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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 618 OF 2013

Cuttack, this the 19th day of September, 2013

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

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

Sri Kishore Chandra Moharana,
aged about 56 years,
S/o. Jagannath Moharana,
Ex-Senior Accountant (under deemed suspension),
Office of Accountant General (A&E), Orissa
Bhubaneswar
Residing at Qr.No.Type-III, 290
New A.G.Colony
At-Bhubaneswar
Dist-Khurda

...Applicant

Advocate(s)-Ms.C.Padhi

VERSUS

Union of India represented through

1. Comptroller and Auditor General of India,
10, Bahadur Shah Jaffar Road,
New Delhi
2. Accountant General (A&E), Orissa
Bhubaneswar
At/PO-Bhubaneswar
Dist-Khurda
3. Deputy Accountant General (Admn.)
Office of Accountant General (A&E), Orissa
Bhubaneswar
At/PO-Bhubaneswar(Disciplinary Authority)

... Respondents

Advocate(s)-Mr.B.K.Mohapatra

ORDER(Oral)

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

Heard Ms.C.Padhi, learned counsel for the applicant and
Shri B.K.Mohapatra, learned Addl. Central Govt. Standing Counsel,
on whom a copy of the O.A. has been served, appearing on behalf of
the Respondents and perused the materials on record.



2. The instant O.A. has been filed by the Applicant under Section 19 of the Administrative Tribunals, Act, 1985, assailing the legality and validity of the disciplinary proceedings initiated against vide Annexure-A/12 and in the circumstances, he has prayed for quashing of the same.

3. The entire gamut of the case is that while the applicant working as Senior Account under the Respondents, in contemplation of initiation of disciplinary proceedings he was placed under suspension with effect from 23.04.2003. The applicant having been convicted in a criminal charge, by the Judicial Magistrate (1st Class) Berhampur, he was dismissed from service with effect from 17.06.2003. The order of the Judicial Magistrate (1st Class) Berhampur having been appealed ^{to} ~~of~~ the Hon'ble High Court of Orissa acquitted all the persons so convicted. Thereafter the applicant preferred an appeal before the Accountant General (A&E) and Appellate Authority for his reinstatement in service. In response to his appeal, the appellate Authority substituted the order of punishment of dismissal to that of compulsory retirement vide its order dated 10.10.2006. Aggrieved with the above order, the applicant moved this Tribunal in O.A.No.765/2006, which was disposed of as under.

“...the O.A. is allowed. It is declared that the orders of the Disciplinary Authority and Appellate Authority (Annexure-A/2 and A/5) are hereby set aside. Respondents are directed to issue suitable orders for reinstatement/deemed suspension as they may decide, and in case disciplinary action is to be taken, necessary charge sheet be issued within a period of three months and the proceedings be completed as expeditiously as possible”.

4. Being dissatisfied with the above order of the Tribunal, the Respondents moved the Hon'ble High Court which formed the subject matter of W.P. © No.15895/2007. The Hon'ble High Court of Orissa vide judgment and order dated 23.3.2011 while upholding the order of this

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Tribunal as referred to above, disposed of the Writ Petition in the following terms.

“...Once the delinquent officer was acquitted of the charge, applicability of Rule-19(1) ceases. Therefore, the tribunal was justified in setting aside the order of dismissal/compulsory retirement from service and directing reinstatement of Opp.Party. For the reason stated above, we do not find any justification to interfere within the impugned order of the Tribunal which is in conformity with law. Accordingly, the writ application is dismissed”.

5. After the above order was passed by the Hon'ble Tribunal the applicant was reinstated in service . While the matter stood thus, vide Annexure-A/12 dated 20.06.2011, the Disciplinary Authority initiated disciplinary proceedings against him by issuing Memorandum of Charges and simultaneously, vide order dated 16.5.2012(Annexure-A/14) the applicant was placed under deemed suspension with effect from 18.06.2003, i.e., the date of his dismissal from service. In the above backdrop of the facts, it is the striking point of Ms.Padhi that in the face of the applicant having been acquitted of the criminal charge, initiation of further disciplinary proceedings by the Respondents under the banner of same charge is not sustainable in law. This apart, the applicant has urged delay in initiation of disciplinary proceedings in so far as Article-II in the Charge Memo is concerned. In this connection, we would like to put it in black and white the articles of charge framed against the applicant, which are as under.

Article-I

That Sri Kishore Chandra Maharana, while working as Sr. Accountant in the office of the Accountant General (A&E), Orissa, Bhubaneswar, was convicted by Hon'ble Judicial Magistrate (1st Class), Berhampur, vide order dated 27.2.2013 for having committed an offence under Section 498-A/34 IPC read with Section 4 of Dowry Prohibition Act. Though, it was the duty of Sri Maharana to inform the fact of conviction to his

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superior authority as per guidelines prescribed in the field, yet he did not inform so.

Thus, Sri Kishore Chandra Maharana, Sr.Accountant, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt.Servant, thereby violated Rule-2(1)(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

Article-II

That the said Sri Kishore Chandra Maharana, while working as Sr. Accountant, in the office of the Accountant General (A& E), Orissa, Bhubaneswar, during the year 1999, had entered into a private deal/trade without prior sanction/permission of the Govt. Department as required under rules. Sri Maharana had also received an amount of Rs.1,00,000/- from the private party towards materialization of the trade.

By the aforesaid act, Sri Kishore Chandra Maharana, Sr.Accountant, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt.Servant, thereby violated Rule-2(1)(i), (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

6. We have considered the submissions made by the learned counsel for both the sides. It is to be noted that by the orders of this Tribunal in O.A.No. 765/2006 as upheld by the Hon'ble High Court of Orissa in W.P. © No.15895/2007, in a clear and unambiguous term Respondents were directed to issue suitable orders for **reinstatement/deemed** suspension as they made decide and in case disciplinary action is to be taken, necessary charge sheet be issued within a period of three months. Therefore, by issuing the charge memo within three months of the judgment and order dated 23.3.2011 of the Hon'ble ^{High Court} in the above mentioned Writ Petition and in effect placing the applicant under deemed suspension, the orders of this Tribunal as upheld by the Hon'ble High Court appears to have ^{been} in no way violated and therefore, the action of the Respondents being within the four corners of rules cannot be called in question. So far as charge under Article-II is concerned, nothing prevents the applicant to put forth his complaint before the departmental authorities for their consideration in the first instance whatever he has averred in the present O.A. Viewed from

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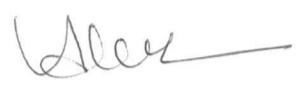
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this, we hold that the applicant has not been able to make out a prima facie case in his favour.

For the foregoing reasons, we are not inclined to admit this O.A. and in the circumstances, the O.A. is rejected. No costs.



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)

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