional P.F. Commissioner, Bhubaneswar (A/3) whereby applicant had sought time to submit his reply:

“Sub: Show cause notice for dismissal from service. Ref: Memorandum No.OR/VIG/01/1997/514 dated 20.09.2011 received on 23.09.11.

Your kind attention is drawn to above in this context, I beg to submit the further as following:



That the aforesaid memorandum dated 20.09.11 was received by me on 23.09.11. I am directed to submit my reply to show cause notice within 15 days from the date of receipt of the order which is on or before 07.10.11.

On careful perusal of show cause notice I am required to go through the case record (Criminal Case No.TR 150/99) including evidence and judgment. The records of the case are at present with my advocate in High Court and the Puja vacation is continuing. Moreover I was disturbed because of Non-acceptance of joining report on 23.09.11 for which I have to take shelter of Hon'ble Central Administrative Tribunal.

That added to the above difficulties at present my old father's chronic diseases of diabetes & high B.P. has become acute, knowing the contents of show cause notice and he is under treatment, requiring constant attention of family members.

Therefore I request your good self kindly allow me 30 days time to collect and peruse the records to prepare my reply to the show cause notice dated 20.09.11 and obliged".

8. The order of the Respondent No.2 (Disciplinary Authority is quoted hereunder:

"Now, therefore, the undersigned being the Disciplinary Authority in the case of Sri Parsuram Senapati, LDC in exercise of powers conferred upon him by rule 15(i) of EPF Staff (CC&A) Rules, 1971, hereby imposes the penalty of "DISMISSAL FROM SERVICE" which shall ordinarily be a disqualification for further employment under the "Central Board" upon Sri Parsuram Senapati, LDC and orders accordingly with immediate effect."

9. The order of the Respondent No.1 (Appellate Authority is quoted hereunder:



“The undersigned after a careful perusal of the entire case file, grounds on which the appeal has been preferred, para-wise comments of the Disciplinary Authority etc., found that :-

- (i) The Disciplinary Authority has carefully gone through the issues raised by the Appellant and expressed his views on the issues raised by the Appellant, accordingly issued his order imposing the penalty.
- (ii) No new facts/issues that warrant consideration in appeal were brought out by the Appellant in his appeal.

I am therefore of the opinion that the Disciplinary Authority imposed the said penalty of “Dismissal from Service” after taking into consideration the facts and circumstances of the case i.e. the conduct of the individual which led to his conviction by the Hon’ble CBI Court at Bhubaneswar vide its order dated 29 August 2011 on a grave charge. I therefore do not find any reason to interfere with the orders dated 12 October 2011 of the Disciplinary Authority and therefore uphold the same.

NOW THEREFORE, I, V P Ramaiah, Additional Central P F Commissioner, Andhra Pradesh & Orissa in exercise of the powers of the Appellate Authority vested in me vide rule 23(2) of the EPF Staff (CCA) Rules, 1971 and schedule attached thereto for the reasons mentioned herein above uphold the penalty order of “Dismissal from Service” imposed by the Disciplinary Authority vide order dated 12 October 2011.

I, as an Appellate Authority order accordingly.

10. The only point which has been canvassed by the Learned Counsel for the Applicant in support of his prayer to quash the order of Respondent Nos.2 & 1 is that without allowing the applicant time to submit his reply, order of punishment was passed which was upheld by the Appellate Authority. No doubt it is the prerogative of the authority concerned to allow or not to allow the request of granting time to submit reply but in either case it is the obligatory duty of the authority concerned to intimate the same



before proceeding to pass the final order; as trite proposition of law is that justice not only be done but seen to have been done. At the same time we cannot close our eyes to the fact that undisputedly, the order dated 29.08.2011 in CBI Case No. RC 15 (A) 17 convicting the Applicant U/s 120-B/420/114/418/468/471/477A IPC & Sec. 13(2) r/w. 13(1) (d) of PC Act, 1988 still holds good as by the order of the Hon'ble High Court of Orissa, the applicant has only been released on bail and the fine imposed by the Learned Special Judge, CBI, Bhubaneswar has been suspended. Had it been a case of dismissal other than the reason of conviction in a criminal case, we would have interfered if the facts and factual aspects to be canvassed by the applicant could not have influenced the minds of the authorities and, therefore, proceeding to pass the order without giving opportunity to show cause would have been fatal in such a situation. Rather, law is well settled that where the ultimate result is inevitable non compliance of natural justice cannot make an order void as in that case compliance of natural justice was a mere formality.

11. For the discussions made above, we find no reason to interfere in the matter and, accordingly this OA stands dismissed by leaving the parties to bear their respective costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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