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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00305/2014

Cuttack, this the 10th day of March, 2016

CORAM:

The Hon'ble Mr.A.K.Patnaik, Judicial Member
The Hon'ble Mr.R.C.Misra, Admin. Member

Shri Pramod Kumar Nath, aged about 46 years, Son of Late Narayan Nath, At-Govindpur, Po.Sidhagiri, Via-Chatia, Ps.Tangi, Cuttck presently working as Assistant Audit Officer, Office of the Accountant General and Social Sector Audit, AG Square, Bhubaneswar, Odisha, Dist. Khurda.

..... Applicant

By legal practitioner: Mr.S.K.Ojha, Counsel

-Versus-

Union of India represented through its

1. Comptroller and Auditor General of India, Pocket-9 Deen Dayal Upadhayay Marg, New Delhi-110124.
2. The Deputy Controller & Auditor General of India, Office of the Comptroller and Auditor General of India, Pocket-9 Deen Dayal Upadhayay Marg, New Delhi-110124.
3. The Accountant General (G&SSA), AG Square, Bhubaneswar, Dist.Khurda, Odisha, PIN-751 001.
4. The Deputy Accountant General(G&SSA) Office of the Accountant General (G&SSA), AG Square, Bhubaneswar, Dist.Khurda, Odisha, PIN-751 001.
5. Shri Santanu Ku. Das, OSJS (Retd.) Ex-District & Sessions Judge and Inquiring Authority, Office of the Accountant General, G&SSA, Odisha, Bhubaneswar, Pin-751001.

..... Respondents

By legal practitioner: Mr.J.K.Nayak, Counsel

O R D E R

Shri A.K.PATNAIK, Judl. Member:

The applicant who is working as an Assistant Audit Officer, in the Office of the Accountant General (General and Social Sector Audit), Bhubaneswar, has filed this Original Application U/s. 19 of the

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Administrative Tribunals Act, 1985, *inter alia* praying to quash the charge sheet dated 21.11.2012 issued under Rule 14 of the CCS (CC&A) Rules, 1965 (Annexure-A/3), the order dated 26.03.2014 (Annexure-A/15), the letter dated 24.04.2014 (Annexure-A/17) and to direct the Respondents to grant him all consequential service and financial benefits retrospectively.

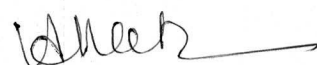
2. The Respondents have filed their reply strongly refuting the stand taken by the applicant in his Original Application.

3. The Applicant has also filed his rejoinder, more or less reiterating the points raised by him in the OA.

4. Heard Mr.S.K.Ojha, the learned Counsel appearing for the Applicant and Mr. J.K.Nayak, the learned Additional CGSC appearing for the Respondent-Department and perused the pleadings and materials placed in support thereof vis-a-vis the Rules and decisions relied on by the respective parties.

5. A summation and summarization of the arguments advanced by the learned Counsel for the Applicant Mr. Ojha are as under:

(a) As per the provisions of IA & AD Rules, the Principal Accountant General (Civil Audit) was pleased to promote the Applicant to the post of Assistant Audit Officer (Civil) from the post of Section Officer in the pre revised scale of pay of Rs.7450-225-11500/- with effect from 02.01.2007 vide order dated 29.12.2006 and since then he has been discharging the duties of Assistant Audit Officer (Civil) [Annexure-A/1];



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(b) It is the well settled law that that the Appointing Authority is to be determined from the point of time of appointment/promotion of the employee concerned and not at the time of issuing the memorandum of charge or punishment and that subsequent authorization cannot take away the constitutional guarantee envisaged under Article 311 of the Constitution of India. The Appointing Authority means an authority competent to appoint which includes an authority who actually appointed the concerned Government servant.

(c) Any order subsequently issued in derogation to the statutory rules is not sustainable in the eyes of law. As such, by no stretch of imagination it can be said that the Accountant General can be the Appointing Authority and Disciplinary Authority of the Applicant. The Rule empowering an authority lower than the authority who actually appointed the government servant cannot exercise the power of the disciplinary authority. In this context, he has relied upon the decisions in the cases of **S.C.Mehta Vrs Union of India**, 1983 (3) SLR 714 (Delhi), **Babaji Charan Rout Vrs State of Orissa**, 1981 (3) 189 (SLR (Orissa) that "The Appointing authority is to be determined from the point of time of appointment and not at the time of passing order of punishment. Appointing Authority must be taken to refer to the authority which actually appointed the Government servant".

(d) The applicant was appointed by the Principal Accountant General whereas the Accountant General is one stage



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below the post of Principal Accountant General and that the Accountant General is only an officiating Head of Department (HOD) in the field office of Indian Audit & Accounts Department (IA & AD). The Disciplinary Authority means who appointed the person to service or above the rank of Appointing Authority. Sub Rule (a) (iii) of Rule 2 of the CCS (CC&A) Rules, 1965 deals with regard to "appointing Authority" in relation to a Government servant therein it has been provided that "the authority which appointed the Government servant to such service, grade or post, as the case may be"

(e) Sub Rule (a) (iii) of Rule 2 of the CCS (CC&A) Rules, 1965 [hereinafter called as Rules, 1965] deals with regard to "appointing Authority" in relation to a Government servant. It has been provided therein that "the authority which appointed the Government servant to such service, grade or post, as the case may be". As per the Rules supported by various judicial pronouncements that the Appointing Authority is the Disciplinary Authority who has been empowered under the statute to initiate or impose any of the punishments under Rule 14 or 16 as enumerated in Rule 11 of the CCS (CC&A) Rules, 1965.

(f) Whereas, in the present case the Memorandum of charge had neither been issued by the Appointing Authority nor did the same have the approval of the Appointing Authority i.e. Principal Accountant General and thus, the charge sheet being without jurisdiction, competency and authority is liable to be set



aside; In this context, he has placed reliance on the provisions of the Rules which are extracted hereunder:

“(1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be in the manner provided in this Rule and Rule 15 or in the manner provided to by Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under this Act.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into or appoint under this rule or under the provision of the Public Servants (Inquiries) Act, 1850, as the case may be an authority to inquire into the truth thereof.

Explanation - Where the Disciplinary Authority itself holds the inquiry, any reference in sub rule (7) to such rule (20) and in sub rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and or rule 15, the disciplinary authority shall draw up or caused to be drawn up—

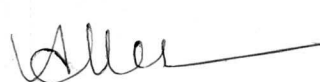
(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—

(a) a statement of all relevant facts including any admission or confession made by the member of the Service;

(b) a list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written



statement of his defence and to state whether he desires to be heard in person.

(5)(a) On receipt of the written statement of defence the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so appointment under sub rule (2), an inquiry authority for the purpose and where all the Articles of charge have been admitted by the Government servant in his written statement of defence the disciplinary authority shall record its findings of each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.”

(g) The power is vested under the statute only to the Disciplinary Authority who has actually appointed the Government servant to form the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a public servant, and then shall draw up or cause to be drawn up the substance of the imputation of the misconduct or misbehaviour into definite and distinct articles of charge. When the rules provide the authorities who can take disciplinary action, then those authorities alone can issue the charge sheet. An officer who is even acting in the place of the appointing authority as a stop gap arrangement or officiating basis while the former is on leave or the post is vacant is not competent to perform the statutory functions and a charge sheet issued by him is illegal. Issuance of the charge sheet without the specific approval of the competent authority so to say appointing authority is bad in law, Mr.Ojha cited the decision in the cases **Union of India vrs V.Gopinath and Union of India and Ors –Vrs-Paul George**, (2014) 1 SCC 352.



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(h) The Government of India (vide DGP&T Memo No. 44/6/59-Disc. Dated 7th August, 1959), made provision for appointment of ad hoc disciplinary authority wherein it has been laid down that before any action is initiated under the CCS (CCA) Rules, with a view to imposing any of the major penalties on an official it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority the fact should be reported to the Department/Ministry concerned for issue of President's orders nominating another officer to act as the disciplinary authority in that particular case. As such, issuance of the charge sheet by the A.G. is per se illegal and is liable to be set aside;

(i) An officer performing current duties of a post cannot exercise statutory power under the Rules, Mr. Ojha relied on the decision of the Government of India, Ministry of Home Affairs OM No. F.7/14/61-Ests (A) dated 24th January, 1963 and submitted that issuance of the charge sheet while performing current duties being bad in law, the charge sheet and subsequent action is liable to be quashed being *ab initio* void and *per se* illegal;

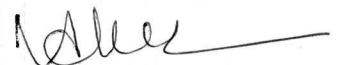
(j) The Notification dated 20th April, 2012 relied upon by the Respondents in their counter, is not applicable to the instant case as in the said notification it has clearly been provided that



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“All Group B posts in pay band-3 GP of Rs.5400, pay Band-2, Grade pay of Rs.5400, Rs.4800/-, Rs.4600 or corresponding thereof” the appointing authority is - ‘Officer in the rank of Principal Accountant General or Accountant General or Officer of equivalent rank’. In the column ‘empowered the penalties’ – ‘Officer in the rank of Principal Accountant General or Accountant General or Officer of equivalent rank’. It has been stated that “OR” is always disjunctive and in that eventuality it can be safely held that the issuance of the major penalty charge sheet by the Accountant General when the applicant was promoted/appointed by the Principal Accountant General is unjustified. “OR” is disjunctive and the AG being not the appointing authority cannot issue a charge sheet and appoint an Inquiry Officer. Mr. Ojha, placed reliance on the decisions in the case of **Cable Corporation of India Ltd. v Additional Commissioner of Labour and others**, (2008)2 SCC (L&S) 581 and **Babaji Charan Rout Vrs State of Orissa**, 1981 (3) 189 (SLR (Orissa) & submitted that the said notification having no retrospective effect cannot take out the right conferred under Article 311 of the Constitution of India.

(k) Although more than one authority is described as the appointing authority, ultimately in relation to a govt servant whichever is higher authority is concerned to be the appointing authority and if it is applied then the action taken in the instant case is bound to fall flat.



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(l) The mandate of Art.13 (2) reads with definition of "law" in clause 3(a) which says that any order which takes away or abridges the fundamental right shall be void. As per the mandate in Articles 14 and 16 (1), the doctrine of uniformity and doctrine of consequential order applies. Once the charge sheet is issued by the Accountant General goes subsequent consequential action also falls. Therefore, if the charge sheet is held to be bad in law being not in accordance with Rules or mandate enshrined in Articles 14 and 16 of the Constitution of India, the subsequent action is nothing but a nullity in the eyes of law. It has been stated that when the initial action is not in consonance with law, subsequent proceedings would not sanctify the same in other words, the doctrine "in case foundation is removed, the superstructure falls" squarely applies to this case. As such, the Memorandum of charge dated 21.11.2012 (Annexure-A/3) issued by the Accountant General, Odisha usurping the power of the Appointing Authority thereby exercising the power of Disciplinary Authority being not in consonance with the rule and law is liable to be set aside;

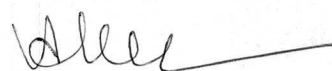
(m) The Accountant General, Odisha without verifying the authority and giving any opportunity to the applicant acted as if he is the Appointing Authority and the Disciplinary Authority and *suo motto* changed and appointed a retired District & Sessions Judge, who happens to be one of his relations to enquire into the allegation vide order dated 16.09.2013. As per the Government of India decision, as upheld by the Hon'ble Apex Court, the



competent authority has the discretion to appoint a retired person as Inquiry Officer to enquire into the truth of the allegation levelled against an employee in a departmental proceeding but appointment of such retired officer is permissible provided he/she has been duly empanelled. In so far as the present department is concerned, the Comptroller and Auditor General of India is the competent authority to approve such names. No such list has been published and even if it is published which the applicant has no knowledge, the name of the present Inquiry Officer did not figure at all. As such, the very appointment of Shri Das as Inquiry Officer that too by the Accountant General, Odisha de hors the rules and cannot be accepted as per law.

(n) The IO adopted a novel procedure unknown to law and service jurisprudence and ordered for de novo enquiry and asked the applicant to be present on the date of enquiry. However, the applicant questioned such novel procedure adopted by the IO but surprisingly, the authority concerned rejected the same vide order dated 26.03.2015 (Annexure-A/15) and thereby calling upon the applicant vide letter dated 24.4.2014 (Annexure-A/17) to attend the enquiry which is not sustainable in the eyes of law;

(o) In another case filed by one of the employees of the same office namely Shri Pramod Kumar Adhikari (OA No. 38 of 2015), the Respondents therein filed their reply in which it has been stated by the Accountant General, Odisha that Promotion of Accountant General to Principal Accountant General is a non-



functional promotion just like the position of Secretary and Principal Secretary in the IAS cadre of State Government. If it is so, then it can be presumed that the Accountant General has no power/authority to issue Memorandum of charge under Rule 14 of Rules, 1965 as the power vested with the Principal Secretary cannot be discharged by the Secretary of a State.

(p) Last but not the least Mr. Ojha pointed out the likely hood of bias behind the entire exercise. It has been contended that for appreciating personal bias or bias to the subject matter, the test is whether there was a real likelihood of bias even though such bias has not in fact taken place. The charge sheet is also an outcome of bias. Mala fide is discernible from the Memorandum and surrounding factors and needs no specific prove in the instant case. Acting contrary to rule and law is bias, as in the instant case. Thus, by applying the test, likelihood of bias, the Memorandum of charge is liable to be set aside.

6. Per contra, in a bid to torpedo and pulverize the arguments advanced by the learned counsel for the applicant, Mr. J.K.Nayak, the learned Addl Central Govt. Standing Counsel appearing for the Respondent-department placing reliance on the submissions made in the counter, argued that due to certain omission and commission in discharging the official duty committed by the applicant, the Accountant General being the Disciplinary Authority of Group B Officer, issued the Memorandum of charge dated 21.11.2012. Applicant submitted his



written statement of defence denying the charges levelled against him. After due consideration of his written statement of defence, the Accountant General, Odisha as his Disciplinary Authority appointed one Shri Deepak Raghu, Deputy Accountant General of the same office as the Inquiry Officer as against such appointment, the applicant submitted bias petition dated 01.3.2013. Considering his representation, Shri Deepak Raghu was replaced by Shri Veeraraghavan to act as the IO. against the said IO applicant submitted another representation dated 31.5.2013 which was considered and turned down vide letter dated 18.6.2013. Shri Veeraraghavan requested to be relieved from his duty as IO on 10.9.2013. Hence, Shri Santanu Kumar Das, a retired District and Sessions Judge was appointed as IO vide order dated 16.9.2013 in terms of GOI decision No. 12 below Rule 14 of CCS (CCA) Rules, 1965 who issued notice to the applicant in terms of sub rule 22 of Rule 14 of CCS (CCA) Rules, 1965 and the decision of the Calcutta Bench of the Tribunal in OA No. 29 of 1990 (Haricharan Shaw v Union of India and others), to conduct the enquiry de novo. The applicant submitted representation on 30.09.2013 alleging bias against the said IO which was rejected vide letter dated 04.10.2013. Being aggrieved, the applicant preferred another representation to the CAG, India on 15.10.2013 which was considered but rejected vide order dated 26.3.2014. The IO issued notice to the applicant for conducting enquiry and, thereafter, the applicant has filed the instant OA seeking the relief, as above.

His contention is that it is not a fact that only an officer in the rank of Principal Accountant General (H.A.G) has been designated as



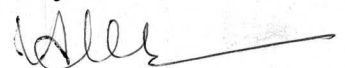
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the Appointing Authority and Disciplinary Authority of the applicant and other Assistant Audit Officers of Indian Audit and Account Department. It is only a coincidence that the applicant and 24 others, as per annexure-A/1, were promoted on 29.12.2006 to the post of Assistant Audit Officer (Group B) when an officer of the rank of Principal Accountant General was the Head of Department in the office of Respondent No.3. The Respondent No.3 has taken over the charge of the office and now is the HOD of office vide CAG's office order dated 01.8.2011. In terms of Ministry of Finance (Department of Expenditure) Order, S.O. 1527 dated 20.04.2012 (previously SO 2815 dated 013.9.1988) published in the Gazette of India dated 29th April – 5th May, 2012 (Annexure-R/3 (a), the HOD of the rank of Principal Accountant General or Accountant General or equivalent ranked officer has been designated as the Appointing Authority as well as the Disciplinary Authority in case of all Group B officers in the pay band 3 with GP of Rs. 5400/- and in PB 2 with GP of Rs. 5400/- Rs. 4800/- and Rs. 4600/- in field offices of the Indian Audit and Accounts Department (IA & AD). Prior to these also HOD in a field office in the rank of PAG or AG has been designated as the Appointing Authority and the authority competent to impose any such penalty. Thus, the functions, duties and powers of officers having the rank of either PAG or AG working as HOD in a field office of IA & AD remains exactly the same. The Respondent No.3 being the present HOD of the office (where the applicant works) is the appointing authority of all the Gr. B officers and is competent to exercise statutory powers of a Disciplinary authority during his incumbency. Thus, the applicant is



wrongly pleading that the respondent No.3 being of the rank of AG cannot function as his appointing authority or disciplinary authority since he has been appointed by the PAG who is higher in rank. The appointment of a retired District and Sessions Judge (Respondent No.5) as the IO is perfectly in consonance with the terms and conditions prescribed for appointing any retired officer as IO (Annexure-R/1). It has been argued that the administrative and statutory powers exercised by the incumbent officer having the rank of AG after succeeding an officer of the rank of PAG as officiating HOD is not at all arbitrary and therefore do not constitute denial of equality under Article 14 of the Constitution of India. In order to prove that the AG is the appointing authority in Gr. B employees and therefore, the exercise of power of Disciplinary authority in regard to the applicant cannot be faulted with, Mr. Nayak specifically drew our attention to the gazettee notification placed at Annexure-R/3 (a) and submitted that at this stage, this Tribunal should not interfere in the matter and as such, this OA is liable to be dismissed.

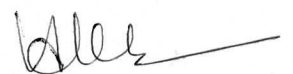
7. We have considered the rival submissions with reference to the pleadings, documents placed in support thereof, rules and various judgements cited by the respective parties. The main point for consideration in this OA is as to whether exercise of the power of the Appointing Authority and Disciplinary Authority in so far as the applicant who has been appointed by the Principal Accountant General is justified and whether taking into consideration the gazette of India at Annexure -R/3 (a) the Accountant General can be held to be the appointing authority so as to act as Disciplinary Authority.



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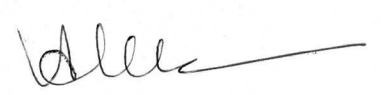
8. It is the well-established law that incidental and ancillary power cannot be used in utter disregard of the object of the statute. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the authorities/executive should be fair reasonable, legitimate and should be above suspicion. Procedural fairness is a mandatory requirement to protect against arbitrary action even where statute confers wide power coupled with wide discretion on an authority. It means, if the exercise of power or action taken by an authority de-hores the Rules the exercise of power or action stand vitiated as the decision making process remains bad. Further trite is the proposition of law that judicial review on administrative action whether quasi-judicial or administrative if it is opposed to the concept of fairness contrary to Rule, law, not bona fide exercise of power interference at the threshold, to protect the innocent employee from further victimization and harassment is no more *res integra*. Keeping in mind the aforesaid dicta, it is to be examined whether the Accountant General, Odisha was justified in exercising the power of Disciplinary Authority.

9. Indisputably and indubitably, and incontrovertibly and unarguably, the applicant was appointed to the post, in question, by the order of the Principal Accountant General, Odisha. Going by the classified list of Group A Officers placed at Annexure-A/2 and the order dated 30.4.2015 promoting Shri Amar Patnaik (IA & AS-1990) Accountant General, Odisha to the post of Principal Accountant General, we have no he ~~situation~~ to hold that the post of Accountant General is the feeder cadre of Principal Accountant General. Sub Rule (a) (iii) of Rule 2



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of the CCS (CC&A) Rules, 1965 [hereinafter called as Rules, 1965] deals with regard to "appointing Authority" in relation to a Government servant wherein it has been provided that "the authority which appointed the Government servant to such service, grade or post, as the case may be". As per the Rules authenticated by various judicial pronouncements it is no more res integra that the Appointing Authority means who has actually appointed the government servant who can act as the Disciplinary Authority vide **Mohinder Singh Vrs the State of HP and others**, 1976 (1) SLR 555 (HP). There can also be no dispute of the law propounded by various courts in our country that Appointing Authority is to be determined from the point of time of appointment/promotion and not at the time of issuing the memorandum of charge or punishment and subsequent authorization cannot take away the constitutional guarantee envisaged under Article 311 of the Constitution of India vide **Babaji Charan Rout Vrs State of Orissa**, 1981 (3) 189 (SLR (Orissa)). Rule clearly provides who shall be the Authority Competent to draw up the charge sheet in which it has been provided that whenever the Disciplinary Authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against a public servant, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of the misconduct or misbehaviour into definite and distinct articles of charge. That is reason for which in DGP&T Memo No. 44/6/59-Disc. Dated 7th August, 1959 it was consciously provided for nomination of ad hoc disciplinary authority in certain contingency in which it has been provided that before



any action is initiated under the CCS (CCA) Rules, with a view to imposing any of the major penalties on an official it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority the fact should be reported to the Department/Ministry concerned for issue of President's orders nominating another officer to act as the disciplinary authority in that particular case. In the case of **Union of India and others Vrs B.V.Gopinath** (2014) 1 SCC (L&S) 161 it was held by the Hon'ble Apex Court that charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law. Further, it was held that a discretionary power must in general be exercised only by the authority to which it has been committed. It is a well known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion he must exercise that power personally unless he has been expressly empowered to delegate it to another. As regards officiating the functions of the HOD is concerned, we may observe that though a person appointed to officiate in a higher post acquires the rank of that post, a person who is merely placed in current charge of the duties of the higher post, is not vested with the higher rank and consequently, though he can exercise administrative and financial powers vested in the incumbent, he cannot exercise statutory powers of that post, whether those powers are derived direct from an act of the parliament or rules, regulations, or bye laws made under various



articles of the constriction. This position is well settled in the case of Ram Rattan v State of MP, AIR 1964 MP 114 upheld by the Full Bench in the case of **Girja Shukla v SDO, Harda**, 1973 LLJ 405. Therefore, an officer holding the current charge only cannot exercise the powers of disciplinary authority. This position has been laid down by the Government of India vide MHA OM No. F-7/14/61-Ests (A) dated 24th January, 1963.

10. The notification in the gazette of India dated April, 29- May 5, 2012 copy of which placed by the respondents in their reply at Annexure-R/3(a) no doubt authorizes and empowers the officer in the rank of Principal Accountant or Accountant General or Office of equivalent rank to be the appointing authority and disciplinary authority of all Group B pots in PB 3 but that will not in any way help to the Respondents in the instant case, as the connotation of which clearly emanates and emerges that whoever appointed the employee concerned that authority shall be the disciplinary authority in so far as the employee concerned; more so the legislation has consciously used the word 'OR' and the word 'or' has been held to be disjunctive (ref: **Cable Corporation of India Ltd. v Additional Commissioner of Labour and others**, (2008)2 SCC (L&S) 581).

11. We would also like to state that the exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitation for each and every authority and therefore no one however high he may be has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the power have to be



exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of power in violation of the basic features of the constitution i.e. Part III dealing with the fundamental rights which also prescribed the limitation. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of the constitution vide **Renu and others Vrs. District and Sessions Judge, Tis Hazari and another**, AIR 2014 SC 2175. Further more, an illegal order passed by disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation. The authority exercising the power contrary to law is malice as observed by the Hon'ble Apex Court in very many cases. For the discussions made above, there can be no second opinion in this case also.

12. In the case of **Badrinath v. Govt. of Tamil Nadu Ors.**, AIR 2000 SC 3243, the Hon'ble Apex Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.

13. In **Ramchandra Murarilal Bhattad and Others vs State of**



Maharashtra & Ors., 2007 (2) SCC 588 wherein the Hon'ble Apex

Court observed as under :

".....where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. There is again no quarrel over the aforementioned proposition of law. Here the Authority has not exercised any power forbidden by law. The Authority has also not exercised its power in the manner which is not in accordance with law."

14. In **State of Punjab v V.K.Khanna**, AIR 2001 SC 343, the apex court held as under:

"While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge sheet or the concerned authority is so biased that the enquiry would be a mere farcical so and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affection of such process of law that law courts ought to rise up to the occasion and the high court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this court dealt with the issue in so great detail so as to examine the judicial propriety at this stage of the proceedings."

15. We reminded with the legal maxims *Quod contra legem fit, pro infecto habetur* (what is done contrary to the law is considered as not done); *Lex rejicit superflua, pugnantia, incongrua* (the law rejects superfluous, contradictory and incongruous things) and *Lex vigilantibus*,


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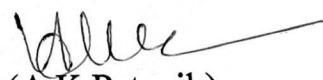
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non dormientibus, subvenit (Law aids the watchful, not the sleeping).

The applicant has filed this case at the right time and right moment seeking judicial intervention.

16. The facts, Rules and law discussed above would amply, clearly, pellucidly, undoubtedly, unhesitatingly indicate, display, demonstrate and establish that the exercise of the power of Disciplinary Authority thereby issuing the charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965 and appointing the IO dealing with the representations in this regard, by the Accountant General, Odisha is ^wholy unjustified, illegal, unwarranted, uncalled for being de hors the rules and law as the Accountant General of Odisha, in no circumstances can be held to be the Appointing Authority so as to exercise the power of Disciplinary Authority in so far as the Applicant is concerned. In the aforesaid circumstances, we quash the charge sheet issued vide Memorandum No. Admn. (G&SSA)/Vigilance/2012/13/DP-6/2339, dated 21.11.2012 under Annexure-A/3 and thereby invoking the legal maxim *Sublato fundamento, cadit opus* (when the foundation has been removed the structure collapses) also quash the subsequent order dated 26.3.2014 (Annexure-A/15) and the order dated 24.04.2014 (Annexure-A/17) and direct that the applicant is entitled to all consequential benefits retrospectively.


(R.C.Misra)
Admn. Member


(A.K.Patnaik)
Judicial Member