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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O. A. No.503 of 2012


Cuttack this the 08th day of September, 2014

Tulsi Ram Sahu 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 (Judicial)

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

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Tulsi Ram Sahu, aged about 52 years, S/o. Sri Padma Charan Sahu, at present working as Pharmacist, Static Cum Mobile Medical Unit, Govt. of India, Ministry of Labour & Employment, At/Po.Rengali, Dist. Sambalpur, Odisha.

...Applicant

(Advocates: M/s.D.N.Pattanayak, S.K.Mohapatra,B.B.Baisakh)

VERSUS

1. Union Government of India, Director General (L.W),Ministry of Labour & Employment, Jaisalmer House, Mansingh Road, Single Storied Hutments, New Delhi-11.
2. Welfare and Cess Commissioner, Kendriya Shrama Kalyan Sadan, Plot No. N 7/6 & 7 (Ground & 1st floor), IRC Village, Bhubaneswar.

... Respondents

(Advocate: Mr.P.R.J.Dash)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

The Applicant (Tulsi Ram Sahu) working as Pharmacist, Static Cum Mobile Medical Unit, Government of India, Ministry of Labour & Employment, Sambalpur being aggrieved by the order No.11/01/2010-AI dated 6th September, 2010 passed by the Welfare & Cess Commissioner (Respondent No. 2) as Disciplinary Authority after considering the reply submitted by the applicant in pursuance of the Memorandum of Charge dated 23rd April, 2010 issued under Rule



16 of the CCS (CC&A) Rules, 1965 and the order No. 11/1/2010-AI dated 27th April, 2012 passed by the Director General, Labour Welfare (Respondent No.1) as Appellate Authority rejecting his appeal has filed the instant OA with prayer to quash the orders of the Disciplinary and Appellate Authorities and direct the Respondents to Release his increment forthwith. He has assailed the said orders on the grounds that the same are illegal and arbitrary since the same are in violation of the principles of natural justice.

2. The Respondents by filing counter resist the claim of the applicant on the grounds that consequent upon a written complaint received by the Welfare & Cess Commissioner, Bhubaneswar from some Beedi Workers that when they approached the applicant to enquire about the Demand Drafts they were misinformed that the same had already been sent to the Medical Unit Towards Housing Subsidy. One Shri S.K.Jah, the Assistant Welfare Commissioner was deputed to the Medical Unit to enquire into the incident and report. He, after making enquiry submitted report stating therein that in absence of the Medical Officer, the workers in fact met the Applicant to ascertain about the Bank Draft and the applicant misinformed them that the Demand Draft towards Housing Subsidy had already been sent. As the Applicant, in his official dealings with public had adopted dilatory tactics willfully causing delay in disposal of the work assigned to him which was not found to be healthy for normal functioning of the organization a Memorandum of charge under Rule 16 of the Rules, 1965 ibid was issued to him. He submitted his reply denying the charge. The Disciplinary



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Authority after going through the reply submitted by the applicant as well as the facts and circumstances of the matter did not feel it necessary to go for a detailed enquiry into the matter and based on the fact finding report and other evidences imposed the order of punishment of withholding of one increment for a period of one year without cumulative effect. The applicant preferred appeal and the appellate authority after going through the appeal preferred by the applicant and all other connected records upheld the order of punishment imposed by the Disciplinary Authority. Accordingly, it has been stated that as the order of punishment was imposed after following due procedure of Rules and complying with the principles of natural justice interference of this Tribunal is not warranted. Hence they have prayed for dismissal of this OA.

3. Arguments were heard and materials produced in support of the pleadings were also perused. We have also perused the provision of Rule 16 of the Rules *ibid*.

4. In paragraph 5 of the counter, the Respondents have stated that after going through the facts and circumstances of the matter, the Disciplinary Authority did not feel it necessary to order for any inquiry as the fact finding report and other evidences were enough to bring home the charges against the applicant. But what are those other evidences have neither been stated in the counter nor in the orders passed by the Disciplinary as well as Appellate Authorities. Similarly, the Respondents have admitted in the counter that the complaint received from some of the Beedi Workers were duly enquired into through Shri S.K.Jah, the Assistant



Welfare Commissioner who upon enquiry submitted the report and the finding of the enquiry was taken into consideration by the Disciplinary Authority while imposing the punishment on the applicant. But the orders of the DA & AA are conspicuously silent as to whether copy of the said report was made available to the applicant, in compliance with the principles of natural justice, prior to imposition of punishment on the applicant. As it appears, the Appellate Authority has also failed in his duty to find out whether Rules/principles of natural justice has been strictly adhered to by the DA before imposing the punishment on the applicant. Another important aspect of the matter which, in our considered view, needs to be looked into inasmuch as the applicant was charge sheeted based on the complaint of some of the Beedi Worker which are factual in nature and specifically denied by the Applicant. Rule 16 of CCS (CC&A) Rules, 1965 states as under:

“16. Procedure for imposing minor penalties:-

(1) Subject to the provision of sub-rule (3) of Rule 15, no order imposing on a Govt. servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after -

- (a) informing the Govt. servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Govt. servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;



- (d) **record of finding on each imputation of misconduct or misbehaviour; and**
- (e) consulting the commission where such consultation is necessary."

5. In this regard, it is noteworthy to quote the relevant portion of the observation of the Hon'ble Apex Court made while dealing with a matter of imposition of minor penalty under Rule 16 of CCS (CC&A) Rules, 1965 in the case of **O.K.Bhardwaj Vrs Union of India and others**, reported in 2002 SCC (L&S) 188 which runs thus:

"Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. **Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with.**"

6. In view of the discussions made above, we feel that when the charge sheet was based on the complaint of some of the Beedi Workers which was factual in nature and denied by the applicant an enquiry as held by the Hon'ble Apex Court in the case of **O.K.Bhardwaj** (supra) ought to have been done. For the foresaid reason, the orders of the Disciplinary Authority dated 6th September, 2010 and Appellate Authority dated 20th April, 2012 are quashed and the Respondents are at liberty to proceed with the matter in the manner as discussed above. But for the present, in view of the quashing of the order of punishment, the applicant is entitled to the increment which has been withheld by way of punishment and the Respondents are directed to release the same in favour of the applicant within a period of 60(sixty) days from the date of receipt of copy of this order.



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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 (Judicial)

