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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O. A. No. 200/Jodhpur/2011

Date of decision: 02.08.2012

CORAM :

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

K.P.Tiwari S/o Shri Onkar Nath Tiwari aged about 44 years, resident of House No. 841, Sector 19, Chopasni Housing Board, Jodhpur, alt present employed on the post of Intelligence Officer in the Office of Narcotics Control Bureau, Jodhpur Zonal Unit, Ambika Bhawan, Ratanada, Jodhpur.

: Applicant

[By Mr. J.K.Mishra, Advocate]

Versus

1. Union of India through Secretary to the Government of India, Ministry of Home Affairs, Department of Internal Security (NCB), New Delhi.
2. The Director General, Narcotics Control Bureau, West Block-I, Wing No. 5, R.K.Puram, New Delhi.
3. The Deputy Director (Admn), Narcotics Control Bureau, West Block -I, Wing No. 5, R.K.Puram, New Delhi.

....Respondents

[By Mr. Vinit Mathur along with Mr. Ankur Mathur, Advocates for Respondent No. 1.]

[By Mr. Mali Ram Pareek, Advocate for Respondents No. 2 and 3.]

O R D E R
{PER HON'BLE MR. G. SHANTHAPPA, JUDL. MEMBER}

The above case is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the Chargesheet dated 26.10.2010 issued by the 3rd respondent and the penalty order dated 06.06.2011 (Annex.A/2) issued by the 2nd respondent; imposed the penalty of with-holding of promotion for one year w.e.f. 25.05.2011, the same be quashed.



2. We have heard the learned counsel for the respective parties.

3. The respondents have filed the reply statement. They have contended that the O.A. is not maintainable since the applicant has not exhausted the remedy available to him, under the CCS (CCA) Rules.

4. The admitted facts on either side are that the applicant was imposed a penalty vide order dated 06.06.2011. Earlier to the said order, the applicant was issued a Charge Memo dated 26.10.2010. The applicant submitted his representation to the said charge memo. Subsequently, the inquiry was held and the applicant participated in the inquiry. After receipt of the inquiry report, the applicant submitted his representation to the charge memo. The disciplinary authority, i.e. the Director General, has considered the charge memo, representation of the applicant on the charge memo, the inquiry report and the representation on the inquiry report and passed an order of penalty i.e. impugned in the O.A. It is the contention of the applicant that the Director General has no authority to impose the penalty. The impugned charge memo is illegal, arbitrary and not sustainable in law and violative of the Article 14 and 21 of the Constitution of India. The chargesheet is required to be issued under the signature of disciplinary authority and the subordinate authority like 3rd respondent ought not to have issued the chargesheet as per the DOP&T OM dated 13.07.1981 (Instruction No.2 Below Rule 15 of the Rule). The applicant



relied on the judgment of the Hon'ble Supreme Court in the case of **Prem Chand Vs. Government of NCT of Delhi and Others** reported in (2007) 2 SCC (L&S) 58. The Inquiry Officer has not followed the prescribed procedure while conducting the inquiry and he has acted like a prosecutor and a judge both. The impugned order of penalty is a stereo typed order and is not a speaking order, hence is violative of the judgment of the Hon'ble Supreme Court in the case of **S.N. Mukherjee Vs. UOI and Ors.** reported in AIR 1990 SC 1984. There is no explanation or reasonable cause for the delay in issuing the charge memo. The respondents have violated the fundamental rights of the applicant and the liberty on the applicant as enshrined under Article 21 of the Constitution has taken away. In view of the judgment of the Hon'ble Supreme Court, the case of **Abdul Rehman Antulay Vs. R.S. Nayak**, reported in 1992 (1) SCC 225 the impugned order is not maintainable in law. While arguing the case, the learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Baradakanta Mishra Vs. High Court of Orissa and Anr.**, Reported in AIR 1976 SC 1899.

5. The counsel for the respondents has vehemently opposed the O.A. on the ground that the applicant has not exhausted the remedy available under the CCS (CCA) Rules. While arguing the case, the counsel for the respondents submits that whenever the legal grounds either for incompetency to pass orders or any procedural



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irregularity, if the applicant approaches the appellate authority, the appellate authority will decide his appeal by exercising the powers vested in him. There is no procedural lapse while conducting the inquiry. The disciplinary authority has issued the order by exercising the powers vested in him. The O.A. is liable to be dismissed as not maintainable, which is premature.

6. The applicant has filed a rejoinder to the reply statement. There is not much clarification to the reply statement. The averments made in the rejoinder are in the form of repetition except denying the reply statement.

7. We have carefully considered the submissions of the learned counsel on either side and perused the pleadings available on record.

8. On the admitted facts that the applicant has not challenged the order dated 06.06.2011 (Annex.A/2) before the appellate authority, which is issued by the Director General, as disciplinary authority. Unless, the applicant has approached the appellate authority by way of a statutory appeal, this O.A. cannot be considered and the O.A. is not maintainable. The learned counsel for the applicant contended that since the incompetent authority has issued the order, the present O.A. is maintainable as held by the Hon'ble Supreme Court in the case of **Baradakanta Mishra**

Vs. High Court of Orissa and Anr., reported in AIR 1976 SCC 1899.



9. We have carefully considered the judgment of the Hon'ble Supreme Court (supra) and also facts of the present case. It is relevant to extract Paras No. 25 and 28 of the judgment of the Hon'ble Supreme Court which reads thus :

"25. The two orders of dismissal dated 3 December, 1973 are based on the order of 8 December, 1972. The substratum of the orders of dismissal being unconstitutional the orders of dismissal cannot have any legal force. Further, the contention of the High Court that the orders of dismissal passed by the High Court merged in the orders passed by the Governor cannot be accepted. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used the word "confirm". The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void.

28. If the reduction of the appellant is without jurisdiction then the appellant is deemed to continue as a District Judge. The High Court could not dismiss the appellant. Dismissal could only be by the Governor. This is clear from the decisions of this Court in N.S. Rao's case (AIR 1975 SC 613)(supra) and Shamsher Singh V. State of Punjab, (1975) 1 SCR 814 = (AIR 1974 SC 2192)."

10. As contended by the respondents that the applicant has not exhausted the remedy available, the counsel for the respondents further submitted that the applicant can approach the appellate authority urging all these grounds, the appellate authority will exercise the powers vested in him. It is relevant to extract the powers given to the appellate authority under Rule 27 (2) as below :

"27(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider -

(i) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of

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any provisions of the Constitution of India or in the failure of justice;

(ii) Whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(iii) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; add pass orders -

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases :

provided that -

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit :

(iii) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty, and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

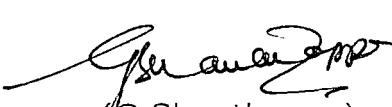
11. After careful consideration of the rule position and also the judgment of the Hon'ble Supreme Court (supra), we are of the considered view that the applicant has to exhaust the remedy by way of appeal to the appellate authority with all the legal grounds urging in his statutory appeal. The appellate authority will exercise his powers vested in him. In the facts and circumstances of this case, the judgements relied upon by the counsel for the applicant



are not relevant. The observations made in our order as above, will not come in the way of the appellate authority to decide the appeal to be filed. Considering the submission on either side, we are of the view, that the O.A. is not maintainable. The applicant is at liberty to approach the appellate authority within a period of 15 days from the date of receipt of a copy of this order. In respect of challenging the appellate authority order dated 06.06.2011, the appeal period of 45 days has already expired. Since the O.A. is pending before this Tribunal, the applicant can file necessary application for condonation of delay in filing the statutory appeal, if such an application is filed by the applicant, the appellate authority is directed to decide the appeal within a period of three months' from the date of receipt of a copy of this order. ^{the appeal}.

12. The O.A. is disposed of as above, with no order as to costs.


(B.K.Sinha)
Administrative Member


(G.Shanthappa)
Judicial Member

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4/8/12

Mag (am)
B.B.12

Rec'd
8/8/12