

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.282 of 2017
Cuttack this the 10th day of August, 2018

CORAM:
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri Ramesh Chandra Beshra, aged about 55 years, S/o. Late Chhaku Beshra, presently working as Record Keeper, Div. I, Odisha Geo-Spatial Date Centre, Survey of India, Bhubaneswar and residing at Qr.No.7-II, Survey of India, PO-R.R. Laboratory, Bhubaneswar-13.

...Applicant
By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak
-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-110 016.
2. The Additional Surveyor General (Eastern Zone), Survey of India, 15, Wood Street, Kolkata-16.
3. The Director, Survey of India, Survey Bhawan, Bhubaneswar, Dist-Khurda-751 013.
4. Sri B.C.Parida, presently working as Director, Survey of India, Survey Bhawan, Bhubaneswar, Dist-Khurda-751 013.

...Respondents
By the Advocate(s)-Mr.G.R.Verma

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Record Keeper in the Orissa Zeo-Spatial Data Centre, Survey of India, Bhubaneswar at the time of filing of the O.A. The applicant has prayed for the following reliefs:

- i) To admit the OA
- ii) To quash the office order dtd. 02.11.2016(Annex.A/1), Review order dtd. 23.12.2016(Annex.A/3), Charge Memo dtd. 01.03.2017(Annex.A/4) and order of punishment dtd. 21.04.2017 (Annex.A/6) holding the same are illegal, arbitrary and outcome of malice.
- iii) To hold that all the aforesaid orders are non-est in the aye of law.
- iv) To direct the Respondent No.1 to conduct inquiry through one independent agency to unveil the truth of the matter.

- iv) To impose cost of Rs.5 lacs on Respondent No.3/4 recoverable from his salary or pay and may be paid to the applicant as compensation towards his sufferings;
- v) To pass any other order/orders as deemed fit and proper for the ends of justice.

2. Brief facts of the case are as follows:

The applicant was a Member of Orissa Geo Spatial Data Centre(OGSDC) Recreation Club. On 16.9.2016, a function was organized by the OGSDC Club where Respondent No.4 in his capacity as Director, Survey of India, Bhubaneswar was presiding over the meeting. The applicant claims that he had sought permission to speak at the meeting, but permission was declined to him. On 2.11.2016, the Director in his capacity as disciplinary authority and controlling authority directed to record his displeasure against the applicant in his APAR for the year 2016 - 17. Again on 1.3.2017, the Director issued a charge sheet to the applicant in the capacity of disciplinary authority alleging that his misbehaviour to the Director during the Annual General Body Meeting amounts to misconduct and violation of official decorum. The applicant gave a reply to the charge sheet vide his representation dated 10.03.2017. On 21.04.2017 the Director (Res.No.3) in his official capacity and Respondent No.4 in his personal capacity imposed a minor penalty of stoppage of increments of pay for two years without cumulative effect from the date of issue of the said order. The applicant has challenged this order and prayed for the reliefs as mentioned in Para-1 above.

3. The applicant has based his prayer mainly on the ground that he has been punished twice for an alleged offence which he did not commit. He had only requested for permission to speak at the Annual General Body Meeting which the Director took as an offence. The attitude of the Director has been vindictive right from the beginning and the applicant has been punished for

no fault of his. The action of the Director is illegal, arbitrary, mala fide and taken without competence, authority and jurisdiction. The Director himself is the complainant, witness and also the authority who took action against the applicant. His action is mala fide and *non est* in the eyes of law since it is *ab initio void*. He has acted as the prosecutor and a judge in his own cause which only shows his personal bias against the applicant. He has been punished without any inquiry into the facts and circumstances of the case. Therefore, the action of the Director (Res.Nos. 3&4) is highly illegal, arbitrary, mala fide and hit by Articles 14, 16,19, 21 and 311 of the Constitution of India.

4. The respondents in their counter filed on 12.03.2018 have contested the claim. They have submitted that the applicant tried to disrupt the Annual General Body Meeting at the OGSDC and wanted to speak despite frequent instructions from the Director to wait for his turn. His attitude was confrontational. Therefore, this was recorded in his APAR by the Director. Subsequently, he was served with a charge sheet on 1.3.2017 and the impugned order was passed on 21.4.2017 after giving an opportunity to the applicant to reply to the charge sheet and after necessary documents were supplied to him. Moreover, the applicant has not exhausted his remedies and has not filed any appeal with the appellate authority against the orders of the disciplinary authority. Therefore, the O.A. filed by him is not maintainable under Section 19 of the A.T.Act, 1985. The Respondents have denied any personal bias on the part of the Director against the applicant.

5. The applicant in his rejoinder filed on 13.7.2018 has reiterated his stand that the Respondent Nos.3/4 has acted in a biased manner and issued the punishment order without authority and competence. The applicant has also referred to A/3 which is a letter dated 23.2.2016 from the Director, Odisha

Geo Spatial Data Centre, Survey of India, Bhubaneswar to the applicant stating that a proposal will be sent to Additional Surveyor General (disciplinary authority) for constitution of an Inquiry Board and the matter be investigated. The applicant has reiterated his prayer that the impugned order at A/6 dated 21.04.2017 should be quashed and set aside.

6. I have heard the learned counsels from both the sides and perused the documents submitted by them. It is the settled principle of law that no one can be a judge in his own case.(Principle enunciated as early as in Earl of Derby's case (1605) 12 Co Rep.114 "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua"). In the present O.A. it is crystal clear that the offence for which the applicant has been awarded a minor punishment relates to an incident in which the Director himself was a party. He has alleged that the applicant had misbehaved with him and that this was the cause for disciplinary action against the applicant. However, in case of an alleged misconduct in which the Director was the aggrieved party, disciplinary action could have been initiated against the applicant only by an authority other than the Director himself. The action taken against the applicant by the Director and the charge memo dated 01.03.2017 and the order of punishment dated 21.04.2017 are therefore illegal and liable to be quashed. Similarly the alleged misconduct having not been proved through a proper inquiry, the order dated 2.11.2016 for adverse entry of "recording displeasure" in APAR 2016-17 by the Director who himself is the aggrieved party, is also questionable. The order dated 23.12.2016 has also been passed by the Director (Respondent No.3/4) himself to uphold his own earlier order dated 02.11.2016 which *prima facie* appears to be illegal and unjust. In case the applicant has committed a grave misconduct by misbehaving with the Director the proper

course of action is to conduct an inquiry by an authority higher than the Director and establish the truth before proceeding with disciplinary proceedings or making adverse entry in the APAR.

7. In view of the above, the O.A. is partly allowed. The orders dated 2.11.2016 (A/1), and 23.12.2016(A/3), charge memo dated 1.3.2017(A/4) and the order of punishment dated 21.04.2017 (A/6) are quashed and set aside. The Respondent No.1 is at liberty to conduct an inquiry into the incident of alleged misconduct as prayed for in Para-8(iv) of the O.A. and take further appropriate action as per rules and law in force. The prayer of the applicant at Para-8(v) of the O.A. to impose a cost of Rs.5 lakhs on Respondent No.3/4 is rejected.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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