

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00841 of 2014
Cuttack this the 25th day of November, 2014

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

Man Mohan Mohapatra
Aged about 60 years
S/o. late Purna Chandra Mohapatra
At/PO-Siruli,
PS-Chandanpur
Dist-Puri
At present working as Superintendent RMS 'N" Division
Cuttack

...Applicant

By the Advocate(s)-M/s.G.Rath
S.Rath
B.K.Nayak-3
D.K.Mohanty

-VERSUS-

Union of India represented through

1. The Secretary
Department of Posts
Dak Bhawan
New Delhi
2. The Chief Post Master General
Odisha Circle
Odisha,
Bhubaneswar-751 001

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra



ORDERR.C.MISRA, MEMBER(A):

Heard Shri G.Rath, learned Senior Counsel for the applicant and Shri U.B.Mohapatra, learned SCGSC for the Respondent-Department on the question of admission.

2. Applicant is presently working as Superintendent RMS 'N' Division, Cuttack. He has approached this Tribunal being aggrieved by the issuance of Memorandum of Charge vide Annexure-A/9 dated 5.9.2014.

3. Brief facts leading to filing this Original Application are that applicant, while working as SSRM 'N' Division, Cuttack, was asked by the Office of CPMG, Bhubaneswar (Res.No.2) to submit his observation regarding the shortage of cash and SB fraud at Kujanga S.O. committed by one Sangram Keshari Behera, Postmaster (Grade-I). This communication dated 1.8.2014 is annexed to the O.A. as Annexure-A/5. In response to this, applicant submitted his observation vide Annexure-A/7 dated 22.08.2014 to Respondent No.2, the relevant part of which reads as under.

"In the end it is to submit before my Respected Authority that all possible steps were taken by Divisional Office to ensure liquidation of cash at Kujang SO but it could not be translated into effective action due to mysterious and surprise inaction by the I.O., Kujang. And, therefore, I did not have any contribution towards the fraud committed by the SPM, Kujang and no



rule/instruction was overlooked or violated by me".

4. In the above background, applicant was issued with the Memorandum containing three Articles of Charge vide Annexure-A/9 dated 5.9.2014 in contemplation of initiation of disciplinary proceedings under Rule-14 of CCS(CCA) Rules, 1965, with direction to submit his written statement of defence within 10 days of the receipt of the aforesaid Memorandum and also to state whether he desired to be heard in person. On receipt of the above Memorandum, applicant submitted his written statement of defence to the CPMG, Bhubaneswar(Res.No.2) with a request to drop the charges leveled against him. While the matter stood thus, applicant has moved this Tribunal in the present O.A. wherein he has prayed for quashing the Memorandum of Charge issued to him vide Annexure-A/9.

5. The grounds urged by the applicant in support of his case, inter alia, are as under.

- i) As per C.O. letter No.Vig/11-1/93/Rig/CH-11 dated BBSR the 07.07.1995 based on the DOG(Posts) Letter No.7-4/88-Vig.(Pt.) dated 3.5.1995, "*no charge sheet is issued to any officer/official at least during the last 6 months prior to his retirement, unless the irregularity/misconduct on his part had come to light during that period only*".

7

Based on this, applicant has contended that whereas his date of retirement on superannuation is 30.11.2014, the charge memo dated 05.09.2014 being issued within six months of his retirement, is not sustainable.

ii) Issuance of Memorandum of charge dated 5.9.2014 *will result in prolongation of the disciplinary proceedings and thereby, the authorities will take the advantage of invoking Clause 69(C) of CCS (Pension) Rules.*

6. In this respect, it is the submission of the applicant that in such contingency, applicant will suffer irreparable loss.

7. We have considered the submissions made by the learned counsel for both the sides and perused the records. For the purpose of admission of this O.A., the issue for determination is whether the Tribunal would intervene to adjudicate the grievance of the applicant at this stage.

8. Sub-Section-(3) of Section-19 of A.T.Act, 1985 provides that "*the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application*".

Therefore, with a view to examining the application, we would like to quote here the relevant provisions of Section 19 of the A.T.Act, 1985, which read as under:

"Application to Tribunal- (1)"Subject to the other provisions of this Act, *a person aggrieved by any order pertaining to any matter* within the jurisdiction of a Tribunal

4

8

may make an application to the Tribunal for the redressal of his grievances".

EXPLANATION - For the purpose of this sub-section

"order" means an order made -

- (a) *By the Government* or a local or other authority within the territory of India or under the control of the Government of India or by any Corporation [or Society] owned or controlled by the Government; or
- (b) *By an officer*, committee or other body or agency of the Government or a local or other authority or Corporation [or Society] referred to in Clause(a).

9. For the purpose of admission of this matter, in the first instance, the Tribunal is to examine whether the *applicant herein could be said to be a person aggrieved by any order made by the Government* and if so, whether *Memorandum of Charge can take the nature and character of an order within the scope and meaning of EXPLANATION offered under Section 19 of the A.T.Act*, as quoted above.

10. There is no doubt that in contemplation of initiation of disciplinary proceedings under Rule-14 of CCS(CCA) Rules, 1965, applicant has been issued with a Memorandum of Charge wherein he has been called upon to put up his written statement of defence. Admittedly, applicant has submitted his written statement of defence vide Annexure-A/10 dated

22.10.2014 and while the matter is under consideration of the competent authorities in the Department, applicant has moved this Tribunal in the present O.A. This being the entire gamut of the matter, in our considered view, ***no order as such exists to the prejudice of the applicant*** and therefore, the ***applicant cannot be said to be a person aggrieved within the meaning of Section 19 of the A.T.Act, 1985.***

11. Secondly, Memorandum of Charge has been issued to the applicant by the Respondent-Department for the purpose of initiating a departmental inquiry under Rule 14 of CCS(CCA) Rules in order to come to a conclusion as to whether the applicant has indeed committed any misconduct unbecoming on the part of a Government servant or otherwise and in the process, applicant has been given an opportunity to submit his written statement of defence, which the applicant has submitted. The Disciplinary Authority has not taken any further steps in the matter by exercise of their authority under the rules relevant for the purpose. Therefore, admission of this O.A. at this stage by the Tribunal would amount to assuming the role of the Disciplinary Authority. In our considered view, therefore, the Memorandum of Charge, ***can by no stretch of imagination take the nature and character of "order"*** to the prejudice of the applicant, particularly in view of the fact that in a disciplinary proceeding, Memorandum of Charge is the cradle,



10

leading to statutorily laid down process which will attain finality only with the issuance of an order.

12. Thirdly, it would be in the fitness of things, to quote hereunder sub-section(4) of Section-19 of the A.T.Act, 1985.

"(4) Where an application has been admitted by a Tribunal under sub-section(3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules".

13. Application of the above provision of the A.T. Act will have the consequence of stultifying any further action of the Disciplinary authority in the event this O.A. is admitted. We do not feel inclined to admit this O.A. as it would, in effect, not only arrest the entire action of the Respondents but also fetter their discretion that becomes exercisable under the statutory rules while dealing with the departmental proceeding. In so far as grounds urged by the applicant are concerned, it is to be noted that the authorities in the Department while exercising their powers in a quasi-judicial proceeding are the best judge to look into those grounds in the first instance. This apart, we may add that it is not even a case where by the inaction of the Respondent-Department, the applicant has been prejudiced.



14. Having regard to the above discussions, we hold ^{that} the applicant has not been able to make out a prima facie case for admission of this O.A. We further hold that at this stage, applicant does not have a cause of action for approaching the Tribunal. In the circumstances, the O.A. is rejected without being admitted.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS