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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.615 of 2013
Cuttack, this the 11th day of September, 2013

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

.....

Jakub Barik, aged about 44 years, Son of Late Rjaendra Barik, resident of Saledamak, PO. Kumbhari, PS. Saintala, Dist. Bolangir working as Fitter General/HS-II/MC/P.No.6096 of Unit-17, Ordnance Factory, Badmal, Dist. Bolangir.

...Applicant

(Advocates: M/s. D.K.Mohapatra, A.Sahoo,D.K.Barik,S.Samal, N.Nayak)

VERSUS

Union of India Represented through -

1. The Secretary, Ministry of Defence, Department of Defence, Department of Defence Production, New Delhi-1.
2. Ordnance Factory, Badmal, represented through the General Manager, Badmal, Dist. Bolangir, Orissa.
3. Ordnance Factory Board represented through its Secretary, 10-ASK Bose Road,Kolkata-700 001.

... Respondents

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

ORDER

(Oral)

A.K. PATNAIK, MEMBER (JUDL.):

Facts of the matter are that the Applicant while working as Fitter General/HS-II/MC/under the Respondent No.2 at Ordnance Factory Badmal in the District of Bolangir, Odisha, at the conclusion of



the Disciplinary Proceedings, ^Qhe was imposed with a punishment of removal from service vide order dated 18.6.2004. Thereafter, he preferred appeal and revision which having been rejected vide order dated 27.6.2005 and 10.10.2007, he filed OA No. 462 of 2009 in this Tribunal challenging the orders of the Disciplinary Authority dated 18.6.2004, Appellate Authority dated 27.6.2005 and Revisional Authority dated 10.10.2007 with prayer to quash the impugned orders and direct the Respondents to reinstate him in service with all consequential service and financial benefits retrospectively. The matter was contested by the Respondent- Department by filing counter. On 29.4.2011, this Tribunal disposed of the OA No. 462 of 2008. Relevant portion of the order of this Tribunal dated 29.4.2011 reads as under:

“6. Nothing has been brought on record that the Committee has meanwhile given any finding on the caste certificate of the applicant. The authorities have every right to take action against the applicant in accordance with the order of the Hon’ble High Court i.e. after receipt of the report of the Committee. Hence ground No. (i) of the order of punishment is not sustainable in the eyes of law.

7. In so far ground No.ii of the order of removal from service i.e. suppression of material fact i.e. his marriage with a Christian Woman as per Christian religion and not intimating the same to his office with an ulterior motive to hide his religion of being Christian is concerned, we are of the view that imposition of the punishment of removal on this ground shocks the judicial conscience and as such needs reconsideration by the authorities.



8. For the reasons stated above, after hearing learned counsel for both sides, the orders under Annexure- 7 dated 18th of the Disciplinary Authority removing the applicant from service upheld by the Appellate Authority and Revisional Authority in Annexure-8&9 dated 27.6.2005 and 10.10.2007 respectively are hereby quashed. The matter is remitted back to the Disciplinary Authority for reinstatement of the applicant to service but without any back wages as no record has been placed by the applicant that during the period from removal he was not in any employment elsewhere. The order shall be complied with by the Respondents within a period of 60(sixty) days from the date of receipt of a copy of this order."

2. Thereafter, the Union of India challenged the above order before the Hon'ble High Court of Orissas in WP (C) No.2127 of 2012. The Hon'ble High Court of Orissa disposed of the said writ petition on 2.9.2012. Relevant portion of the order of the Hon'ble High Court of Orissa dated 2.9.2012 reads as under:

"As we do not find any infirmity in the impugned order dated 29.4.2011 passed by the Central Administrative Tribunal in OA No. 462/2008, we are not inclined to interfere with the same.

However, on the request of the learned Asst. Solicitor General of India, we grant two months time to comply with the order of the Tribunal.

The writ petition is disposed of accordingly."

3. In compliance of the aforesaid order of this Tribunal dated 29.4.2011 in OA No. 462/2009 and subsequently upheld by the Hon'ble High Court of Orissa vide order dated 2.9.2012 in WP(C)No.2127 of 2012, the



Respondent-Department issued order dated 5.11.2012 which reads as under:

“ORDER

WHEREAS Shri Jakub Barik, F/G(MCM), P.No.6098 was removed from service w.e.f. 18.6.2004 on the grounds among others of fraudulently obtaining a Caste Certificate by furnishing false information showing as Schedule Caste under Hindu religion to get a Government employment with a dishonest motive i.e. conduct unbecoming of a Govt. servant for violation of Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964.

AND WHEREAS the said penalty order along with order of rejection dated 27.6.2005 passed by the Appellate Authority dated 10.10.2007 passed by the Revisional Authority have been quashed by Hon'ble CAT Cuttack in OA No. 462 of 208 vide their order dated 29.4.2011 with a direction to reinstate Shri Barik and with the direction that the authorities have every right to take action against him in accordance with the order dated 13.4.2009 of Hon'ble High Court of Orissa in WP (C) No.13738 of 2008 i.e. after receipt of the report of the SLSC. Hon'ble High Court of Orissa vide their order dated 7.9.2012 passed in WP (C) No.2127 of 2012 has upheld the same and has granted two months time to comply with the order of the Tribunal.

NOW, THEREFORE, in compliance to the above orders of the Hon'ble CAT Cuttack and Hon'ble High Court of Orissa Shri Jakub Barik, F/G (MCM) is **hereby reinstated in service w.e.f. 18.6.2004 and accordingly taken into strength of this factory from the date of his removal from service i.e. 18.6.2004 without any back wages.**

(emphasis added).

It is also ordered in line with the direction dated 13.4.2009 of Hon'ble High Court of Orissa in WP (C) No.13783 of 2008 and as directed by Hon'ble CAT, Cuttack that the above reinstatement of Shri Jakub Barik is subject to the outcome of verification report on his caste status by the SLSC (ND) who having considered the representation submitted by him have vide their letter No. VI.E-III (F)-22/12.522/SSD dated 19.10.2012 allowed him one month more time to appear before them and consequent action thereon.

It is further ordered that Shri Jakub Barik shall, under Sub Rule (4) of Rule 10 of the CCS (CCA) Rules, 1965, be deemed to have been placed under suspension with effect from the date of his



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removal from service i.e. 18.6.2004 and shall continue to remain under suspension until further orders. During the period that this order shall remain in force the Head Quarters of the said Shri Jakub Barik, F/G (MCM) shall be BADMAL and the said Shri Jakub Barik, F/G (MCM) shall not leave the Headquarters without obtaining prior permission of the Competent authority. However, he is entitled for subsistence allowance from the date of this order as per FR 53 on production of non employment certificate”

4. Thereafter, in another order dated 31.1.2013, the GM of the

Ordnance Factory, Badmal directed as under:

“ORDER

Whereas Shri Jakub Barik, F/G(MCM), Per No.6096 of Ordnance Factory Badmal is placed under deemed suspension w.e.f. 18.6.2004 vide order of even number dated 5.11.2012 as disciplinary action has been contemplated against him.

2. And whereas, the Disciplinary Authority carried out the first mandatory review of suspension before expiry of 90 days (i.e. 02.02.2013) from the date of suspension order i.e. 05.11.2012, based on the recommendation of Suspension Review Committee headed by Appellate Authority i.e. Member/A&E/OFB and ordered to extend the suspension for a further period of 180 days beyond 02.02.2013 i.e. upto 1.8.2013.

3. The Disciplinary Authority taking all the materials and circumstances into record has also ordered that the subsistence allowance shall be continued to be paid to Shri Jakub Barik, F/G (MCM), Per No.6098 without any variation as ordered vide FO Pt-III No.736 dated 5.11.2012.”

5. The said deemed order of suspension, on review, was extended for a further period of 180 days vide order dated 30th July, 2013. Sub Rule (4) of Rule 10 of the CCS (CC&A) Rules, 1965 is

reproduced herein below:



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“10(4). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government Servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.”

6. Being aggrieved by the said action, the Applicant has filed the instant OA stating the action of the Respondent- Department is illegal, arbitrary and void ab initio with prayer to quash the last paragraph of the impugned order and the concomitant subsequent orders dated 5.11.2012, 31.1.2013 and 30.7.2013 in Annexure-3,4, and 5 and direction be made to the Respondent No.2 to allow the applicant to join in service in his former post of FG/HS-II/MC w.e.f. the date of removal from service i.e. 18.6.2004 along with promotion and consequential benefits till date within a reasonable time to be fixed by this Tribunal.

7. Copy of this OA has been served on Mr.P.R.J.Dash, Learned Additional CGSC for the Union of India to appear and represent for the Respondent-Department. We have heard Mr.D.K.Mohapatra, Learned Counsel for the Applicant and Mr.P.R.J.Dash, Learned Additional

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CGSC appearing for the Respondents and perused the materials placed on record. In support of the relief claim, Mr. Mohapatra drew our attention to the orders of this Tribunal, the Hon'ble High Court of Orissa, provision of Sub Rule 4 of Rule 10 of the Rules, 1965 to state that the order dated 5.11.2012 being not sustainable in the eyes of law is liable to be set aside. Further it has been contended by him that once the applicant is reinstated to service in compliance of the order of this Tribunal upheld by the Hon'ble High Court of Orissa the penultimate direction that the applicant is to continue under deemed suspension is misnomer/misconceived and cannot be said to be bona fide exercise of power and, therefore, the direction in the order dated 5.11.2012 that the applicant is to continue under deemed suspension and subsequent orders dated 31.1.2013 and 30.7.2013 are liable to be set aside.

8. On being asked, Mr. Dash could not throw any satisfactory reply with reference to any authority to sustain the direction that after the applicant was reinstated to service allowing him to continue under deemed suspension is justified.

9. The provision made in sub rule 4 of Rule 10 of the Rules, 1965 provides that where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside

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or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government Servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders but no where it has been provided that the deemed suspension can be passed after reinstatement of the employee concerned. We find that this Tribunal after quashing the impugned orders remitted the matter back to the DA for reinstatement of the applicant to service which has been upheld by the Hon'ble High Court and in compliance of the said order once the applicant is reinstated to service the Respondent-Department is estopped under law to invoke the provision of Sub Rule 4 of Rule 10 and allow the applicant to continue under deemed suspension from the date of the applicant was removed from service. Rather it is trite law that public administration is responsible for the effective implication of the rule of law and constitutional commands which effectuate fairly the objective standard

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set for adjudicating good administrative decisions. However, wherever the executive fails, the Courts come forward to strike down an order passed by them passionately and to remove arbitrariness and unreasonableness, for the reason, that the State by its illegal action becomes liable for forfeiting the full faith and credit trusted with it.

10. It is trite law that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to a public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to a language used in the order itself - **Commissioner of Police Bombay Vs Gordhan Das Bhanji**, AIR (39) 1952 SC 16.

11. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by a fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by



additional grounds - **Mohinder Singh Gill Chief Election Commissioner**, AIR 1078 SC 851=(1978) 1 SCC 405.

12. Where a power is given to do a certain thing in a certain way, thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time -**Shiv Bahadur Singh v State of UP**, AIR 1954 SC 322 & **Deep Chand v State of Rajsthan**, AIR 1961 SC 1527).

13. If upon admitted or indisputable facts only one conclusion was possible then in such a case, violation of principles of natural justice would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to interfere in the order which was passed in violation of natural justice -**S.I.Kapoor-Vrs-UOI**, AIR 1981 SC 136 followed in the case of **Aligarh Muslim University and Others V Mansoor Ali Khan**, AIR 2000 SC 2783. Since on the face of it the impugned order is not sustainable issuing notice to the Respondents is of no use.

14. Keeping in the mind the aforesaid dicta and the facts and law enumerated above, we are of the considered view that since counter would not validate the direction/order of the authority allowing the applicant to continue under deemed suspension there is no use to defer the adjudication of the matter awaiting the counter of the Respondent-



Department. Hence we quash the last part of the direction/order made in order dated 5.11.2012 and subsequent orders dated 31.1.2013 and 30.7.2013 and remit the matter back to the Respondents to allow the applicant to resume his duty forthwith. It is further ordered that the Applicant would be entitled to full salary with effect from the date of the order of reinstatement i.e. 5.11.2012. But we do not like to express any opinion in so far as the other part of the reliefs sought by the applicant in this OA for which the applicant shall have to avail of the opportunity first ^{by} way of making representation/appeal to the concerned authority.

15. 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 (Judl.)