

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA. 351/1053/2018

Date of Order: 03.08.2018

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dharam Raj
Vs.
A & N Administration

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. S. Samanta, Counsel
Mr. S.K. Ghosh, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

The case of the applicant has a checkered past.

2. In this O.A the applicant has assailed and sought for quashing of charge sheets dated 21.07.2016 & 24.08.2017, ex-parte enquiry report dated 12.12.2017 and penalty order of dismissal from service issued by the Chief Secretary, A & N Administration dated 16.05.2018. The challenge is on the ground that the charge sheet dated 21.07.2016 has been issued by an incompetent authority, the charge

sheet dated 24.08.2017 has been issued without cancelling the earlier charge sheet and the penalty order has been issued in violation of the solemn order passed by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair and with an intention to circumvent and frustrate the grievance of the applicant while the issue is pending before the Hon'ble High Court.

3. Ld. Counsel for the applicant at the outset would vociferously object to representation of respondents through Mr. Samanta since he, in earlier rounds, appeared on behalf of the one petitioner, against the A & N Admn.on whose prayer the orders affecting the applicant at present were issued. Ld. Counsel submitted that such representation was impermissible, as having appeared against A& N Administration in the case filed against the present applicant he could not neitherlegally nor ethically represent A & N Administration. Hence we leave it to Mr. Samanta to appear or not to appear henceforth in this matter for and on behalf of A&N Administration. Mr. S. K. Ghosh, Id. Counsel, however, would represent the respondents, being engaged by them.

4. We heard the rival contentions and perused the materials on record.

5. Ld. Counsel for the applicant sought for stay of the penalty order since two charge sheets on self same charges were not maintainable and the respondents vehemently opposed the same.

6. What we deciphered from the pleadings of the parties as are under:

The applicant was charge sheeted twice.

(i) The 1st charge sheet dated 21.07.2016 issued to the applicant, contained indictment in regard to violation of Administration's order dated 05.05.2016 whereby and whereunder the applicant was directed to report for duty to the Office of PCCF Van Sadanupon getting relieved of his duties on 04.05.2016 and the second Article was that while absenting himself from duty sought permission to leave Headquarters for proceeding to mainland for medical check-up without any supporting documents. In response whereof he was directed to first report for duty and then seek leave but he failed to comply with the order. The 3rd Article was that he submitted his duty report wrongly as Protocol Officer which report was returned to him in original with a memo dated 25.06.2016 but he failed to comply with the direction.

(ii) The gravamen of indictments in the 2nd charge memo is as under:

"As per judgment dated 13.01.2017 of the Hon'ble High Court of Calcutta, Circuit Bench at Port Blair, Shri Dharam Raj, had to join back as Lower Grade Clerk (LGC) in the parent Department within a period of 10 days from the date of the order, but he failed to comply with the orders of the Hon'ble High Court. He filed Mandamus Appeal and a stay application before the Division Bench of Hon'ble High Court against the said order dated 13.01.2017 vide CAN No. 5231 of 2017 with MAT No. 892 of 2017.

The said appeal has been dismissed by the Hon'ble High Court vide its order dated 06.07.2017. Shri Dharam Raj even after dismissal of his appeal failed to report for duty as Lower Grade Clerk.

Therefore the indictments, articles, assertions in the charge sheet were not identical. However, conclusion of proceedings ex-parte against the applicant is an admitted fact and the charge sheets culminated into the impugned penalty of dismissal from service which "shall ordinarily be disqualification for future employment under the Government".

7. The chronology of events which led to initiation of the proceedings, as would be relevant and germane to the present case, could be appreciated from the judgment and order passed by the Hon'ble High court in W.P. No. 047 of 2016 rendered on 18.03.2016 in **Akshay Pant vs. LG & Ors.** The solemn order records the following :

The applicant was appointed as Inspector (Weight & Measure)/Legal Metrological Officer (Group B, Non-gazetted) in the Department of Civil Supplies and Consumer Affairs vide Civil Supplies Office Order No. 842 dated 31.05.2011, with grade pay of Rs 4200/-. However, with the approval of the competent authority, he got appointment with retrospective effect i.e. from 2006 onwards.

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He joined the post in the Civil Supplies Department vide order dated 06.06.2011 which authorized him to function as Protocol Officer in addition to his own duties without any extra remuneration.

While functioning as Inspector (W&M) along with additional charge of Protocol Officer, his appointment was challenged before the Hon'ble High Court in WP 23 of 2012.

On 17.07.2012 the Hon'ble Single Judge after hearing the writ petition, being WP No.23 of 2012 , was pleased to set aside the appointment order.

The order of Hon'ble Single Judge was challenged in Mandamus appeal, being MAT No. 39 of 2012. Shri Dharam Raj, the present applicant also filed another appeal being MAT No. 036 of 2012.

The writ appeals filed by the Administration and Dharam Raj were dismissed upholding the order passed by the Hon'ble Single Judge whereby the appointment of Dharam Raj to the post of Inspector (W&M)/Legal Metrological Officer was quashed.

Aggrieved, Dharam Raj, the applicant herein, moved a review application being RVW No. 004 of 20-12 that was dismissed by the Hon'ble High Court on 28.06.2013. Thereafter, special leave petition was taken out, which was also dismissed by the Hon'ble Apex Court.

Consequently, the Director, Civil Supplies and Consumer Affairs/Joint Controller of Legal Metrology, cancelled the appointment of Shri Dharam Raj to the post of Legal Metrological Officer, vide order No. 1157 dated 24.07.2013.

Dharam Raj moved another review petition being RVW No. 006 of 2013 before the Hon'ble High Court.

After removal of Dharam Raj from the post of Inspector/Legal Metrological Officer, he was directed to report to the post of Lower Grade Clerk (LGC) in the Administration but, he did not report to the post of LGC.

Instead he tendered resignation in July 2011 which was accepted retrospectively. Dharam Raj did not turn up to report duty as Lower Grade Clerk, as according to him, he was no more in government service and hence had no authority to function in any capacity in the Administration.

Hon'ble High Court in W.P. No. 47 of 2016 found that, "after removal from his service by the Civil Supplies Department he was placed by the Administration as a LGC, but he refused to join.

In such a situation, an additional duty which was given to him to serve as a Protocol Officer could not have been served by Dharam Raj since he was not at all an employee of the Administration".

In 2009 post of Deputy Superintendent of Police (Group-B-Gazetted) lying vacant in IP&T Department in the pre-revised pay scale of Rs. 6500-200-10500 (Revised Pay Band-2 Rs. 9300-34800/- with G.P. of Rs. 4600/-) was converted to the post of Protocol Officer. The said Gazetted post lying vacant in Tourism Department was transferred to General Administration and Dharam Raj was appointed and regularized on adhoc basis for a period of six months with immediate effect.

The Hon'ble High Court observed that:

"It is undisputed that the appointment of Dharam Raj in the post of Inspector was an illegal appointment and that order of appointment was set aside by the Hon'ble High Court".

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"Unfortunately Dharam Raj became a blue eyed boy of Administration for some unknown reason in spite of his defiant attitude. The Administration has initially appointed him as Protocol Officer for six months on adhoc basis by the impugned order dated 02.12.2013 and thereafter extended. The authorities ignored the rules stipulating that the adhoc appointment may be resorted to subject to for period limited to one year only".

As a result Hon'ble High Court passed the following order:

"For the aforementioned reasons, the impugned order of adhoc appointment and extension and also the impugned order of regularization are set aside by this Court.

The authorities are directed to fill up the vacant post by following rules framed in that regard within three months from the date of communication of this order."

The order dated 8.3.16 in WP was challenged in Mandamus Appeal being MAT 019 of 2016 with CAN 62/16 by Dharam Raj in Dharam Raj vs. Akshay Pant wherein on 8.4.2016 the order of Hon'ble Writ Court permitted Dharam Raj to function as LGC "being his parent posting till disposal of appeal" meaning thereby, on 8.4.2016 Dharam Raj was permitted to join his parent posting which was never under PCCF Haddo.

Finally on 13.6.2016 Hon'ble High Court while setting aside the order of the Hon'ble Writ Court, dated 18.03.2016 in W.P. No. 47/2016, passed the following order: (extracted with supplied emphasis for clarity)

".....we find that the appellant was prevented by sufficient reasons from appearing before the Writ Court on the date when the writ petition was heard. That apart, we cannot be unmindful of the fact that the Administration has taken a stand which is different from the stand taken by the Administration while offering the appointment to the appellant to the post of Protocol Officer.

In these set of facts, we feel that a fair chance of contest should have been given to the appellant by extending the time for filling affidavit by him in the writ proceedings.

That apart we find that the Writ Court, while deciding the said writ petition took much pain to consider the legality of ad hoc appointment given to the appellant in the post of Protocol Officer and the extensions thereof even though no specific ground was made out by the writ petitioner for challenging such ad hoc appointment given to the appellant. On reading the draft Recruitment Rules we are of the prima facie view that absorption followed by ad hoc appointment is not the criterion for regularization of service in the post of Protocol Officer as per the draft Rules. As such our prima facie view is that the ultimate absorption of the appellant in the said post of Protocol Officer may be maintained, notwithstanding his ad hoc appointment and/or extension thereof are found to be illegal and/or irregular, only if however his absorption in the said post is found to be in consonance with the extant draft Rules."

8. The matter was reheard by Hon'ble Writ Court and dismissed once again on 13.01.2017, with the following order:

"13. The last question which calls for determination of the Court to give complete justice in this case is whether respondent no. 6 is deemed to be still in the service for discharge of duty as Lower Grade Clerk in the parent Department. I have already observed that on my query to the learned counsel for the respondent no. 6, Mr. Roshan George has submitted on instruction from his client that the respondent no. 6, is willing to join back to the post of Lower Grade Clerk in the parent Department within specific period of time. I have also observed that the acceptance of technical resignation tendered by the respondent no. 6 from the post of Lower Grade Clerk has no legal validity after issuance of the order by the authority concerned for repatriation of the respondent no. 6 to the parent department as Lower Grade Clerk with effect from July 24, 2013. Since the respondent no. 6 usurped the post of Protocol Officer under the General Administration without having any authority under the law, he is not entitled to get the financial benefit for discharge of duty of the Protocol Officer under the General Administration from December 2, 2013 till he is removed from the post of Protocol Officer under General Administration by the respondent no. 1 and 2. The question may crop up as to what will be the status of the respondent no. 6 from July 24, 2013 when his appointment as Legal Metrology Officer was cancelled by the authority concerned. Since the service of the respondent no. 6 in the parent department as Lower Grade Clerk has not been terminated and since the respondent no. 6 is willing to join back to the post of Lower Grade Clerk in the parent department, the period of service rendered by the respondent no. 6 under Andaman and Nicobar Administration from July 24, 2013 till the date of this order will be treated as on duty in his substantive post of Lower Grade Clerk under the parent Department. The respondent no. 6 is entitled to get all benefits of service including financial benefits and advance career progression and promotion if any, to which he is entitled as Lower Grade Clerk in the department of Civil Supplies and Consumers Affairs, subject to the condition that the

respondent no. 6 will report for duty in the post of Lower Grade Clerk under the Department of Civil Supplies and Consumers Affairs within a period of ten days from the date of the order."

The order in WP No. 047/2016 was further clarified by the Division Bench in MAT No. 003/2017 with CAN No. 010/2017 in the following manner: (extracted with supplied emphasis for clarity)

".....the writ petition was disposed of by holding that since service of the respondent no. 6 in the parent department as Lower Grade Clerk has not been terminated and since the respondent no. 6 is willing to join back to the post of Lower Grade Clerk in the parent department, the period of service rendered by the said respondent no. 6 under the Andaman and Nicobar Administration from July 24, 2013 till the date of the said order will be treated as on duty in his substantive post of Lower Grade Clerk under the parent department. It was also directed that the respondent no. 6 is entitled to get all the benefit of service including financial benefits and advance career progression and promotion, if any, to which he is entitled as Lower Grade Clerk in the department of Civil Supplies and Consumer Affairs, subject to the condition that the respondent no. 6 will report for duty in the post of Lower Grade Clerk under the department of Civil Supplies and Consumer Affairs within a period of ten days from the date of the order."


The implication of the aforesaid orders in WP as well as MAT No. 033/2017 clarified on 09.02.2017 is that the parent department of the applicant for all purposes would be the "Civil Supplies and Consumer Affairs" and not under PCCF

in the Forest Department and he would be entitled to treat the period from 24.07.2013 to 13.01.2017 (date of order) as "on duty".

Therefore, the order dated 05.05.2016, purportedly issued in compliance of the direction of the Hon'ble Writ Court, on 18.03.2016, asking the applicant to join under PCCF at Haddo was clearly, inarguably and irrefutably in violation of the Hon'ble High Court's direction on 8.4.2016 to allow him to join his "parent posting" and therefore its non compliance does not call for any disciplinary action.


9. In terms of the Judgment of Writ Court the respondents ought to have permitted or asked the applicant to join Civil Supplies and Consumer Affairs Department and not under PCCF, Haddo. They had thus mis-directed himself either deliberately or upon misreading and misunderstanding the tenor of the judgment of the Hon'ble Writ Court, whereas for not compliance of the order dated 05.05.2016, while WP 047 of 2016 was pending, the charge sheet dated 21.07.2016 was issued tainted with malice and therefore deserved to be stayed.

10. It is noted that, further, MAT No. 003/2017 was filed on the ground that the submission made by Id. Counsel Mr. Roshan George that his client is "willing to join back to the post of LGC in the parent department" was not correctly recorded.



Hon'ble High Court disposed of the Mandamus Appeal No. 003/2017 with observation that the present applicant would approach the Learned Single Judge of this Court "praying for rectification of such alleged wrong recording of the submission of Mr. Roshan George, the same will be considered by the learned Single Judge of this Court in accordance with law" and clarified that "in the event his prayer for rectification is not ultimately allowed, he may come up before the Appeal Court by challenging the order of rejection of his prayer for rectification and the legality of the order which is impugned in this appeal" and permitted him "to raise all the points including the point of maintainability of the appeal".

One CAN No. 029 of 2017, that was filed seeking rectification of the order passed in WP No. 047/2016, was dismissed. Thereafter, MAT No. 892 of 2017 with CAN No. 5231/2017 was preferred against the order passed in CAN No. 029/2017 which was also dismissed. Further, the applicant preferred CAN No. 12295/2017 seeking recalling the order dated 06.07.2017 whereby and whereunder MAT No. 892/2017 was dismissed, which is pending disposal. Therefore, as of now, the order dated 13.01.2017 in WP No. 047/2016 stands, in terms of which the applicant was required to join his parent department of Civil



Supplies & Consumer Affairs and not under PCCF, Haddo and he was entitled to count the period of 24.07.2013 to 13.01.2017 as on duty as LGC.

11. Strangely enough, the 1st charge sheet, dated, 21.07.2016 was issued alleging violation of the Administration's order dated 05.05.2016 asking him to report under PCCF as not hence complied with and for submitting duty report wrongly as Protocol Officer which report was returned on 25.06.2016 to the applicant asking him to report to PCCF as LGC. Therefore, on the one hand, the respondents denied him opportunity to report in terms of Administration's order dated 05.05.2016, and turned ~~volte~~ face to charge sheet him for not complying with the said order. Such acts and actions can only be termed as a glaring example of administrative highhandedness and malefic intention.

12. We further noted that the second charge sheet dated 24.08.2017 contained Articles as under:


"As per judgment dated 13.01.2017 of the Hon'ble High Court of Calcutta, Circuit Bench at Port Blair, ShriDharam Raj, had to join back as Lower Grade Clerk (LGC) in the parent Department within a period of 10 days from the date of the order, but he failed to comply with the orders of the Hon'ble High Court. He filed Mandamus Appeal and a stay application before the Division Bench of Hon'bl High Court against the said order dated 13.01.2017 vide CAN No. 5231 of 2017 with MAT No. 892 of 2017. The said appeal has been dismissed by the Hon''ble High Court vide its order dated 06.07.2017. ShriDharam Raj even after dismissal of his appeal failed to report for duty as Lower Grade Clerk."

The indictment itself speaks volume about the retaliatory action of the respondents against the applicant for having preferred Mandamus Appeal before the Hon'ble High Court.

13. The conjoint reading of Articles of both the charge sheets would go a long way to demonstrate that the applicant had in fact reported for joining in terms of the order dated 05.05.2016 but was not allowed to report. Therefore, on one hand, he was prevented from joining and on the other hand absolute volte face charge sheeted for not joining or not reporting. Similarly, while on one hand he was asked to join a different department (under PCCF) in violation of the direction of Hon'ble High Court on 13.01.2017 on the other he was charge sheeted for not complying with such direction and penalised heavily.

14. In the aforesaid backdrop we feel that the balance of convenience or inconvenience is heavily tilted in favour of the applicant and therefore the penalty order deserves to be stayed and is therefore stayed till disposal of the OA.

15. The applicant is granted liberty to join the "parent department" in compliance of the direction of the Hon'ble High Court in WP No. 047/2016 and subject to the outcome of the present OA as well as CAN No. 12295/2017.



357/10539 2018 *Am*

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16. List on 04.09.2018.

Nandita Chatterjee
(Dr. Nandita Chatterjee)
Member (A)

Bidisha Banerjee
(Bidisha Banerjee)
Member (J)

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