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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00160 and 162 of 2014
Cuttack, this the 4th day of August, 2016

Dillip Kumar RoutApplicant (in O.A.No. 160/14)
Nagendra Kumar MohantyApplicant (in O.A.No. 162/14)

Versus

Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be referred to PB for circulation? *Yes*

See
(R.C.MISRA)
Member (Admn.)

See
(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00160 & 162 OF 2014
Cuttack, this the 14th day of June 2016

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

.....
Sri Dillip Kumar Rout aged about 49 years S/o Prahallad Rout, Secretary, Accountant in the Office of the Principal Accountant General(Accounts and Establishment), Odisha, Bhubaneswar Cum-General Secretary, Odisha Accounts Association, Bhubaneswar-751001, P.S. Capital, Dist. Khurda.

.....Applicant in O.A. No. 260/00160/2014)

Sri Nagendra Kumar Mohanty aged about 52 years S/O late Akulananda Mohanty, Accountant in the Office of the Principal Accountant General(Accounts and Establishment), Odisha, Bhubaneswar Cum-President, Odisha Accounts Association, Bhubaneswar-751001, P.S. Capital, Dist. Khurda.

.....Applicant in O.A. No. 260/00162/2014)

By the Advocate(s)-M/s. R.N. Acharya, A. Swain, N.C. Moharana
(In both the O.As.)

-Versus-

Union of India, represented through

1. Secretary to Govt. of India, Ministry of Finance, North Block, Pin-110001, New Delhi.
2. The Principal Accountant General(A&E) Odisha Cum Appellate Disciplinary Authority, At/PO-Bhubaneswar-751001, P.S. Capital, Dist-Khurda, Odisha.
3. The Deputy Accountant General (Admn.) and Disciplinary Authority.
4. The Deputy Accountant General(Pension) cum Inquiry Officer All are of the Office of the Principal Accountant General, Odisha Bhubaneswar-751001, P.S Capital Unit-1, District-Khurda, Odisha.

.....Respondents

By the Advocate(s) - Mr. J.K. Nayak (In both the O.As.)

.....
J.K.Nayak

ORDER

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

The facts of both these Original Applications being the same, both the O.As. are disposed of by a common order.

2. In O.A. No. 260/00160/2014 the applicant, an Accountant in the office of the Principal Accountant General, Odisha and who also happens to be General Secretary of the Odisha Accounts Association, has approached this Tribunal claiming the following relief:

“The Hon’ble Tribunal may graciously be pleased to admit the Original Application and issue notice to the respondent to show cause as why the original application shall not be allowed and in the event the respondents fail to show cause or shows insufficient cause, the Hon’ble Tribunal may be pleased to and quash the orders passed on dated 02.09.2013 on 09.01.2014 under Annexure-A/2 and orders dated 02.09.2013/03.09.2013 under Annexure-A/1 Annexure A/11/1 dated 07.03.2014 and grant the consequential reliefs thereof. And would be further pleased to pass any other order(s) as the Hon’ble Tribunal deems fit and proper.”

It is also to be noted that the applicant in O.A. No. 260/00162/2014 is also serving as Accountant in the same office and happens to be President of the Odisha Accounts Association. He has sought similar relief before the Tribunal as sought by the applicant in O.A.No. 260/00160/2014. For the sake of convenience the facts narrated in O.A. No. 260/00162/14 are summed up below.

3. The applicant was working as Sr. Accountant in the office of the Principal Accountant General, Odisha. He was also the President of Odisha Accounts Association of which the applicant in O.A. No. 160/14 was General Secretary. The factual matrix of the case is that the applicant made a letter of request on 27.02.2012 on behalf of the association to the Deputy

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Accountant General (Admn.), i.e. Respondent No.3, seeking permission to hold a meeting during lunch break on 28.02.2012. Even though permission was not given the meeting was still held and the Respondents alleged that the meeting continued beyond 2 P.M. and loudspeaker was used. Similar allegation was made about a meeting held on 10.04.2012 of the association to administer oath of office to the newly elected office bearers. However, although permission was accorded for holding the meeting during lunch hour, it was alleged by the departmental authorities that the meeting continued beyond 2 P.M. and loudspeaker was also used thus adversely affecting the working atmosphere in the office. This being the sum total of the allegation of misconduct and misbehavior on the part of the applicant, the Respondents called for the explanation of the applicant as well as other office bearers. After receiving the explanation the Deputy Accountant General (Administration), i.e. Respondent No.3, initiated disciplinary proceeding against the applicant vide memorandum dated 17.05.2012, in which he intimated the applicant that an inquiry is proposed to be held against him. A statement of imputation of misconduct, a list of documents and a list of witnesses by whom the three charges were proposed to be sustained were issued to the applicant and he was directed to submit within 10 days his statement of defence. Article I of the charge sheet relates to holding of meeting on 28.02.2012 without prior permission being taken from the competent authorities. Under Article II of the charges, it was alleged that the meeting held on 10.04.2012 continued beyond the permitted hour. Under Article III, it was alleged that loudspeakers were used in both the meetings disrupting the working atmosphere of the office.



After the applicant submitted his explanation, the Disciplinary Authority appointed Respondent No.4, i.e. G.J.Das, Deputy Accountant General (Pension) as Inquiry Officer (I.O. in short) against the applicants of both the O.As. Before the appointment of Sri G.J.Das as Inquiry Officer, the competent authority had appointed on P.K.Das, Director, E.Co.Railway, Bhubaneswar as Inquiry Officer. Subsequently, he was changed and one Sri Srinibas Mohanty, Welfare Officer in the office of Pr. Accountant General, was appointed as Inquiry Officer and it is alleged by the applicant in this O.A. that Sri Mohanty continued his inquiry till his date of retirement and submitted his report and, thereafter, the present Inquiry Officer was appointed again. What happened to the Inquiry Report of Sri Mohanty, the earlier I.O., has been suppressed by the Respondent-authorities. However, the present I.O., Sri G.J.Das submitted his inquiry report on 05.07.2013 in which he found that Article I and II of the charge sheet were proved and Article III of the charge sheet was not proved. The applicant in this O.A. further submits that certain officials of the same office, who were alleged to have submitted written complaints regarding disturbances in the association meetings were summoned as witnesses by the I.O. But all the written complaints were undated and on the face of it, the complaints are appearing to be spurious and cooked up. The further allegation is that the Respondent-authorities in order to harass the applicant, who is an office bearer of the association, asked the various employees of the office to come up with manufactured complaints which are both false and fabricated. The I.O. did not properly consider these defects in the various complaints and allegations. The Respondent No.3, i.e. Deputy Accountant General



(Admn.), who happens to be disciplinary authority and who was a material witness of the meeting, was not called as a witness by the I.O. Thus, the I.O's. report was pro-administration based upon no evidence and full of illegality and factual inaccuracies, as alleged by the applicant. Be that as it may, it is further noted that the inquiry report was forwarded to the Disciplinary Authority (D.A. in short) for appropriate decision but he has blatantly failed to apply his judicious mind and, therefore, came to an unsustainable conclusion by holding the applicant guilty of charges under Article I and II of the charge sheet. It is also alleged by the applicant that the Respondent No.3 became the complainant, the prosecutor and ultimately the judge in this proceeding., which violates the principle of natural justice since no person can be a judge of his own case. After conclusion of the proceedings, the D.A. imposed the punishment of reducing the applicant to a lower rank as Accountant from the date of the order and further imposition of penalty of postponement of his future increments on his restoration after one year. According to the submission made by the applicant, this punishment is grossly out of proportion with the gravity of the charges. After the order of punishment was passed, the applicant also made a statutory appeal to the Respondent No.2, i.e. Pr. Accountant General (A&E). The Appellate Authority (A.A. in short) after considering the appeal issued show cause notice to the applicant as to why the punishment so awarded by the D.A. should not be enhanced. As per the applicant, this is a prejudicial and unjudicious decision by the A.A. However, he made representation to the A.A. in response to the show cause notice. By an order dated 07.03.2014, the A.A. passed final orders



enhancing the punishment to two years, i.e. reduction to the lower post from Sr. Accountant to Accountant for a period of two years from 02.09.2013 with a stipulation that the reduction shall operate to postpone future increments on restoration after two years. The allegation made by the applicant is that the A.A. instead of correctly going into the appeal petition, in a most injudicious manner, enhanced the punishment, which is also disproportionately harsh compared to the gravity of the charges, which are stated to be proved by the I.O. Against the backdrop of the factual context mentioned above, the applicant has approached this Tribunal with the prayer to quash the orders of the Disciplinary Authority as well as Appellate Authority.

4. Respondents have filed a counter affidavit, a perusal of which reveals the following facts.

In response to the submission made by the applicant in this O.A., the Respondents have contested the various factual aspects of this case. However, they have mentioned that the fact of the inquiry by the previous I.O., i.e. Sri Srinibas Mohanty, was not suppressed by the Respondents. The earlier I.O. had done only a part of the inquiry till his retirement on 30.11.2012. It is further submitted by the Respondents that the statement of the applicant that the complaints made were manufactured one or were product of afterthought are completely denied. All the three charges made against the applicant were distinct from each other. Due to insufficient evidence regarding use of loudspeaker, charge under Article III was not proved by the I.O. but the charges made under Article I and II were proved by the I.O. after due consideration of the material evidence



produced against him and considering his defence in the matter. It is completely denied by the Respondents that Respondent No.3 acted as a complainant and also a judge in this case. The fact of the matter is that the Respondent No.3, i.e. Dy. Accountant General (Admn.) was excluded from the list of witnesses from examination because he happens to be the D.A. The name of Respondent No.3 did not find place in Annexure-3 of the charge memo, i.e. list of documents and the list of witnesses. It is denied by the Respondents that Respondent No.3 had acted like a judge of his own case. Coming to the role of the Appellate Authority, it has been submitted by the Respondents that Respondent No.2 being the A.A. carefully considered the appeal dated 30.09.2013 and after finding no substance in the appeal and also considering the fact that the punishment awarded by the D.A. was inadequate, enhanced the penalty after giving due opportunity to the applicant. The reason why the A.A. decided to enhance the punishment was that the applicants, in both the O.As., were General Secretary and President of the Odisha Accounts Association and, therefore, their conduct and behavior should be role model for other staff members. Therefore, the A.A. decided that gravity of charges as proved against the applicant warranted a higher level of punishment. The further submission made in the counter affidavit is that the process of inquiry and the orders passed in the disciplinary proceeding by the D.A. and the A.A. are in strict consonance with the provision of CCS (CCA) Rules, 1965 and that there has been no omission or commission on the part of the authorities resulting in miscarriage of justice as alleged by the applicant.



5. Having heard Ld. Counsel for both the sides, we have also perused the records.

6. Ld. Addl. Central Govt. Standing Counsel for the Respondents has in course of the hearing provided some additional information for consideration in relation to this case. In order to counter the charge that the Respondent No.3 has acted as complainant, prosecutor and judge in the disciplinary proceeding, Ld. ACGSC submitted that there are three offices of Pr. Accountant General/Accountant General operating from the same premises for performing the audit and accounts work pertaining to the Govt. of Odisha. Every such Head of Office has a separate Deputy Accountant General (Admn.) of its own. In the present case, a complaint was sent by the Sr. DAG (Admn.) of the office of Accountant General (General and Social Sector Audit), to the Deputy Accountant General (Admn.) office of the Accountant General (A&E), Odisha, regarding disturbances caused by the applicant while conducting association meeting on 28.02.2012 and 10.04.2012. After receipt of this complaint, the Deputy Accountant General (Admn.) in the office of the Pr. Accountant General (A&E), who is Respondent No.3 in the O.A., being the appointing authority of the applicant initiated disciplinary proceeding against the applicant by following the due procedure as laid down in CCS (CCA) Rules, 1965. Ld. ACGSC has also filed a letter dated 10.04.2012 of the office of the Accountant General (General and Social Sector Audit), sent to Respondent No.3 as mentioned above. With this submission, the Ld. ACGSC has denied the charge of the applicant that the Respondent No.3 has acted as a judge of his own case.



7. Ld. Counsel for the applicant has not been able to produce any document with regard to any serious procedural violation in the conduct of disciplinary proceeding. Nor is it the case of the applicant that the principle of natural justice was jettisoned while passing the order of punishment by either the D.A. or the A.A. The A.A. has no doubt enhanced the quantum of punishment as imposed by the D.A. but before enhancing the punishment he has given a show cause notice to the applicant and considered his submission. Therefore, it cannot be said that there has been any unlawful exercise of power with regard to enhancement of punishment. Coming to the charges framed against the applicant, it is to be noted that the discipline in public offices is of utmost importance ^{for} ~~to~~ the efficient functioning of the Government. It will be admitted by one and all that even if the employees are transacting some business with regard to the affairs of the association that must be done with due permission from the competent authority and according to the terms and conditions as laid out by them. More ^{important} ~~sufficient~~ is the fact that nothing should be done by the members of the association to disturb the working atmosphere of a public office. It cannot be, therefore, held that the charges as framed against the applicant are frivolous or vague. The specific duty of the office bearer of the association is also to encourage and inculcate the spirit of discipline amongst the member of the association. Therefore, it can be in no way expected that the charges framed against the applicant were unsustainable. However, we have to also take a view regarding gravity of the charges. It is to be noted that the I.O. has come to a finding that charge I and charge II were proved, meaning thereby that the meeting of the association was organized without permission of the

competent authority and that the time limit prescribed for the meeting was also crossed. Charge no.3, however, which is regarding the allegation of use of loudspeaker, has not been proved. The D.A. has passed a detailed order which was communicated to the applicant vide a memorandum dated 02/03.09.2013. On perusal of this detailed order it is noted that the D.A. has taken ^{into} account all the findings of the Inquiry Officer. D.A. in his order has clearly mentioned that the I.O. in his report submitted that the delinquent in his official capacity in the association has conducted a general body meeting in canteen corridor without prior permission thereby violating the CCS (Conduct) Rules, 1964 and, therefore, charge under Article-I has been proved. The charge made in Article-II that the delinquent conducted the meeting beyond 2 PM was also found to be proved in the Inquiry Report. However, the charge under Article-III that loudspeaker was used in the meeting creating high sound was not proved basing on the fact of the record and the evidence adduced. However, the D.A. has not discussed in detail how the gravity of charges warranted the punishment of reduction to the lower post of Accountant for a period of one year from the date of the order as well as the punishment that the reduction shall operate to postpone future increments on restoration after one year. The decision to impose such punishment has not been properly discussed in the order of the D.A. In our opinion, this should have been done in order to relate the order of punishment to the gravity of the charges that were proved. It is noted that the A.A. while disposing of the appeal petition decided to enhance the quantum of punishment in this case. In this regard, the A.A. issued memorandum dated 09.01.2014 to the delinquent calling for his show cause

before imposing the punishment. Thereafter, on consideration of the representation of the delinquent dated 15.01.2014, the A.A. passed the final order of enhancing the punishment of reduction to the lower post from Sr. Accountant to Accountant for a period of two years from 02.09.2013 with a stipulation that the reduction shall operate to postpone the future increments on restoration after two years. This order was communicated to the applicant on 07.03.2014.

8. We have perused the order of A.A. in detail. This order is very detailed and has covered all the facts right from the initiation of proceeding to the stage of final orders. The A.A. has also considered all the points raised in the representation by the delinquent. Therefore, it cannot be said that the order suffers from any defect or it overlooked any of the grievance of the applicant. However, the A.A. after recording that the action has been taken judiciously keeping in view the mandates prescribed under CCS (CCA) Rules, 1965 has suddenly come to a conclusion that the punishment imposed by the D.A. on the delinquent is very minimum. Thereafter, taking the gravity of the misconduct into account, the A.A. has decided to enhance the quantum of punishment. In this regard, I have taken ~~Re~~ into account the stand taken by the Ld. ACGSC that the A.A. has taken a very serious view about the indisciplined behavior of the applicant. He also has taken a view that the conduct and behavior of the members of the ~~ve~~ association has to be a role model for all staff members and, therefore, the order of punishment as imposed by the D.A. was considered to be inadequate by the A.A.



9. We are aware of the law laid down by the Hon'ble Apex Court that in the matter of disciplinary proceeding the scope of interference by the Courts and Tribunals would be only to verify whether the due procedures were followed and the principle of natural justice was respected while the disciplinary proceeding was conducted against the delinquent official. Ld. Counsel for the applicant in this case has raised certain issues regarding conduct of the Respondents No.3, i.e. D.A., as well as the conduct of the I.O. and also change of I.O. because of administrative reasons. He has also raised the issue of bias against the applicant and the harassment caused to the applicant on account of the fact that he is an office bearer of the Odisha Accounts Association. However, he has not been able to establish the charge beyond any doubt and, therefore, no concrete instance has come to our notice in which the Respondent authorities have violated any established principle of law while disposing of the disciplinary matter. We, however, have found that regarding quantum of punishment, the D.A. and the A.A. have not sufficiently discussed the reasons as to why such punishment was warranted. In case of the A.A., it is not clearly argued out as to how enhancement of punishment was required even if it was viewed that the applicant should not have conducted himself in an indisciplined manner as a member of the association. The D.A. also after dealing with all the issues raised by the applicant and the evidence brought out in the Inquiry Report has not properly adjudicated the quantum of punishment that was imposed on the applicant. We are, however, aware of the law as laid down by the Hon'ble Apex Court that the Tribunal should not interfere with the quantum of punishment to be imposed in a delinquent employee



after the conclusion of the disciplinary proceeding and that the matter should be left best to the discretion of the authorities who are competent to impose such punishment. This is in appreciation of the fact that only the disciplinary authority was aware of the fact and circumstances of the case and, therefore, the Tribunal's interference is most unwarranted in such matters. With regard to this position, the decisions of the Hon'ble Apex Court, which is quoted below, is relevant:

**Deputy Commissioner KVS & Others VS. J. Hussain,
reported in AIR 2014 Supreme Court 766**

Para 6 & 7

In exercise of power of judicial review the court can interfere with the punishment imposed on delinquent employee when it is found to be totally irrational or outrageous in defense of logic..... When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play.

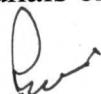
Para-9

Even when the Court finds the punishment to be shocking and arbitrary, the court cannot act as disciplinary authority and impose a particular penalty. The Court can only refer the matter back to Disc. Authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case.

**LIC of India and Others VS. S. Vasanthi reported in 2016
(2) SLJ 48-54**

It is further reiterated by Hon'ble Apex Court that in a case if the court felt that the quantum of punishment is disproportionate, then it should remand the matter back to the Disciplinary Authority instead of modifying the punishment on its own.

A perusal of these judgment of the Hon'ble Apex Court clearly reveals that unless there is a punishment order which is totally irrational and disproportionate to the nature of charge, the Tribunals or Courts should



not interfere. It has also further decided by the Hon'ble Apex Court that even when the court finds that the punishment is shocking and arbitrary, the court cannot act as a D.A. and impose a particular punishment. In such a situation where the court finds that the punishment has been disproportionate with the nature of charge, the matter can only be remanded to the D.A. to take appropriate view by imposing a lesser punishment.

10. Even though the Hon'ble Apex Court has laid down the law that decision of the Disciplinary/Appellate Authority with regard to the quantum of punishment is not to be normally interfered with by Courts and Tribunals, in ^{the} catena of decisions it has also been emphasized that by the process of judicial review, the Courts/Tribunals can interfere in the area of quantum of punishment, if in the view of the Court it appears to be shockingly disproportionate to the gravity of the charges brought in against the delinquent official. In such a scenario, the Court or Tribunal should remit the matter to the authorities directing them for reconsideration of the quantum of punishment, instead of remolding the punishment by itself. A consideration of the facts of the case has convinced us that the punishment imposed by the D.A., subsequently enhanced by the A.A., appears disproportionate to the gravity of charges, requiring intervention by this Tribunal.

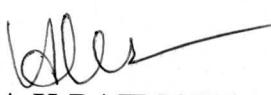
11. In the present case under consideration, the charges which have been proved in the report of the I.O. are that the meeting was conducted without obtaining a letter of permission from the competent authority and meeting also continued beyond the specified hour. In our considered view, such charges should not have warranted a punishment of reduction in rank



for a period of one year with further stipulation that this will also affect the future increments after the expiry of one year. With regard to the order of the A.A. also, although it is to be fairly stated that the A.A. has passed a very detailed and well reasoned order, we did not find any specific reason as to why the order of punishment was required to be enhanced in the present case. We are, therefore, of the view that the punishment imposed by the D.A. as well as the enhanced punishment decided by the A.A. are both disproportionate to the gravity of charges, which have been proved against the applicant. Therefore, we quash the orders of the Disciplinary Authority as well as Appellate Authority and remand the matter back to Respondent No.3, i.e. Disciplinary Authority, to consider imposition of any lesser penalty in keeping with the gravity of the charges as proved against the applicant.

12. With the above observation and direction, this O.A. stands allowed to the extent as mentioned above. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

RK