

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1397/2016

New Delhi this the 22nd day of April, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Subroto Das, 48 years
S/o Shri Rabindra Nath Das
Chief General Manager,
Pension Fund Regulatory and Development
Authority,
2nd Floor, Chatrapati Shivaji Bhawan,
B-14/1, Qutab Institutional Area,
New Delhi-110016.

Resident of:

M-505, Habitat Co-operative Group Housing
Society,
B-19, Vasundhra Enclave,
Delhi-110096.Applicant

(Argued by: Shri Prateek Tushar Mohanty)

Versus

1. Pension Fund Regulatory and Development
Authority,
2nd Floor, Chatrapati Shivaji Bhawan,
B-14/1, Qutab Institutional Area,
New Delhi-110016.
2. Shri B.S. Bhandari
Whole-Time member and Inquiring Authority,
Pension Fund Regulatory and Development
Authority,
2nd Floor, Chatrapati Shivaji Bhawan,
B-14/1, Qutab Institutional Area,
New Delhi-110016.Respondents

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

Applicant, Subroto Das, has preferred the instant
Original Application (OA), claiming the following reliefs:-

- “(i) to allow the present application;
- (ii) to quash the impugned Daily Order Sheets dated 01.02.2016, dated 09.02.2016 and dated 09.03.2016 [Annexure A-1 (Colly)] in its entirety and without prejudice;
- (iii) to direct, by way of Writ of Mandamus, or any other suitable direction as this Hon’ble Tribunal may consider fit, the First Respondent to dispose of the complaints of bias dated 09.02.2016 [AnnexureA-2] by a reason end speaking orders;
- (iv) to direct the Respondent to take appropriate action against the persons who had illegally targeted the applicant;
- (v) to direct the Respondent to take appropriate action against the persons who had violated the extant instructions as brought out in the OA;
- (vi) to allow exemplary costs of the application; and
- (vii) to issue any such and further order/directions this Hon’ble Tribunal deems fit and proper in the circumstances of the case”.

2. The compendium of the facts and material relevant for deciding the present OA is that, applicant, while functioning as Chief General Manager in Pension Fund Regulatory and Development Authority (PFRDA) is alleged to have committed grave misconduct. As a consequence of which, he was served with the following Articles of Charge:-

“Article-I

That the said Shri Subroto Das while functioning as Chief General Manager in PFRDA during the period from 13.05.2014 to 07.10.2014, without any intimation or prior permission had joined a full time course of study with a foreign university and thereby he has committed violation of Regulation 48 of PFRDA (Employees’ Service) Regulations and Office Order No.PFRDA/1/HR/1 dated 5.4.2013, which requires seeking prior approval of PFRDA, for pursuing/applying for courses for additional/professional qualification read with Regulation 49 of PFRDA (Employees’ Service) Regulations.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Subroto Das, Chief General Manager was assigned official work and without

performing such assigned work or informing the Reporting Officer, he had stopped attending to his duties and thereby violated Regulations 49 and 51(2)(b) of PFRDA (Employees' Service) Regulations, 2015.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Subroto Das, Chief General Manager had failed to intimate that while availing sanctioned leave to USA during the period from 30.06.2014 to 14.08.2014, he had secured admission in Columbia University for attending a full time course on Program in Economic Policy Management (PEPM). While seeking extension of leave from 01.08.2014 to 14.08.2014, the said Shri Subroto Das failed to inform of the fact of his securing admission in a foreign university for pursuit of a full time course. By withholding such material information consistently from the Competent Authority, Shri Subroto Das failed to maintain absolute integrity and his conduct was unbecoming of an employee. This conduct violated Regulations 51(2) (a) and 51(2)(c) of PFRDA (Employees' Service) Regulations, 2015.

Article-IV

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Subroto Das, Chief General Manager without sanction of any leave by the Competent Authority remained absent unauthorizedly from service w.e.f. 10.09.2014 and thereby violated Regulations 61 (1) and 61 (2) of PFRDA (Employees' Service) Regulations. Shri Subroto Das remained on unauthorized absence upto 23.06.2015 for a period of 286 days".

3. In pursuance of the charge-sheet, the applicant filed his reply on 30.09.2015. The competent authority appointed the Enquiring and Presenting Officers on 02.06.2016. The applicant participated in the enquiry proceedings and asked the Enquiry Officer (EO) (respondent No.2) to recuse himself from the enquiry proceedings. He has also filed a complaint dated 09.02.2016 (Annexure A-2) of bias against respondent no.2, to the Appellate Authority.

4. Thereafter, instead of allowing the enquiry proceedings to proceed smoothly and getting it completed and await its

outcome, the applicant straightaway jumped to file the present OA seeking quashing of the impugned daily order sheets of the DE proceedings dated 01.02.2016, 09.02.2016 and 09.03.2016 (Annexure A-1 Colly). He has also prayed for a direction to Respondent No.1 to dispose of his Annexure A-2 complaint of bias against the Respondent No.2

5. After hearing the learned counsel for the applicant and going through the record with his help, we are of the considered opinion that the OA has been filed prematurely and as such is not maintainable at this stage.

6. Ex-facie, the argument of the learned counsel that EO is biased and since Appellate Authority has not decided the complaint dated 09.02.2016 (Annexure A-2), the impugned enquiry proceedings are vitiated and are liable to be set aside, is not only devoid of merit but also misplaced.

7. As is evident from the record that very serious charges of misconduct have been levelled against the applicant. He is not allowing the EO to proceed with the enquiry smoothly. Not only that, he has asked the EO to recuse himself from the enquiry proceedings. He has filed a complaint dated 09.02.2016 (Annexure A-2) of bias against EO to the Appellate Authority (not to the Disciplinary Authority). If the applicant is aggrieved by any action of the EO, then he ought to have approached the Disciplinary Authority to change the EO at the first instance. Without doing so, he has directly

filed the present OA. In any case, there was no occasion or reason for him to move a complaint (Annexure A-2) of bias before the Appellate Authority, which would indeed suggest that applicant is interested in delaying the disposal of the enquiry proceedings for the reasons best known to him.

8. Moreover, perusal of the impugned daily order sheets of the enquiry proceedings (Annexure A-1 Colly) would reveal that the EO has acted in a very fair and reasonable manner while conducting the disciplinary proceedings. It is the applicant who has tried to put hurdles in the smooth functioning of the EO on the one pretext or the other. From the records, it is apparent that applicant himself is at fault and he cannot legally be permitted to take the benefit of his own wrongs. He should have fully cooperated with and waited for the final outcome of the disciplinary proceedings. In case he remains aggrieved with the final order to be passed by the punishing authority, he has a statutory right to challenge the same in appeal.

9. Be that as it may, in any case, no extraordinary ground, much less any cogent one has been made out by the applicant to directly entertain the instant OA, even without the Disciplinary Authority having passed the final order. In view of the law laid down by the Hon'ble Apex Court in cases of **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** and **The Govt. of A.P. and Others Vs. P.**

Chandra Mouli and Another (2009) 13 SCC 272 the OA is not maintainable. The applicant appears to have filed the instant OA in order to delay the departmental proceedings and hence it deserves to be dismissed with costs.

11. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of DE proceedings, the OA is dismissed at this stage with a cost of Rs.2000. This cost should be paid by the applicant to PFDRA.

Needless to mention that nothing observed hereinabove would reflect in any manner on the merits of the case vis-à-vis the disciplinary proceedings as the same has been recorded for the limited purpose of deciding the OA at the preliminary stage.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh