

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. OA 399 of 2012
OA 672 of 2012

Date of order : 20.12.2016

Present: Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

GAYA PRASAD

VS

UNION OF INDIA & ORS.

For the applicant : In person

For the respondents : Ms. R.Basu, counsel
Mr.S.K.Ghosh, counsel

O R D E R (ORAL)

Justice V.C.Gupta, J.M.

Written submissions have been filed in OA No. 672/12 by the applicant.

Heard the ld. Counsel for the respondents as well as the applicant in person and perused the record. As both OA 399/12 & OA 672/12 are inter-linked, both these petitions are disposed of by a common order after hearing the applicant in person and ld. Counsel for the respondents.

2. As per pleadings in OA 399/12 the applicant has prayed for the following reliefs :

"In the perspective of the above facts and circumstances in the harassment of the applicant, it is, therefore, most humbly prayed that this Hon'ble Court may be pleased to direct respondent No.1 to change the biased inquiry officer immediately by appointing independent and unbiased officer from other ministry/CVC/DoPT at the earliest without involving any ITS officer because Disciplinary authority (an ITS officer), is withholding his promotion to ITS Group -A in the wake of frivolous & fabricated disciplinary case and his junior has been promoted."

3. The applicant Gaya Prasad was working as Assistant Director in Telecom Engineering Centre (Department of Telecom). During the course of his employment the applicant was found absent and period of absence was treated as dies non. Simultaneously an enquiry under Rule 40 of CCS (CCA) Rules,



1965 was also initiated for enquiring the unauthorised absence by issuing a charge sheet on 19.8.2010. The article of charges reads as under :

Article I : That the said Shri Gaya Prasad, while functioning as Assistant Director (C&T), in Telecom Engineering Centre, Department of Telecommunication, New Delhi, during the period 11.8.09 to 16.3.2010 deliberately and intentionally, disobeyed all the written orders of his superior authority, viz., Director (C&T) Shri Gaya Prasad was never found sitting in his official room No. 656-A Khurshid Lal Bhavan and never met Director (C&T) since 18.8.09. He also did not intimate his whereabouts to Director (C&T). He refused to receive office files. He did not carry out any official work since 17.8.09 till 28.1.2010 which was assigned to him by his superior officers and is continuously refusing to carry out the tasks assigned to him since 17.8.09. He wilfully disobeyed the instructions of his superior officers.

By his aforesaid acts, the said Shri Gaya Prasad has behaved in a manner that is unbecoming of a government servant and has committed grave misconduct of dereliction of duty and wilful insubordination. His conduct amounted to insulting and insubordination to such a degree as to be incompatible with the relation of superior officer and sub-ordinate officer.

The said Shri Gaya Prasad failed to maintain absolute devotion to his duties and acted in a manner which is unbecoming of Government servant, thereby contravening the provisions of Rules 3-A[(a) and (b)] of CCS (Conduct) Rules, 1964 and Rules 3 (1)(i), (ii) and (iii) of CCS (CCA) Rules, 1965.

Article II : That during the aforesaid period, and while functioning in the aforesaid office, the said Sh. Gaya Prasad raised frivolous and baseless complaints against the senior officers of the Department and used defamatory and insulting language against his senior officers. He acted in a discourteous manner against his senior officers. He sent representations to senior officer without following proper procedure.

Thus, by his above acts, the said Shri Gaya Prasad committed grave misconduct which tantamount to insulting and insubordination to such a degree as to be incompatible with the relation of superior officer and sub-ordinate officer. He acted in a manner which is unbecoming of Government servant, thereby contravening the provisions of Rules 3-A[(a) and (b)] of CCS (Conduct) Rules, 1964 and Rules 3 (1)(i), (ii) and (iii) of CCS (CCA) Rules, 1965.

During the course of enquiry he instead of giving reply to the charges indulged in doubting the loyalty and trustworthiness of all the ITS (Indian Telecom Services) officers and start raging the hierarchy in ITS and claiming that all the ITS officers are harassing the applicant. He also claimed that the department should be headed not by any ITS officer but by an IAS officer and also start challenging that he has not been utilised by the department and he has been given a work which is not suited to him and to his post with a malafide intention though the applicant has worked hard but the authorities reported him absent on ground of alleged non-functioning on certain dates. He made representation of biasness for conducting this enquiry by a biased officer.

(Signature)

The claim was declined by the Disciplinary Authority. Thereafter he filed this petition challenging the continuance of the enquiry and to change the biased Enquiry Officer by an independent officer of some other department. An interim order has been passed in this OA which is extracted hereinbelow :

"11. In the instant case, the representation is considered by the Secretary who is the administrative head and is not the Appellate Authority. Even if there is no reviewing authority, the consideration should have been done by the Appellate Authority. The Secretary had no authority. The statement of the applicant further shows that the issue relating to dies non is pending before co-ordinate bench.

12. In view of the above, impugned order dated 8.2.12 is stayed. Consequently the Enquiry Officer will not hold the enquiry on 30.4.12. Issue notice to the respondents returnable on 12.5.12. The pendency of the OA shall not stand in the way of the President considering his representation."

4. The reply has been filed by the respondents refuting the allegations made by the applicant and mainly stated that the ^{applicant} is treating himself above the established procedure of conducting the enquiry in accordance with rules and wants that the entire system should be changed and then enquiry should be conducted. He wilfully absented and declined to do the job which was entrusted to him and consequently he was rightly held wilfully absent from work and order of initiating enquiry cannot be said to be against the rules. The bald allegation of biasness without any substance cannot be the basis to change the Enquiry Officer.

5. So far as OA No. 672/12 is concerned it was filed by the same applicant in person with the following relief :

"Quash the impugned order No. TEC/Admn-Estt/GP851/2009 dated 11.10.2011 and direct the respondent No.1 to pay the due salary with 18% interest for the period from 26.8.2010 to 18.5.2011."

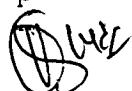
The impugned order dated 11.10.11 is also reproduced below :

"To
Sh Gaya Prasad
Assistant Director (RTEC-ER)
Kolkata

Subject : Allegation financial harassment regarding
Reference: Your letter dated 1.8.11 & 27.9.11 addressed to
Secretary (T)

With reference to above mentioned letters & on the subject, I have been directed to intimate as under :

(a) Payment of arrears, if any, for the period of suspension shall be decided on completion of disciplinary proceedings



(b) Pay for the period unauthorized absence from duty is inadmissible.

(Surendra Kumar)
A.D.G. (Estt)
Tele - 23329230".

When the absence of applicant was declared dies non he was not allowed to make any payment for that period. He was also put under suspension for the misconduct contemplating a departmental enquiry. However, his suspension was revoked but he was not paid his salary to that period though subsistence allowance was paid. As per impugned order the authorities informed the applicant that payment of arrears if any, for the period of suspension shall be decided on completion of the Disciplinary Proceedings.

6. The order impugned in OA No. 672/12 is an order wherein a decision has been taken by the authorities regarding payment of salary for the period of suspension after concluding the disciplinary proceedings. So far as the period of ~~suspension~~ ^{discovery} is concerned it has been mentioned that no salary could be paid.

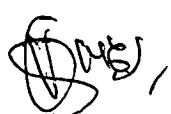
Therefore it would be necessary to decide OA 399/12 and OA 672/12 simultaneously.

7. Today when the applicant was directed to address the Court in regard to OA 399/12 he stated that he wants time to make necessary amendment in the prayer clause. In this case departmental proceeding initiated against the applicant has been stayed by an order dated 27.4.12. The operative portion of the interim order as contained in para 11 & 12 are reproduced hereinbelow :

"11. In the instant case, the representation is considered by the Secretary who is the administrative head and is not the Appellate Authority. Even if there is no reviewing authority, the consideration should have been done by the Appellate Authority. The Secretary had no authority. The statement of the applicant further shows that the issue relating to dies non is pending before co-ordinate bench.

12. In view of the above, impugned order dated 8.2.12 is stayed. Consequently the Enquiry Officer will not hold the enquiry on 30.4.12. Issue notice to the respondents returnable on 12.5.12. The pendency of the OA shall not stand in the way of the President considering his representation."

The impugned order reveals that the matter relating to dies non is pending before a co-ordinate Bench and considering this aspect the interim order was passed. Today we have decided the matter pertaining to dies non of



applicant while deciding OA No. 180 of 2013 wherein we decided that unless a departmental enquiry is conducted for absence, his pay for the period of absence cannot be deducted treating the period as dies non. The relevant para 11 of judgment passed in OA No. 180/13 is extracted below for ready reference:

"The above findings on the part of the respondent authorities goes wholly against the principles of natural justice. Hence all such orders issued from 17.8.09 to 22.10.09 are quashed and set aside. The authorities will make payment of the salary which has been deducted for the above period for 'dies non' within 2 months of getting a certified copy of this order. Leave is, however, granted to the authorities to initiate disciplinary proceedings if they deem fit, on issue of non performance of duty and give statutory penalty as per law."

Hence in view of the above orders regarding stay of disciplinary proceeding is not required to be continued. Consequently we vacate the interim order with regard to stay of departmental proceedings against the applicant.

8. The question whether the person conducting enquiry is biased or not cannot be considered at this stage without any material. Bias is a question of fact to be proved from evidence. But the materials placed before us is nothing but merely the averments. The applicant has been granted liberty to represent to the President for redressal of his grievance in 2012. The order of the President has not been brought on record. We find that the OA No. 672/12 has become infructuous regarding question of dies non in view of the order passed in OA 180/13.

9. So far the first part of the order is concerned it relates to payment of arrears for the period of suspension. The authority has directed to decide the same on completion of disciplinary proceeding. It has been brought to our notice that the suspension of the applicant has already been revoked on 26.8.10 as contained in para 9 of the reply and the disciplinary proceeding was also initiated against him. Hence we do not find any justification to interfere with the order impugned so far as the first part relating to payment during the suspension period is concerned.

10. So far as the second part of the impugned order is concerned, we have already passed judgment in OA 180/13 with regard to the payment of the period of unauthorised absence of dies non.



11. Hence in view of the above we dispose of both the applications with following direction to the respondents and the applicant. The enquiry initiated against the applicant shall be expeditiously concluded within a period of six months from the date of communication of this order.

12. We also trust and hope that the applicant will fully co-operate in the enquiry and in case the applicant does not co-operate the enquiry may be concluded according to the rules within the aforesaid period.

13. The question of payment of pay with regard to period of suspension shall be decided by the respondent/ Disciplinary Authority along with final order, which may be passed in the enquiry as per rules.

14. Interim order, if any is discharged. No order as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

JUSTICE VISHNU CHANDRA GUPTA
MEMBER (J)

in