

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/356/2015
Cuttack this the 28th day of August, 2018

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

Chaitanya Kumar Samal, aged about 55 years, S/o. Kutartha Samal, working as Senior Accountant, Office of Director of Accounts (Postal), Mahanadi Vihar, Cuttack-4, Town/Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.S.K.Rath
S.K.Nayak
M.Bhera

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Government of India, Ministry of Communication, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist-Khurda.
3. The Director of Accounts (Postal), Orissa Circle, Cuttack-4, At/PO-Mahanadi Vihar, Town/Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.C.M.Singh

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Senior Accountant in the Office of the Director of Accounts (Postal), Cuttack at the time of filing of this O.A. In this Original Application filed under Section 19 of the A.T.Act, 1985, he has challenged the action taken against him and has prayed for the following reliefs

- i) This Hon'ble Tribunal may quash Annexure-A/11 dated 27.10.2014 passed by Respondent No.3 as Disciplinary Authority.

- ii) This Hon'ble Tribunal also may quash the order of Appellate Authority dated 22.04.2015 vide Annexure-A/13.
- iii) This Hon'ble Tribunal may direct the Respondents to grant all the consequential financial and service benefits in directing them to pay incremental dues as stopped for a period of one year with interest @ 6% per annum from withheld till payment.
- iv) Any other appropriate order may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. Brief facts of the case are as follow:

A charge sheet was issued against the applicant on 7.1.2010 by the Director of Accounts (Postal), Shri A.Monohar Rao proposing to take action against him under Rule-16 of CCS(CCA) Rules, 1965. The imputation of misconduct on the part of the charged official(applicant in the present O.A.) reads as follows:

"Sri Chaitanya Kumar Samal, while working as Sr. Accountant in the Office of the DA(P), Cuttack sent one visiting slip through Sri Karunakar Hansda, MSE seeking permission to meet the DA(O) at about 1.00 P.M. on 31.12.2009. The DDA(P) was present in the chamber of the DA(P) by that time. The DA(P) who was busy in some official work asked the DDA(P) to intimate him that he may meet the DA(P) during his next visit. The message of the DA(P) was communicated to Sri Chaitanya Kumar Samal, Sr. Accountant through Sri Karunakar Hansda, MSE. Then the DDA(P) left the chamber of the DA(P). Thereafter at about 1.05 , Sri Chaitanya Kumar Samal, Sr. Accountant entered into the chamber of the DA (P) forcibly along with two other staff without taking prior permission.

Even though they entered without permission, DA(P) keeping all his important work aside asked them to know the purpose of entering the chamber. Sri Chaitanya Kumar Samal, Sr. Accountant told to discuss with the DA(P) on some official matter. The DA(P) told him that he is busy and they may discuss on the official matter during his next visit to the office. Then Sri Chaitanya Kumar Samal, Sr. Accountant, shouted loudly saying "when will you come". The DA(P) told him that he would intimate him before his next visit. Again Sri Chaitanya Kumar Samal, Sr. Accountant made argument without any purpose in a menacing and threatening manner and left the chamber of the DA(P) shouting loudly.

At around 2.00 PM when the DA(P) was coming outside his chamber he found Sri Chaitanya Kumar Samal, Sr. Accountant along with some staff gathered in the first floor corridor. The DA(P) enquired about their gathering as the lunch time was over and asked them to go to their seats. Then Sri Chaitanya Kumar Samal, Sr. Accountant, came forward and said in a loud voice "we came to know that you are going to issue a memo for the incident that occurred in your chamber. You withdraw that memo or there will be trouble". The DA(P) told him to solve their official problem in the next visit and moved towards the ground floor. But Sri Chaitanya Kumar Samal, Sr. Accountant, tried to obstruct his passage twice coming to his front and repeating his demand to withdraw the action proposed to be taken against him. Finding no other way, the DA(P) returned back to his chamber for safety point of view.

By his above act Sri Chaitanya Kumar Samal, Sr. Accountant, behaved and dealt with his head of the office in a manner unbecoming on the part of a Government servant which violates provision of Rule 3(i) (iii) of CCS(Conduct) Rules, 1964".

The applicant gave his reply to the charge sheet on 18.1.2010 denying the misconduct levelled against him. Shri A. Manohar Rao, Director (Accounts) in the capacity of Disciplinary Authority considered the reply given by the applicant and imposed punishment of withholding of next increment for a period of two years without cumulative effect. The applicant filed an appeal against this order. The Chief Post Master General, Orissa Circle as the Appellate Authority considered the appeal and by taking an extremely compassionate view reduced the punishment of withholding of next increment for a period of two years without cumulative effect to withholding of one increment for one year without cumulative effect. The same was challenged by the applicant in this Tribunal on the ground that the Disciplinary Authority had acted as a judge in his own case since the allegation of misconduct was misbehaviour by the applicant with Shri A. Monohar Rao, the Disciplinary Authority himself. This Tribunal accepted the contentions and quashed the order of the Disciplinary Authority (Res.No.3) and remitted the

matter back to Respondent No.2 for considering it in accordance with the Government of India instructions cited in the O.A. A fresh Memorandum of Charge was issued to the applicant on 31.7.2014 by Shri S.R.Swain, Director of Accounts (Postal) under Rule 16 of CCS(CCA) Rules, 1965 for his alleged misconduct. The applicant submitted his reply on 4.8.2014 and requested for supply of certain documents viz., visiting slip dated 31.12.2009 alleged to have been sent through Sri Karunakar Hansda, MTS at about 1.00 PM, statement of the said Shri Hansda, names of officials alleged to have entered along with him to the chamber of Shri A.Manohar Rao, Director of Accounts (Postal) at about 1.05 PM, names of some of the staff alleged to have gathered with him at around 2.00 PM outside the chamber of the then Director of Accounts(Postal) and any Memo drawn up against him by then Director of Accounts(Postal) , Shri A.Manohar Rao. In response to this the documents named in the reply were provided to the applicant on 8.8.2014 The applicant submitted his detailed reply to the Charge Memorandum on 11.8.2014. After considering the detailed reply, Shri S.R.Swain, Director of Accounts (Postal), the Disciplinary Authority imposed punishment on the applicant vide order dated 27.10.2014(A/11) which reads as follows:

"However, considering the past service of Sri Chaitanya Kumar Samal, Sr. Accountant into account and taking a lenient view, I Sri S.R.Swain, Director of Accounts hereby order that the pay of Sri Samal, SA be reduced from Rs.21850 to Rs.21210/- in PB-II (Rs.9300-34800 +GP Rs.4200) for a period of two years with effect from 01.10.2014 without cumulative effect. It is further ordered that Sri Samal will earn increments of pay during the period of reduction and that on expiry of this period the reduction will not have the effect of postponing his future increments of pay".

The applicant filed an appeal against the order of the Disciplinary Authority. But the CPMG, as the Appellate Authority after considering all the

points raised in the appeal, confirmed the punishment imposed by the Disciplinary Authority and rejected the appeal filed by the applicant. Aggrieved by this, the applicant has filed the present O.A. praying for the reliefs as at Para-1 above.

3. The applicant has based his prayer on the following grounds as at Para-5 of the O.A.

"5.1. For that the order of Disciplinary Authority dated 27.10.2014 Annexure-A/11 and order of Appellate Authority dated 15.04.2015 Annexure-A/13 is not sustainable in the eye of law, as because the based on no materials, neither documentary, complaint nor statement, as per requirement Rule 16 of CCS(CCA) Rules, 1965 to have a summary proceeding.

5.2. For that the Disciplinary Authority having failed to supply document as required under Annexure-8 and denied in Annexure-A/9 the proceeding and imposition in bad in law. So also the order of Appellate Authority, as he failed call for the records and passed order mechanically without consonance of Rule 16.

5.3. For that as per imputation of charges, saying "when will you come" with loud voice at Chamber of the then Disciplinary Authority A.Manohar Rao is not misconduct. As per allegation, two colleagues, one MSE Karumakar Hansda was present and no such statement is recorded by then DA(P) and present DA(p). So the action taken is bad in law and dehors to procedure specified in Rule 16.

5.4. For that as requirement Rule 16 and Circular dated 28.10.1985 the disciplinary Authority has to record the reason, as no enquiry is necessary. In this no such reasoning was recorded in the order of punishment dated 27.10.2014 in Annexure-A/11.

Moreover, as imputation of charges, in the Chamber of the then DA(A) A Manohar Rao four persons are present without recording their statement no action can be taken. So the entire process and action thereof is illegal and arbitrary and based on no materials. As per Rule 16(1)(b) the Disciplinary Authority is of opinion that such enquiry is necessary or in negative the same is be recorded.

5.5. For that appellate authority in his order dated 22.04.2015 Annexure-A/13 has recorded the finding on non-application of mind and taking into consideration Rule 16(1) A to the effect that enquiry is entertained if the punishment proposed to affect the pension payable, withholding increments of pay with cumulative

effect for any period. In such case, detailed procedure under Rule 14 (3) to (23) is adopted.

But this view is not correct as implication or reading of Rule 16(1) (b), read with OM NO.11012/18/85/Estd. Dated 28.10.1985. So this punishment imposed is bad in law, so also order of appellate authority confirming the same.

5.6. For that the Disciplinary Authority has failed to adopt procedure prescribed under Rule 16 of CCS(CCA) Rule 1965 is issued charge Memo and imposing punishment in nature minor penalty. The deviation as glaring is specified below:-

- (i) No evidence neither oral nor documentary exhibited in the order of punishment dated 27.10.2014 Annexure-A/11.
- (ii) The reasons has not recorded in the order of punishment.

Thus the entire process has undertaken by the Disciplinary Authority in violation to Rule 16(1)(b). The appellate authority also not verified in this irregularity. Thus both orders are invalid in eye of law.

5.7. For that the charge memo is not specific, clear and thus entire process and result thereof are bad in law. The Charge Memo does not contain the names of witnesses even if as alleged the employees are present at the time of occurrence. The employees present and the statement are not recorded apprehending that allegation of Disciplinary Authority would be falsified.

5.8. For that the Charge Memo is not based neither any complaint nor any statement. The enquiry was never done as per Rule and thus the initiation of proceeding based on no material or no evidence as such and thus liable to struck down by this Hon'ble Tribunal.

5.9. For that the Disciplinary Authority has exercised his power only with a malafide intention to curb the Association Activities. This punishment would lead to unfair labour practice and amounts colourable exercise of power to curb the office bearer not to ventilate grievance of employees. It worthy state that the DAP occasionally attend of the office at Cuttack. This is nothing but to fulfil the egoism, proved as misconduct".

4. The respondents in their reply filed on 1.9.2015 have contested the claim of the applicant. They have submitted that the applicant had misbehaved with the Director of Accounts (Postal) Shri A.Manohar Rao by

loudly shouting at him in words "when will you come" ? When the Director of Accounts (Postal) told him that he would intimate the date before his next visit, the applicant spoke in a menacing and threatening manner and left the chamber of DA(P). When the DA(P) was coming outside his chamber at around 2.00 PM, the applicant along with some staff gathered in the corridor of 1st floor. The DA(P) enquired about their gathering and as the lunch time was over, he asked them to go to their seats. Then the applicant came forward and said in a loud voice "we came to know that you are going to issue a memo for the incident that occurred in your chamber. You withdraw that memo or there will be trouble". The DA(P) told him to solve the official problem in his next visit and moved towards the ground floor. But the applicant tried to obstruct his passage twice coming in front of him and repeating his demand to withdraw the action proposed to be taken against him. Finding no other way, the DA(P) returned to his chamber for his own safety. The respondents claim that due to this misconduct a Charge Memorandum was issued against the applicant and due procedure has been followed. Although this Tribunal had quashed the punishment imposed by the Disciplinary Authority in the first instance, a fresh charge sheet was issued to him as per rules and due procedure has been followed while awarding the punishment to the applicant. The disciplinary authority and the appellate authority had applied their mind while passing the orders. Therefore, the O.A. filed by the applicant is devoid of merit and should be dismissed.

5. The matter was argued on 20.8.2018. I heard the learned counsels from both the sides and perused the documents submitted by them. I find that the first charge sheet dated 07.01.2010 issued against the applicant was flawed since the Disciplinary Authority had acted as a judge in his own case when the

alleged misconduct involved him. However, the matter was laid to rest by this Tribunal quashing the order of the disciplinary authority and remitting it back to the appellate authority to proceed as per rules. So far as the 2nd charge sheet is concerned, it has been issued by a different Disciplinary Authority and due procedure has been followed while conducting the disciplinary proceedings.

6. In a catena of judgments, the Hon'ble Supreme Court has laid down the law on the issue of scope of judicial review by the Courts/Tribunals in the matter of disciplinary proceedings.

In *Surender Kumar vs. Union of India (2010) 1 SCC 158*, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

In *Union of India vs. Flight Cadet Ashish Rai (2006) 2 SCC 364*, the Hon'ble Supreme Court has held as under.

"Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administration action is subject to control by judicial review in the following manner:

- (i) Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

In *Hombe Gowda Educational Trust vs. State of Karnataka* (2006) 1 SCC, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

Similarly, in *B.C. Chaturvedi vs. Union of India* (1995) 6 SCC 749, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceeding as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act or of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mold the relief so as to make it appropriate to the facts of each case."

In *Union of India vs. G. Ganayutham* (1997) 7 SCC 463 the Hon'ble Supreme Court has held:

"To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law,

have arrived at. The court would consider whether relevant matters has not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test"

8. In the present O.A. I have carefully gone through the documents and I find that no procedural impropriety has occurred in so far as the 2nd charge sheet and the subsequent disciplinary proceedings are concerned. It is not in the domain of this Tribunal to enquire and give a verdict whether the alleged misconduct actually had taken place or not. The applicant has tried to justify his action by stating that he usually speaks at a loud voice and it is also normally at the lunch hour when he and his associates gather in the corridor. This Tribunal is not inclined to pass any judgment on this behaviour. The limited issue before this Tribunal is whether the procedure prescribed under the rules have been followed or not.

7. Rule-16 of CCS(CCA) Rules, 1965 prescribes as follows:

"16. Procedure for imposing minor penalties:

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after –

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules(3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;

- (c) taking the representation, if any, submitted by the Government servant under Clause(a) and the record of inquiry, if any, held under Clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (d) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule(1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause(a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules(3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (viii) the orders on the case together with the reasons therefor.

9. A careful perusal of the records shows that rules as prescribed in the CCS(CCA) Rules, 1965 have been followed in the present disciplinary proceedings. Keeping in view the facts of the case and the points of law, I find no reason to interfere in the orders passed by the Disciplinary Authority and the Appellate Authority. I am of the view that these orders are detailed and

reasoned orders passed with due application of mind and after following the due procedure of law. I therefore find no merit in this O.A. which is dismissed as devoid of merit, with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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