

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/000553 OF 2011
Cuttack, this the 06th day of November, 2017

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Sri Ashok Kumar Patra,
aged about 48 years,
S/o Birabar Patra, At-Godakana,
P.O- Mancheswar Railway, Bhubaneswar,
Presently working as Senior Clerk,
O/o-Workshop Personnel Officer,
Carriage Repair Workshop, E. Co. Railway,
Mancheswar, Dist-Khurda.

...Applicant

By the Advocate-M/s. D. P. Dhalsamant, N. M. Rout

-VERSUS-

Union of India Represented through

1. General Manager, East Coast Railway, Rail Vihar,
Chandrasekharapur, Bhubaneswar, Dist-Khurda.
2. Chief Workshop Manager, Carriage Repair Workshop, E.Co.
Railway, Mancheswar, Bhubaneswar, Dist- Khurda.
3. Workshop Personnel Officer, Carriage Repair Workshop, E. Co.
Railway, Mancheswar, Dist- Khurda.

...Respondents

By the Advocate- Mr. R. N. Pal

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ORDER

S. K. Pattnaik, MEMBER (J):

The applicant has filed this O.A. seeking quashing of the chargesheet dated 18.05.2010 (Annexure-A/5).

2. Applicant's case, in short, runs as follows:

In response to an advertisement issued by the Railways, the applicant had applied for the post of Khalasi under Sports Quota and, on being selected, was appointed vide order dated 03.06.1985. The applicant had submitted the original Sports Certificate, basing on which, his joining report was accepted and he joined w.e.f. 11.06.1985 and was confirmed in service on 01.01.1986. He was promoted to the cadre of Jr. Clerk in 2004 and, subsequently, to the post of Sr. Clerk in 2006. The cause of action for the present case arose on 23.11.2006 (Annexure-A/3) when the applicant was asked to furnish copies of the Sports Certificate. The applicant submitted his reply on 25.11.2006 to the effect that he had submitted the requisite original Sports Certificates to the Administration before his initial appointment and though he tried to trace out copies of the said certificates, it was not available. On receipt of the explanation, the Department did not take any action initially but subsequently issued a charge memo dated 11.05.2010 on the allegation that the certificate submitted by him was not coming under the category of Sports Quota as per the stipulation of the Railways and hence his appointment was void. The applicant wanted copies of relevant documents for the purpose of submission of his defence but the authorities informed him that the connected file is not traceable in the office. The plea of the applicant is that without supplying the relevant documents the inquiry proceeded for which he had challenged the same before this forum.

3. Respondents contested the case by filing a counter. According to the Respondents, the applicant was appointed as Khalasi

under Sports Quota but at the time of verification the requisite Sports Certificate was not available in service record. The same was asked by the Vigilance Department and the applicant was advised to submit the copies of the Sports Certificate but he was unable to produce the same, as a result of which, disciplinary action was initiated. Further case of the Respondents is that inquiry has already been concluded and Inquiry Report is yet to be received from the Inquiry Officer and, in the meantime, without waiting for the Inquiry Report, the applicant approached this forum at a premature stage.

4. Question of law on the point of quashing of a charge memo has been set at rest by the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. Vs. Prabhash Chandra Mirdha (2013) 1 SCC (L&S) 121. Their Lordships referring 31 decisions have candidly observed that charge sheet/show cause notice is not normally liable to be quashed by a Court/Tribunal as it does not adversely affect the rights of a delinquent employee and does not give rise to any cause of action. However, it can be quashed on the ground of issuing authority not being competent to do so or on the ground of delay in initiating or concluding inquiry proceeding causing prejudice to the delinquent employee. No doubt, there is a delay in initiating the disciplinary proceeding but on this ground a charge memo cannot be quashed when there is an allegation that the candidate has obtained the employment by fraud, mischief or misrepresentation as no legal right in respect of his appointment to the said post vests on a candidate, who has obtained the

employment by an unfair means [2013 (3) SLJ 155, Vikash Pratap Singh Vs. State of Chhattisgarh, relied on]. It is a settled position of law that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby and delay in detection or in taking action will raise no equities [(2003) 8 SCC 311, Ram Preeti Yadav Vs. U.P. Board or High School and Intermediate Education and others, relied on]. So when the inquiry is in process, it may not be prudent to quash the charge memo at the midway as the allegations of obtaining employment is distinct and specific and there is no vagueness in the charge.

5. Ld. Counsel for the applicant has placed reliance on a decision reported in AIR 1990 SC 405 (P.Mahendran & Ors. Vs. State of Karnataka). This is a case where it has been held that amendment of rules have no retrospective effect. There is no dispute about such legal proposition. Ld. Counsel for the applicant has also placed reliance on the decision reported in 2007 (1) SCC (L&S) 254 (Govt. of A.P. & Ors. Vs. A.Venkata Raidu) wherein Their Lordships have observed that on the ground of vagueness of charge it can be quashed but here in this case the charge is specific and there is no vagueness. Hence the aforesaid decision is not applicable. Ld. Counsel for the applicant has also placed reliance on a decision reported in 2005 SCC (L&S) 861 (P.V.Mahadevan Vs. Md. T.N. Housing Board) wherein Their Lordships have observed that when there is protracted disciplinary inquiry or proceeding, on the ground of delay it can be quashed. Since in the instant case, the mischief/omission/fraud was detected at a later stage, on this ground the

disciplinary proceeding cannot be quashed.

6. Since the disciplinary proceeding has already been concluded in the meantime and has not finally disposed of in view of the stay order, we feel it expedient to dispose of this O.A. without further delay. Hence ordered.

7. O.A. being devoid of merit is dismissed with no order as to costs. Stay order granted earlier is hereby vacated.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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