

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 512/2018

**Present: Hon'ble Mr.Gokul Chandra Pati, Administrative Member
Hon'ble Mr.Swarup Kumar Mishra, Judicial Member**

Madhab Chandra Panda, aged about 53 years, S/o Late Ananta panda, presently working as Senior Audit Officer (Commercial), in the office of the Accountant General (G&SSA), Odisha, Bhubaneswar, Dist. – Khurda-751001.

.....Applicant.

VERSUS

1. Union of India, represented through the Comptroller & Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
2. The Deputy Comptroller and Auditor General (Commercial), O/o the Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
3. The Accountant General (G&SSA), AG Square, Bhubaneswar, Dist. – Khurda, Odisha, Pin – 751001.
4. Shri K. Surjith, DAG-Cum-Inquiry Officer, in the Office of the Principal Accountant General (E&RSA), AG Square, Bhubaneswar, Dist.-Khurda, Odisha, Pin – 751001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.K.Patra, counsel

Heard & Reserved on : 4.1.2019

Order on : 11.1.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant, in this OA, has prayed for the following reliefs:-

- “(i) To admit this OA and call for the records;
- (ii) To quash the charge memo dated 4.7.2018 (Annex A/1) holding the same as illegal, vague and unspecific one;
- (iii) To quash the punishment order of Disciplinary Authority dated 25.7.2018 (Annex A/3) and Appellate Authority order dated 28.9.2018 (Annex A/9) holding the same are contrary to rules;
- (iv) To quash the orders of the Disciplinary Authority dated 27.7.2018 (Annex A/4 series), order dated 14.9.2018 (Annex A/8) holding the same are contrary to rules and judicial pronouncements;
- (v) To hold that the continuation of inquiry further after order dated 25.7.2018 (Annex A/3) amounts to double jeopardy and liable to be quashed;
- (vi) And/or pass any other order/orders as deemed fit and proper.”

The applicant has also sought for the interim relief to restrain the respondents from taking any action on the charge-memo dated 4.7.2018

(Annexure-A/1) issued against the applicant. After hearing the parties on interim relief on 2.1.2019, we decided to finally hear this OA at the admission stage, since whether the disciplinary proceedings against the applicant is pending or not, is the main dispute in this OA, which can be decided based on whether the interim relief is to be granted or not.

2. Accordingly, learned counsel for the applicant was heard on 4.1.2019. He argued that the applicant is issued a charge-memo dated 4.7.2018 (A/1) for 2 charges and the applicant has furnished the reply dated 14.7.2018 (Annexure-A/2), denying the charges and reserving the right of personal hearing. Learned counsel submitted that as per the request made in the reply dated 14.7.2018, the disciplinary authority (in short DA) i.e. the respondent no. 3 allowed the applicant a personal hearing on 20.7.2018 and thereafter, he issued the order dated 25.7.2018 (Annexure-A/3) communicating a 'warning' to the applicant, which is to be kept in the personal file/service book and to be reflected in the APAR. It is the case of the applicant that the charge-memo dated 4.7.2018 has been concluded with issue of the penalty of 'warning' as per the order dated 25.7.2018 (A/3) and he is aggrieved since the respondent no. 3 proceeded to appoint the respondent no. 4 as the Inquiring Authority (in short IA) vide order dated 27.7.2018 (A/4) and a Presenting Officer. Therefore, he filed an appeal dated 2.8.2018 (A/5), addressed to the Appellate Authority (in short AA) i.e. the respondent no. 2, who passed the order dated 28.9.2018 (A/9), which is signed by senior administrative officer, stating that the appeal for quashing the charge-memo and the order of 'warning' does not lie in terms of the rules 22(ii) and 23 of the CCS (CCA) Rules, 1965. Learned counsel for the applicant argued that the DA's action of continuing with the inquiry of the charge-memo after imposing the punishment of warning is illegal and would amount double jeopardy of the applicant.

3. Learned counsel for the respondents submitted that as stated in their short reply, the warning issued vide order dated 25.7.2018 was on account of an incident as explained in the notes at Annexure-R/1 of the short reply and para 5 of the short reply, on which the then Accountant General had passed order on 5.2.2018 to issue a warning to the applicant. It was submitted in para 6 and 7 of the short reply, that the charge-memo dated 4.7.2018 has been issued on the basis of incidents different from the incident for which warning has been issued as per the order dated 5.2.2018 of the then Accountant General. A copy of the judgment of Hon'ble Apex Court in the case of **Central Industrial Security Force and others vs. Abrar Ali reported in (2017) 4 Supreme Court Cases 507** was filed by the learned counsel for the respondents.

4. We have considered the submissions by the rival parties and perused the pleadings on record. It is seen from the note at Annexure-R/1 that the DAG, the senior authority in the office of the respondent no. 3, has been shouted at by the applicant when he was asked about non-compliance of the work of review of the IRs entrusted to him. When this incident was placed before the respondent no.3, he passed the order on 5.2.2018:- "Give him a warning". It is the case of the respondents that the warning issued to the applicant vide order dated 25.7.2018 (A/3) has been issued in compliance of the order dated 5.2.2018 of the respondent no.3 on the basis of the incident which is not included in the charge-memo dated 4.7.2018.

5. The charge-memo dated 4.7.2018 contains the following article of charge:

"Article-I

That Sri Madhab Chandra Panda, while functioning as the Sr. Audit Officer/Commercial Cadre in the SS-III group of the office of the Accountant General (General & social Sector Audit) Odisha, Bhubaneswar was instructed on 24.4.2018 to review the T.C.Meeting Files, but he denied to carry out the job without a written order. When the concerned Group Officer went to the section to hand him over the written order, he was nowhere to be found. He had shown similar disobedience on a previous occasion on 11.12.2017 when asked to review the old I.R. paras. When confronted by the Group Officer, then he refused to do the same without a written order in a discourteous manner by raising his voice, for which a Memorandum was issued on the same day. The reply submitted by Sri Panda to the memo was not convincing, hence a verbal warning was given to him on 1.3.2018 on the orders of the then Accountant General and conveyed by the Group Officer. Repetition of similar behaviour in a short span of time even after a warning, clearly shows that Sri Panda has little regards to official rules and regulation, lacked devotion to duty and a streak of insubordination thereby violating rule 3(1)(ii) of the CCS (Conduct) Rules, 1964 and behaved in a manner unbecoming of a Government Officer thereby violating Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article-II

That Sri Madhab Chandra Panda, while funding as the Sr. Audit Officer/Commercial Cadre in the SS-III group had overstayed his sanctioned leave by 07 days and also proceeded out of station unauthorizedly without obtaining 'station leave' permission. Shri Panda was also indisciplined in attending to the office. A random check of the office biometric attendance system disclosed that Sri Madhab Chandra Panda, Sr. Audit Officer was not punctual in attending the office, while at Headquarters. On 16th October 2017 he did not mark his attendance after lunch break, but recorded his departure in the biometric system at 6.07 PM. Similarly, on 24th November, 2017, Shri Panda left office early at 3.21 PM without permission. Also, it was seen that Sri Panda was habitually absent during office hours unauthorizedly which can be corroborated from the biometric system of 23rd and 24th April 2018. Thus, it was seen that Sri Panda was not punctual in attending to office and showed disregard for leave rules which tantamount to lack of devotion to duty thereby violating rule 3(1)(ii) of CCS (Conduct) Rules, 1864. Also, such indisciplined behaviour shown by Shri Panda was

unbecoming of a government Officer, thereby violating Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."

6. It is clear from above that the charges against the applicant contained in the charge-memo dated 4.7.2018 are different from the incident mentioned in the note at Annexure-R/1. The reply of the applicant to the charges as per his letter dated 14.7.2018 (A/2) states as under:-

"Sir, I deny the charges mentioned in the above charge sheet and reserve the right of being heard in person."

7. The order dated 25.7.2018 (A/3) passed by the respondent No. 3 states as under:-

"WHEREAS Shri Madhab Chandra Panda while functioning as Sr. Audit Officer in SS-III Section, was assigned to review some old IRs. However, Shri Panda refused to perform the task by citing that it is the duty of an Auditor to perform such task.

WHEREAS when the matter was brought to the notice of the Accountant General (G&SSA), Odisha, it was ordered on 5.2.2018 to issue warning to Shri Panda. Thereafter, DAG 9SS-III) verbally warned him on 1.3.2018 and instructed him not to repeat the same mistake in future.

AND WHEREAS Shri Panda, Sr. AO in his representation dated 14.7.2018 has requested to be heard in person before the Accountant General (G&SSA). Accordingly, Shri Panda was allowed to appear in personal hearing before the undersigned on 20.7.2018 at 4.00 PM. During hearing, Shri Panda has denied the fact that he had received any verbal warning from DAG (SS-III).

NOW THEREFORE, this "WARNING" is hereby issued to Shri Madhab Chandra Panda, Sr. Audit Officer for his unauthorized absence from duties, insubordination and lack of devotion to duty as ordered by the then Accountant General on 5.2.2018.

The copy of this order may be kept in his Service Book and in Personal File and also be reflected in his APAR."

The applicant has impugned this order dated 25.7.2018 on the ground that the charge memo dated 4.7.2018 is unreasonable and before initiating the action, the authority should have called for a show cause.

8. One of the argument advanced by the learned counsel for the applicant is that the order dated 25.7.2018 has referred to the letter dated 14.7.2018, which is the reply submitted by the applicant in reply to the charge-memo, and hence, by this order, the charge-memo issued has been concluded. We are unable to accept these contentions/submissions of the applicant, since the respondents have demonstrated that the basis of the warning order dated 25.7.2018 is not the charge-memo dated 4.7.2018, but the note at Annexure-R/1 to the short reply filed by the respondents. Further, although the representation dated 14.7.2018 of the applicant has been mentioned in the

order dated 25.7.2018, but there is no reference to the charge-memo dated 4.7.2018.

9. It is also noted that there is no punishment of 'warning' specified in the rule 11 of the CCS (CCA) Rules, 1965. The minor penalties under the rule 11 are as under:-

"Minor Penalties -

- (i) censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- (iv) withholding of increments of pay;"

The question of warning is covered under Government of India's decisions (in short GID) after the rule 11 of the CCS (CCA) Rules, 1965 and GID No. 1 states as under:-

"(1) Distinction between Censure and Warning :-

An order of "Censure" is a formal and public act intended to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment, and nothing can amount to a "censure" unless it is intended to be such a formal punishment and imposed for "good and sufficient reason" after following the prescribed procedure. A record of the punishment so imposed is kept on the officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

There may be occasions, on the other hand, when a superior officer may find it necessary to criticise adversely the work of an officer working under (e.g. point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all circumstance into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of 'censure' it calls for some informal action such as the communication of a written warning, admonition or reprimand, if the circumstances justify it, a mention may also be made of such a warning etc., in the officer's confidential roll; however, the mere fact that it is so mentioned in the character roll does not convert the warning etc. into "censure". Although such comments, remarks, warning etc., also would have the effect of making it apparent or known to the person concerned that he has done something blame-worthy and, to some extent, may also effect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of 'Censure' because it was not intended that any formal punishment should be inflicted.

The fact that a mere informal 'warning' cannot be equated to a formal 'censure', should not, however, be taken as tantamount to

suggestion that a written warning may be freely given without caring whether or not it is really justified. It is a matter of simple natural justice that written warnings, reprimands, etc. should not be administered or placed on an officer's confidential record unless the authority doing so is satisfied that there is good and sufficient reason to do so. Paragraph 6 of the Home Ministry's Office Memorandum No. 51/5/54-Ests.(A) dated the 27th January, 1955 provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinates' work and qualities, but also to see that he gives to his subordinates at all times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officers' duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition etc. issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In process of bringing the defects to the notice of person concerned, where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to formal proceedings required to be taken under Rule 55-A (now rule 16) of Rules, nor the warning given amounts to the imposition of a formal penalty.

[MHA OM No. 39/21/56-Ests.(A) dated the 13th December, 1956]."

10. From the provisions above in the rules/guidelines, it is clear that the 'warning' is not a punishment like 'censure' and it can be issued when the superior officer is of the view that the matter is not serious enough to warrant any formal punishment, he may close the matter by issuing a warning, with a reference in his confidential roll, but that would not amount to formal punishment. Further, before issuing the warning with reference in the APAR, it is necessary to a show cause notice or call for the explanation of the applicant. As per the respondents' contentions, the order dated 25.7.2018 was issued based on the note at Annexure-R/1. There is nothing on record if any show cause notice has been issued to the applicant or if he was given any opportunity of hearing before issue of the order of warning. Hence, there is violation of natural justice and also violation of the GID No. 1 after the rule 11 of the CCS (CCA) Rules, 1965, for which the order dated 25.7.2018 (Annexure-A/3) would not be sustainable in law.

11. In the case of **Abrar Ali (supra)** cited by learned counsel for the respondents, the punishment of dismissal from service imposed by the disciplinary authority was upheld by the appellate and revisionary authority. It was challenged in a writ petition, where the punishment was held to be illegal.

Hon'ble Apex Court, in the cited case, disagreed with the decision and held that deciding the quantum of punishment for a charge taking into consideration of the past conduct of the employee, for which he might have been already punished earlier, will not amount to double jeopardy. In the present OA, the applicant complains of double jeopardy since he is of the view that the charge-memo dated 4.7.2018 is concluded by the Disciplinary authority after he issued an order of warning. Hence, factually, the present OA is distinguishable from the facts of the cited case of Abrar Ali (supra) and the cited judgment will not be helpful for the respondents' case.

12. In view of the reasons discussed in paragraphs 8, 9 and 10 above, we are of the considered view that the order dated 25.7.2018, issuing warning to the applicant, is not based on the charge-memo dated 4.7.2018. the said order dated 25.7.2018 is based on the note at Annexure-R/1 and order dated 5.2.2018 of the respondent no.3 and it has been issued in violation of the GID No. 1 after the rule 11 of the CCS (CCA) Rules, 1965 and in violation of the principles of natural justice. The appeal order dated 28.9.2018 (Annexure-A/9) against the order dated 25.7.2018 is also not sustainable since it is not signed by the appellate Authority, as specified under the GID No. 4 below the rule 15 of the CCS(CCA) Rules, 1965.

13. We are not able to accept the averment of the applicant that the charge-memo dated 4.7.2018 issued under the rule 14 of the CCS(CCA) Rules, 1965 for major penalty, is unreasonable and malafide, since there is nothing on record to show that the charge-memo is malafide or unreasonable. The allegations mentioned in the charges framed include disobedience of order of superior authority, which cannot be termed as unreasonable. Moreover, the applicant was given opportunity to submit his reply, which has been submitted by him. We do not find any ground to interfere in the disciplinary proceedings at this stage.

14. In the circumstances, we are unable to grant any of the reliefs prayed for in the OA, except the prayer in respect of the order dated 25.7.2018 (Annexure-A/3) and order dated 28.9.2018 (Annexure-A/9), which are accordingly quashed for the reasons mentioned in paragraphs 8, 9 and 10 of this order. Hence, the OA is partly allowed as above with no order on cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath