

140

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.351 of 2012

Cuttack this the 19th day of June, 2017

Dr.V.Nandagopal ...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?*
2. *Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.351 of 2012

Cuttack this the 19th day of June, 2017

CORAM

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

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

Dr.V.Nandagopal, aged about 59 years, S/o. Shri P.Veeraswamy,
Senior Scientist, Central Rice Research Institute, Cuttack

...Applicant

By the Advocate(s)-M/s.S.K.Purohit

A.K.Das

-VERSUS-

1. Indian Council of Agricultural Research, Krishi Bhawan,
represented through its' Secretary, Dr.Rajendra Prasad
Road, New Delhi
2. 2.Director, Central Rice Research Institute, Cuttack

By the Advocate(s)-Mr.S.B.Jena

ORDER

R.C.MISRA, MEMBER(A)

In this Original Application under Section 19 of the
A.T.Act. 1985, applicant has sought for the following relief.

- i) Quash the impugned order Annexure-9 & 11
and/or substitute/reduce/scale down the
punishment as the same is shockingly
disproportionate to the offence committed, if
any.
- ii) Direct the Respondent No.1 to reconsider the
punishment in the light of the applicant's
achievements and the consequential loss or
losing such an achieved efficient devoted
scientist and exposing him to penury by
awarding dismissal from service having taken
his service for 33 years.
- iii) Allow this application.



2. Shorn of unnecessary details, it would suffice to note that the applicant, while working as Senior Scientist, National Research Centre of Groundnut, Junagadh (NRCG) had been chargesheeted under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) by the CBI, which formed the Special Case No. 8 of 2001 before the Special Judge, CBI Court No.3 at Mirzapur, Ahmedabad. Vide judgment dated 31.12.2009 of the Special Judge, CBI, applicant was held guilty as a result of which he was directed to undergo simple imprisonment of two years with penalty of Rs.5000/- on each of the charges under Section 120-B, IPC, Section 7 and 13(2) read with 13(1)(d) of P.C.Act and in default of payment of fine to undergo imprisonment for further three months. Challenging the aforesaid judgment, applicant moved the Hon'ble High Court of Gujarat at Ahmedabad in Criminal Appeal No.141 of 2010. In Criminal Misc.Application No.744 of 2010 (arising out of Criminal Appeal No.141 of 2010), the Hon'ble High Court of Gujarat at Ahmedabad passed an order on 28.01.2010, the relevant part of which reads as under.

"This Court has gone through the judgment and order passed by the learned Special Judge, CBI Court No.3, Ahmedabad. The applicant was sentenced to suffer S.I. for two years and to pay fine of Rs.5000/- for each of the offences punishable under Section 12-B of IPC, Secs. 7 and 13(2) read with Section 135(1)(d) of Prevention of Corruption Act. Taking into consideration the fact that the applicant was on bail during trial and also considering the nature of offence and sentence awarded, in the opinion of this

43

Court, the applicant is required to be released on bail.

In view of the above, this application is allowed. Pending hearing and final disposal of appeal, the applicant is ordered to be released on same bail with fresh bond. Rule is made absolute. Direct service is permitted".

3. While the matter stood as such, Office Memorandum dated 8.4.2010(A/7) was issued to the applicant by the Respondent No.1 in which it was indicated that :

"And whereas on a careful consideration of the judgment dated 31.12.2009 of the Hon'ble CBI Court, Ahmedabad, the President, ICAR has provisionally come to the conclusion that the gravity of the charge is such as to warrant the imposition of a major penalty and accordingly, proposes to impose the penalty of dismissal from service on Dr.V.Nandgopal, Sr. Scientist (under suspension);

Now therefore, Dr.V.Nandgopal is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the President, ICAR. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Dr.V.Nandgopal".

4. In response to this, applicant submitted his representation on 30.4.2010 (A/8) and the disciplinary authority, in consideration of the same imposed punishment of dismissal from service on the applicant vide order dated 18.06.2010(A/9). Aggrieved with this, applicant moved this Tribunal by filing O.A. No.391 of 2010. This Tribunal, vide order dated 14.10.2011 disposed of the same with direction to

3

44

the applicant to prefer an appeal before the appellate authority against the disciplinary authority's order. In obedience to this, applicant preferred an appeal on 27.10.2011(A/10) which was considered by the President, ICAR by holding that there was no need to interfere with the orders of penalty and resultantly, appeal was rejected. Hence, by filing this O.A. applicant has challenged the orders of the disciplinary authority as well as the appellate authority, seeking relief as referred to above.

5. It is the case of the applicant that the respondents neither considered his representation to the Memorandum proposing punishment of dismissal from service nor the appeal preferred by him in pursuance of the direction of this Tribunal in its proper perspective. According to applicant, those orders suffer non-application of mind and thus, do not stand to judicial scrutiny. Applicant has contended that Respondent No.1 ought to have considered the representation and the appeal, keeping in mind the G.I., Department of P & T, Notification No.11021/3/86/Estt.(A) dated 11.11.1985 and dated 4.4.1986 which stipulate the manner of considering an application under Rule-19(1) of CCS(CCA) Rules or under Cl.(a) to the second proviso to Article 311(2) of the Constitution of India, as under.

"Having come to know of the conviction of a Govt. servant on a criminal charge, the Disciplinary Authority must consider whether his conduct, which had led to his conviction was such as warrants the imposition of penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the Criminal

45

Court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the Disciplinary Authority by itself'.

6. Based on this, applicant has contended that his representation or for that matter his appeal, has not been considered by the Respondent No.1 in keeping with the above provisions of rules. The punishment as imposed is shockingly disproportionate to the gravity of offence and even if Rule-11 of CCS(CCA) Rules empowers the authority to deviate from the punishment in Clause(viii) or (ix) in exceptional cases and for special reason to be recorded in writing for reducing the punishment, the authorities have not so considered.
7. Contesting the relief sought by the applicant, respondents have filed their counter. It has been submitted by the respondents that the points which have been considered by the CBI Court are no more open to be considered by the disciplinary authority. It has been submitted that the penalty of dismissal from service was imposed on the applicant after he had been convicted by the CBI Court and after considering the submissions made by the applicant in his representation on the penalty proposed to be imposed on him in the light of the judgment dated 31.12.2009 of the CBI Court in accordance with
- 5

46

the provision of Rule - 19 of CCS(CCA) Rules. Respondents have pointed out that applicant can still file a review petition to the President, ICAR under the provisions of Rule-29A of the CCS(CCA) Rules subject to the condition of producing new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case. In pursuance of the direction of this Tribunal in O.A.No.391 of 2010, applicant had filed an appeal which was duly considered and the appellate authority observed that the penalty imposed on the appellant is commensurate with the gravity of the charge and there was no need to interfere with the orders of penalty and accordingly, the appeal preferred by the applicant was rejected.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder as well as written notes of submissions and the decision annexed thereto filed by the applicant.

9. Undisputed ~~fact~~ facts of the matter are that in the Criminal Case, applicant has been held guilty of the charge by the CBI Court and accordingly, he was imposed simple imprisonment for a period of two years, besides a fine of Rs.5000/- in default of which, he has to further undergo three months simple imprisonment. On being appealed of, the Hon'ble High Court of Gujarat at Ahmedabad has granted bail

D

47

on submission of fresh bond, but has not stayed the order of conviction passed by the CBI Court.

10. In the above backdrop, the entire case of the Respondents is that applicant has been imposed punishment of dismissal from service after taking into consideration the representation/appeal made via-a-vis the judgment of the CBI Court by virtue of which applicant has been convicted. On the other hand, the applicant has relied on the decision of the Hon'ble High Court of Orissa in State of Orissa & others vs. Sri Golekha Chandra Routray reported in 2015(II) OLR - 480 [W.P. (C) No.17786 of 2012] to claim reconsideration and judicial intervention. However, on perusal ^{of} judgment dated 27.7.2015, we find that the Hon'ble High Court has in fact quashed the order of the Orissa State Administrative Tribunal and held that no plausible reason could be assigned for reducing the punishment, and matter did not deserve reconsideration, even though on principle, an order of dismissal should not be an automatic result of a conviction in a criminal case. In the present case, therefore, we have to see whether the applicant could claim any extenuating circumstances as a ground for imposition of lesser penalty.

11. We have gone through the decision so cited as well as the DoP&T O.M.No.11012/11/85-Estt. Dated 11.11.1985, referred to by the applicant in his appeal dated 27.10.2011(A/10) in which applicant has quoted Paragraph-4 thereof, which we

7

48

have already quoted in Paragraph-5 above. In the appeal preferred applicant has apparently not brought out any such extenuating circumstances for the purpose of awarding lesser punishment or reduced ^{or} punishment, as the case may be, in a case of acceptance of bribe, which has been tried and consequently, he has been convicted. The applicant, however, has pleaded that he has a record of academic excellence, and ^{Pur} has produced three books after his dismissal from service. This, according to our view, is not an extenuating circumstance. Academic excellence even of the highest order is ^{of} no excuse for ^a bad conduct. This is a perverse argument advanced by the applicant. Therefore, there was nothing wrong on the part of the appellate authority in upholding the punishment of dismissal from service on the applicant. We are also of the opinion that the punishment imposed is not grossly disproportionate to the gravity of offence, as claimed by the applicant.

12. In the result, the O.A. is dismissed, leaving the parties to bear their own costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

BKS