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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00158 OF 2014
Cuttack, this the 20th day of March, 2014

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

Narayan Chandra Dash,
Aged about 56 years,
Son of Late Niranjana Dash,
Personal No. 337,
Presently working as Technical Officer-"B",
Proof and Experimental Establishment, Chandipur,
At/PO- Chandipur, Dist. Balasore-756025.

.....Applicant

Advocate(s)... M/s. S.K.Ojha, S.K.Nayak.

VERSUS

Union of India represented through

1. Secretary to Govt. of India,
Ministry of Defence, Sena Bhawan,
New Delhi- 110011.
2. Department of Defence Research and Development (DRDO).
Ministry of Defence, repled. through
The Secretary-Cum-Director General,
DRDO & Scientific Advisor to Rakshya Mantri,
DRDO Bhawan, Rajaji Marg, New Delhi-110005.
3. Director, Proof & Experimental Establishment,
Ministry of Defence, At/PO/PS Chandipur,
Dist. Balasore- 756025.
4. Addl. Director (Admn.), Proof & Experimental Establishment,
Ministry of Defence, At/PO/PS Chandipur,
Dist. Balasore- 756025.
5. Joint Controller of Defence Accounts,
Ministry of Defence, At/PO O.T. Road,
Dist. Balasore- 756001.

..... Respondents

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

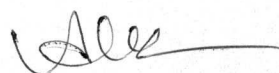


ORDER (ORAL)

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

Copy of this OA has been served on Mr. B.K.Mohapatra, Learned Additional CGSC for the Union of India, who accepts notice for the Respondents in this OA. Registry is directed to serve notice, in terms of sub rule 4 of Rule 11 of the CAT (Procedure) Rules, 1987 for onward transmission. Heard Mr. S.K.Ojha, Learned Counsel for the Applicant, and Mr. B.K.Mohapatra, Learned Additional CGSC appearing for the Respondents, and perused the records.

2. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 15.11.2013 issued by the Addl. Director (Admn.), i.e. Respondent No.4, canceling the earlier orders by which the benefit of family planning has been extended to the applicant and by way of issuing further office order dated 24.02.2014 a direction has been issued to recover the Family Planning Allowance so paid to the applicant. Mr. Ojha, Ld Counsel for the applicant, brought to our notice the documents annexed at Annexure-A/1 which shows that the applicant's wife Smt. Kalpalata Dash has undergone "Tubectomy" operation on 06.02.2009 at District Headquarters Hospital, Balasore. After fulfilling all the parameters and, consequence thereby, vide order under Annexure-A/2 dated 05.03.2009 the applicant was granted the benefit of Family Planning Allowances. However, by drawing our attention to the order dated 15.11.2013 in which it has been mentioned that "Family Planning Allowance granted to the officer noted on the margin with effect from



01.03.2009 vide above mentioned D.O. Part-II is hereby CANCELLED due to administrative reason”, Mr. Ojha submitted that same has been issued by the Addl. Director (Admn.) for Director, who is not the competent authority. Challenging the said order of cancellation, the applicant made an exhaustive representation addressed to the Director (Respondent No.3) vide representation dated 11.12.2013, which has been disposed of vide Annexure-A/8 dated 24.02.2014. Mr. Ojha by drawing our attention to the order passed under Annexure-A/8 dated 24.02.2014 submitted that this order cannot be treated as bonafide order rather can be termed as a cryptic order as none of the points raised in the representation preferred by the applicant has been considered and answered.

3. We are also, prima facie, of the view that the order under Annexure-A/8 is a cryptic one as none of the points raised in the representation made by the applicant has been considered and answered in the proper perspective.

4. On being confronted with the said question, Mr. Mohapatra, Ld. ACGSC, submitted that without allowing an opportunity to file counter quashing the order under Annexure-A/8 will have a prejudicial effect on the departmental Respondents.

5. Perused the records vis-à-vis the order of rejection dated 24.02.2014. “Duty to act fairly” is part of the fair procedure envisaged under Articles 14 and 21 of the Constitution of India. It is the settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In the case of **S.N. Mukherjee v. Union of India**, AIR 1990 SC 1984 the Hon’ble Apex Court unequivocally held that the object underlying the rules



6 of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons ^{is} expressly or by necessary implication has been dispensed with, the authority must record the reasons for its decision.

6. 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 for public effect and are intended to effect the action and conduct of those to whom they are addressed to 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.

7. 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 fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ^{bad} ~~can~~ 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.


8. When the order of rejection is not capable of passing the test of reasonableness as enshrined in Articles 14 and 16 of the Constitution of

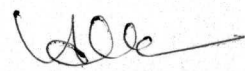


India and as per the law, reasons to be provided in support of the rejection cannot revalidate the order of rejection. In view of this, admitting this OA in our considered view will only delay the rights of the applicant for proper consideration of his case. In view of the above, without expressing any opinion on the merit of the matter, we are of the considered view that the letter of rejection under Annexure-A/8 is a cryptic one as none of the points raised in the representation has been answered. Therefore, without prejudice to the either of the sides, while quashing order under Annexure-A/8 dated 24.02.2014, we think it proper to remand the matter back to Respondent No.3, i.e. the Director, to consider the representation preferred by the applicant on 11.12.2013 and pass a reasoned and speaking order within a period of 60 days from the date of receipt of copy of this order. Till such time the order under Annexure-A/5 dated 15.11.2013 will not be given effect to.

9. With the aforesaid observation and direction this OA stands disposed of at this admission stage. There shall be no order as to costs.

10. As prayed for by Mr. Ojha, Ld Counsel for the applicant, copy of this order be sent to Respondent No. 3 by speed post, at his cost, for which he undertakes to furnish the postal requisite by 21.03.2014.


(R.C.MISRA)
MEMBER (Admn.)


(A.K.PATNAIK)
MEMBER(Judl.)