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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.408 of 2013

Cuttack this the 7th day of September, 2016

B.K.Patnaik ...Applicant

-VERSUS-

IRCS & Ors.Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 408 OF 2013

this the 7th day of Sept, 2016

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

Biranchi Kumar Pattnaik aged about 59 years S/o Late Shri Chakradhar Pattnaik, Village Badhipatna, PO Narendrapur, PS Raj Ranpur, Distt.Nayagarh at present EB 118, Badagada BRIT Colony, Bhubaneswar, PS Badagada, District Khurda.

...Applicant

By the Advocate : Shri S. Pattnaik

-VERSUS-

- 1- Indian Red Cross Society, Odisha State Branch, Bhubaneswar, District Khurda, represented through its Honorary Secretary, at Red Cross Bhawan, Sachivalaya Marg, PS Kharvel Nagar, Bhubaneswar, District Khurda.
- 2- President, Indian Red Cross Society, Odisha State Branch, Bhubaneswar, Raj Bhavan, Bhubaneswar, District Khurda.
- 3- Chairman, Indian Red Cross Society, Odisha State Branch, Red Cross Bhawan, Sachivalaya Marg, P.S. Kharvel Nagar, Bhubaneswar, District Khurda.
- 4- Union of India represented through its Secretary, Ministry of Health, New Delhi.

...Respondents

By the Advocate : Shri C.K. Mohanty

ORDER

R.C.MISRA, MEMBER(A) :

The applicant in this O.A. is a former employee of the Indian Red Cross Society (IRCS), Odisha State Branch, and has approached this Tribunal for the following reliefs :

1. *The Hon'ble Tribunal may be pleased to quash the disciplinary proceeding No. 01 of 2012 initiated by the Respondent No. 1 against the applicant vide Annexure - 2.*
2. *Any other relief(s) deemed fit and proper in favour of the applicant".*

2. Facts that emerge from this O.A. are that the applicant joined the IRCS in the year 1977 as a Lower Division Clerk-cum-Typist, and in the year 1996 he was promoted as a Senior Assistant. On 16.08.2011 vide Memo No. 1733/RC, by an order of Respondent No.1, i.e. Hony. Secretary, IRC, Odisha



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State Branch, the applicant was placed under suspension. The order of suspension was passed pending drawal of regular disciplinary proceedings against him. Section 21(c) of the Service Rules for the employees of the IRCS, Odisha Branch, provides that an employee against whom an inquiry is proposed to be held, shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. It is further stipulated that inquiry shall ordinarily be completed within a period of '*three months*' unless the enquiring officer asks for further time in writing with sufficient reasons. In spite of the fact that applicant was put under suspension on 16.08.2011, no chargesheet was served upon him immediately. On 14.02.2012, however, after a period of six months of passing of order of suspension, the Articles of Charges along with Memo of Evidence and List of Witnesses were served upon the applicant. The applicant on 29.02.2012, made a prayer to Respondent No. 1 to supply relevant documents to enable him to prepare his reply to charges levelled against him.

The next important development is that while the matter stood thus, the applicant was made to retire on 29.02.2012 by respondent No.1 by an order dated 28.02.2012. In spite of the prayer made by applicant for supply of documents, the respondents did not take any step in this regard; however, applicant submitted his written statement of defence on 01.08.2012 denying all the charges. On 14.08.2012, the respondent No. 1 appointed an Inquiry Officer to enquire into the charges. Thereafter, applicant made another prayer for supply of documents on 16.10.2012, which elicited no response from respondents. The various developments



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in this matter are in total violation of the Service Rules which lay down that enquiry shall be completed within three months, unless the Inquiry Officer asks for more time, in writing. Apart from this, applicant has also alleged that once the employee has retired from service, there is no authority vested in the employer for continuing the departmental inquiry against the employee. It is to be noted that applicant was made to retire on 29.02.2012, by an order of Respondent No 1. The applicant finding no other efficacious remedy has made a prayer to the Tribunal for quashing the disciplinary proceedings continuing against him.

3. The IRCS, the respondents in this case, describing themselves as a reputed philanthropic Organization have submitted a counter-affidavit, making following contentions. They have submitted that applicant joined as a LDC-cum-Typist in the respondents' organization in the year 1977, and was promoted as Senior Assistant in the year 1996. On 16.08.2011, he was placed under suspension, pending drawal of disciplinary proceedings against him. The applicant was charged with acts of grave misconduct, violative of the Clause 20 of the Code of Conduct in the Service Rules, 2001 meant for the employees of the respondents organization. The articles of charges, memo of evidence and list of witnesses were served upon the applicant in due process of disciplinary proceedings. An important submission in the counter-affidavit is denial by the respondents of applicant's allegation that he submitted representation praying for supply of documents which however was not responded to by the respondents. No such representation was made to the respondents according to counter-affidavit. It is further contended that respondents have taken due steps for

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conduct of disciplinary proceedings and appointed a respected Advocate, Member of the Bar, as Inquiry Officer. The process of inquiry is over and final report would be received shortly which would be placed before the Court, so claim the respondents.

4. Having heard the learned counsels for both sides, we have perused the documents and gone through the written notes of arguments.

The first thing that we have noted is that the proceedings are not under the Central Civil Services (Classification Control & Appeal) Rules, 1965, but, under the Service Rules for the Employees of the IRCS, Orissa State Branch, Bhubaneswar. The applicant was placed under suspension on 16.08.2011, pending drawal of disciplinary proceedings against him. The applicant was served with a chargesheet, with detailed articles of charge only on 14.02.2012, which is nearly six months after the date of suspension. There is no doubt that there has been considerable delay in framing of charge sheet and service thereof on applicant. According to him, he received Article of Charges on 15.02.2012, and thereafter on 29.02.2012 he made a representation to respondent No. 1 requesting for supply of documents so that he can prepare written statement of defence. He claims that he was not supplied with the documents, whereas respondents counter him by saying that no such representation was made. But, in the meantime, applicant was made to retire on 29.02.2012 by the respondent No. 1. The applicant's case is that though documents were not supplied, he submitted a written statement of defence on 11.08.2012 denying all the charges. On 14.08.2012 respondents appointed an Inquiry Officer. The respondents in their counter affidavit filed on 25.02.2015 are claiming that final report in



the inquiry is awaited, and very shortly, the final report would be submitted before the Tribunal. However, no final report of inquiry has been so far submitted. Why respondents did not place the final report of inquiry before us in spite of their undertaking to do so, is for us, a matter of concern. But from the recital of events it is clear that the process of enquiry has taken too long a time. The charge-sheet was served on delinquent on 14.02.2012, and even after a period of more than four years, inquiry report is not yet submitted. When inquiry is prolonged over a long period, harassment is caused to the delinquent. In the matter of **Prem Nath Bali Vs. Registrar, High Court of Delhi** (CA No. 958 of 2010) decided on 16.12.2015, the Hon'ble Apex Court observed as follows :-

"31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry, then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee."

5. Therefore, prolongation of a departmental inquiry beyond a reasonable time limit, is a travesty of justice and must be avoided. Here, we have to refer to the Service Rules meant for the employees of the IRCS, Odisha Branch applicable to the present case. Rule 21 (e) of the said Rules, inter alia, lays down that "the inquiry shall be ordinarily completed within a period of 3 months unless the Inquiring Officer asks for further time in writing with sufficient reasons". The circumstances of this case go to establish the fact that provision of Rule 21 (e) has been more honoured in the breach than its observance, and to that extent, the argument placed by learned counsel for applicant appears quite valid. It is, however, debatable



(6) whether merely because the proceedings are being inordinately delayed, one could find this argument potent enough to render the charges null and void. But the learned counsel for applicant has placed another important argument to challenge the disciplinary proceedings. He has contended that once the employee retires from the service, there is no authority vested in the employer for continuing with departmental inquiry. When applicant was made to retire on 29.02.2012, the currency of proceedings beyond this crucial date, is liable to be quashed. The learned counsel further argues that unless the statute permits, after retirement of delinquent, the proceedings shall not be valid. In the Service Rules under reference here, there is no provision for continuing with proceedings after the employee's date of retirement. A perusal of the Service Rules indicates that Rule 20 of the same is relating to the Code of Conduct of Employees. Rule 21 describes various categories of punishment which can be imposed on employees against whom charges of misconduct are proved. The detailed procedures of conduct of disciplinary proceedings are provided under Rule 21, but on perusal it is found that there is no specific provision regarding the question whether against retired employees, proceedings can be initiated, and what would happen to proceedings on going against an employee, when he becomes retired on a particular date. Therefore, the contention that the rules are silent regarding what would be the fate of proceedings pending as on the date of retirement of an employee, appears to be correct.

6. The argument of the learned counsel for applicant is that in the absence of specific provision in the Service Rules, respondents cannot legally be permitted to continue the departmental proceedings against the

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applicant, causing him great hardship and harassment. In respect of this submission, our attention has been attracted to the judgment of the Hon'ble High Court of Orissa in Writ Petition(Civil) No. 8628 of 2011 in the matter of ***Sarat Chandra Das Vs. Orissa State Warehousing Corporation*** reported in 2013 (1) OLR-169. The facts involved in that Writ Petition are that the petitioner was working in the Orissa State Warehousing Corporation. He superannuated on 30.04.2009. Memorandum of charges was served upon him on 25.04.2009 and additional charges were framed on 29.04.2009. The question was whether the same proceedings will continue after retirement of the employee in the absence of specific provision in the Staff Regulations of the said Corporation. The Hon'ble High Court came to the finding that in the absence of specific rule, it would not be permissible to continue with the disciplinary proceedings even if initiated during the period of service of an employee, after his superannuation, and on that ground, payment of the retirement benefits to the superannuated employee cannot be withheld. The Hon'ble High Court thus quashed the disciplinary proceedings with the following observations :

"There is absence of any provision in the Staff Regulation to continue a disciplinary proceeding after the employee is superannuated. As a matter of fact, from the definition clause, it is clear that an employee after being superannuated, the relationship of an employer and an employee ceases, and even if, a disciplinary proceeding has been initiated when he was continuing as an employee, after superannuation, the relationship having severed and there being no provision to continue such disciplinary proceeding under the Regulation, continuation of a disciplinary proceeding after superannuation of an employee cannot be held to be legal and valid."

7. The Hon'ble High Court relied upon the decision of Hon'ble Apex Court in the case of ***Bhagirathi Jena Vs. Board of Directors, OSFC and Others*** reported in (1999) 3 SCC 666. The facts of that case were that



disciplinary proceedings were initiated against applicant under Regulation 44 of OSFC Staff Regulations, 1975 and Charge-sheet was served on 22.07.1992. But inquiry could not be completed by the date of retirement of applicant. The Hon'ble Supreme Court concluded that once the appellant retired from service, there was no authority vested in the Corporation for continuing departmental inquiry even for the purpose of imposing any reduction in retiral benefits payable to the appellant. In the case of *Sarat Chandra Das Vs. Orissa State Warehousing Corporation*, the Hon'ble High Court after discussing the issues, 'un-hesitatingly quashed' the disciplinary proceedings initiated against the petitioner in its entirety, and directed that all retiral benefits be paid to petitioner forthwith.

8. Relying upon the judicial pronouncements dealt above, learned counsel for applicant in this O.A., urges that Service Rules of IRCS, Orissa Branch do not provide for continuation of departmental inquiry beyond the period of retirement of the applicant. Therefore, the proceedings are liable to be quashed. It is alleged that the rules provide for completion of proceedings in a period of three months, whereas the proceedings here are going-on for more than 3 years, without any conclusion. We also find that even though respondents in their counter-affidavit had undertaken to *produce the inquiry report before the Tribunal very soon, they did not do so*, raising question mark about conclusion of inquiry. Therefore, to say the least, no expedition or urgency was shown by respondents to finalise the proceedings. However, the critical issue is that the findings of the Hon'ble High Court cover the facts of the case also since the Service Rules in this



case also do not confer any authority on the respondents to continue with departmental proceedings after the retirement of the applicant.

9. It will be relevant in this context to discuss the position of law with regard to proceedings under the CCS(CCA) Rules. The settled position of the law in this regard is that the Court or the Tribunal will not normally quash a proceeding or a charge-sheet at the threshold. The Hon'ble Apex Court has laid down this principle in a catena of decisions. In the case of *Secretary, Ministry of Defence and Ors. Vs. Prabhas Chandra Mirdha* reported in (2013) SCC (L&S) 121, the Hon'ble Apex Court categorically laid down that "ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause in disciplinary proceedings should not ordinarily be quashed by the Court".

10. However, in the present case, the proceedings are not under the CCS(CCA) Rules, 1965. These have been framed under the Service Rules meant for employees of the Indian Red Cross Society, Orissa Branch. The Service Rules do not have a specific empowering provision for continuation of departmental proceedings against a delinquent employee beyond the date of his retirement. The judicial pronouncements in this regard, as discussed in previous paragraphs have categorically laid down that in the absence of a specific provision in the service regulations, it will not be permissible to continue departmental proceedings after retirement of



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delinquent employee. That is why, in the present scenario, the proceedings, in our opinion, are liable to be quashed."

11. For the reasons as discussed above, we are of the opinion that the proceedings dated 14.02.2012 initiated and pending against the delinquent-applicant as at AnnexureA-2, are not sustainable as per law and accordingly, the same are quashed. The O.A. is allowed in the result, with no cost to the parties.


(R.C.MISRA)

MEMBER(A)


(A.K.PATNAIK)

MEMBER(J)

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