

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

**O.A.Nos.16, 17, 212,355, 356 of 2016
&
OA No.929/2015**

Date of Reserve: 26.03.2019

Date of Order:05.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

O.A.No.16 of 2016

Pramod Kumar Mallik, aged about 47 years, S/o. Late Devraj Mallik, At/Po. Patapur, Dist. Cuttack presently serving as Junior Statistical Officer, National Sample Survey Organization (Field Operation Division), Acharya Vihar, Commercial Complex, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.D.K.Panda, G.Sinha,A.Mishra

-VERSUS-

1. Union of India represented through its Secretary to Government, Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi-110 001.

...Respondent

By the Advocate(s)-Mr.Satyabrata Mohanty

O.A.No.356 of 2016

Pramod Kumar Mallik, aged about 48 years, S/o. Late Devraj Mallik, At/Po. Patapur, Dist. Cuttack presently serving as Junior Statistical Officer, National Sample Survey Organization (Field Operation Division), Acharya Vihar, Commercial Complex, Bhubaneswar.

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By the Advocate(s)-M/s.D.K.Panda, G.Sinha,A.Mishra

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1. Union of India represented through its Secretary to Government, Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi-110 001.

2. Additional Director General, National Sample Survey Officer (Field Operation Division), Government of India, R.K.Puram, New Delhi.
3. Deputy Director General, National Sample Survey Office, Acharya Vihar, Bhubaneswar-751 013.
4. Senior Statistical Officer and Head of Office, National Sample Survey Office, Acharya Vihar, Bhubaneswar-751 013.
...Respondents

By the Advocate(s)-Mr.A.C.Deo

O.A.No.17 of 2016

Janaki Nandan Hota, aged about 54 years, S/o. Late Dr. Siddheswar Hota, MIG, Type-2, House No. 279, Lane-7, Satya Sai Enclave, Khandagiri presently serving as Junior Statistical Officer, National Sample Survey Officer (Field Operation Division) Acharya Vihar, Commercial Complex, Bhubaneswar.
...Applicant

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-VERSUS-

1. Union of India represented through its Secretary to Government, Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi-110 001.
...Respondent

By the Advocate(s)-Mr.D.K.Mallick

O.A.No.355 of 2016

Janaki Nandan Hota, aged about 54 years, S/o. Late Dr. Siddheswar Hota, MIG Type-2, Hosue No. 279, Lane-7, Satya Sai Enclave, Khandagiri presently serving as Junior Statistical Officer, National Sample Survey Organization (Field Operation Division), Acharya Vihar, Commercial Complex, Bhubaneswar.
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4. Senior Statistical Officer and Head of Office, National Sample Survey Office, Acharya Vihar, Bhubaneswar-751 013.
...Respondents

By the Advocate(s)-Mr.P.K.Mohanty

O.A.No.212 of 2016

Santosh Kumar Sahoo, aged about 59 years, S/o. Late Gobinda Sahoo, MIG, Type-2, Plot No. 58/52, Gangotri Nagar, Road No.3, Sishupalgarh, PS. Dhauli, Bhubaneswar presently serving as Junior Statistical Officer, National Sample Survey Organization (Field Operation Division), Acharya Vihar, Commercial Complex, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.D.K.Panda, G.Sinha

-VERSUS-

1. Union of India represented through its Secretary to Government, Ministry of Statistics & Programme Implementation, Sardar Patel Bhawan, Sansad Marg, New Delhi-110 001.

...Respondent

By the Advocate(s)-Mr.D.K.Mallick

O.A.No.929 of 2015

Santosh Kumar Sahoo, aged about 59 years, S/o. Late Gobinda Sahoo, MIG, Type-2, Plot No. 58/52, Gangotri Nagar, Road No.3, Sishupalgarh, Ps. Dhauli, Bhubaneswar presently serving as Junior Statistical Officer, National Sample Survey Organization (Field Operation Division), Acharya Vihar, Commercial Complex, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.D.K.Panda, G.Sinha,A.Mishra

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4. Senior Statistical Officer and Head of Office, National Sample Survey Office, Acharya Vihar, Bhubaneswar-751 013.
...Respondents

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

ORDER

PER GOKUL CHANDRA PATI, MEMBER(A)

The Reliefs have been prayed by three Applicants in each of these OAs are as under:

OA 16/2016

- " (i) To quash the order passed by the respondent No.1 on 20.7.2015 (Annexure A/4) as well as the order dated 4.1.2016 (Annexure A/11) in directing for holding for further enquiry by another inquiry officer.
- (ii) To direct the respondent No.1 to pass final orders in the departmental proceeding on the basis of the enquiry report submitted by the enquiry officer vide his letter dated 27.5.2015.
- (iii) Or in the alternative quash the entire proceedings by dropping the charges.
- (iv) And to allow the application with cost."

OA 356/2016

- "(i) To quash the order passed by respondent No.1 in not promoting to the applicant to the post of Senior Statistical Officer on regular basis for want of vigilance clearance and reverting to his substantive post i.e. Junior Statistical Officer on regular basis (Annexure A/13).
- (ii) To quash the order passed by the respondent No.4 on 25.6.2015 in reverting the applicant from Senior Statistical Officer to Junior Statistical Officer (Annexure A/6)
- (iii) To quash the order dated 13.8.2015 (Annexure A/9) passed by respondent No.4 in rejecting the representation of the applicant.

- (iv) To direct the respondents, more particularly the respondent No.4 to allow the applicant to continue as Senior Statistical Officer.
- (v) Direct the respondents to pay all service and financial benefits to the applicant retrospectively.
- (vi) And to allow the application with cost."

OA 17/2016

- " (i) To quash the order passed by the respondent No.1 on 17.07.2015 (Annexure A/4) as well as the order dated 4.1.2016 (Annexure A/11) in directing for holding for further enquiry by another inquiry officer.
- (ii) To direct the respondent No.1 to pass final orders in the departmental proceeding on the basis of the enquiry report submitted by the enquiry officer vide his letter dated 27.5.2015.
- (iii) Or in the alternative quash the entire proceedings by dropping the charges.
- (iv) And to allow the application with cost."

OA 355/2016

- "(i) To quash the order passed by respondent No.1 in not promoting to the applicant to the post of Senior Statistical Officer on regular basis for want of vigilance clearance and reverting to his substantive post i.e. Junior Statistical Officer on regular basis (Annexure A/14).
- (ii) To quash the order passed by the respondent No.4 on 25.6.2015 in reverting the applicant from Senior Statistical Officer to Junior Statistical Officer (Annexure A/7)
- (iii) To quash the order dated 13.8.2015 (Annexure A/10) passed by respondent No.4 in rejecting the representation of the applicant.
- (iv) To direct the respondents, more particularly the respondent No.4 to allow the applicant to continue as Senior Statistical Officer.
- (v) Direct the respondents to pay all service and financial benefits to the applicant retrospectively.
- (vi) And to allow the application with cost."

OA 212/2016

- " (i) To quash the order passed by the respondent No.1 on 8.7.2015 in directing for holding for further enquiry by another inquiry officer (Annexure A/4).
- (ii) To quash the order dated 11.2.2015 (Annexure A/11), by which the respondent No.1 was appointed Sri A.K.Mishra DDG, NSSO (FOD) as the enquiry officer to conduct the enquiry afresh.
- (iii) To direct the respondent No.1 to pass final orders in the departmental proceeding on the basis of the enquiry report submitted by the enquiry officer vide his letter dated 12.9.2014.
- (iv) Or in the alternative quash the entire proceedings by dropping the charges.
- (v) And to allow the application with cost."

OA 929/2015

- "(i) To quash the order passed by the respondent No.4 on 25.6.2015 in reverting the applicant from Senior Statistical Officer to Junior Statistical Officer (Annexure A/7)
- (ii) To quash the order dated 13.8.2015 (Annexure A/10) passed by respondent No.4 in rejecting the representation of the applicant.
- (iii) To direct the respondents, more particularly the respondent No.4 to allow the applicant to continue as Senior Statistical Officer.
- (iv) Direct the respondents to pay all service and financial benefits to the applicant retrospectively.
- (v) And to allow the application with cost."

2. The facts and circumstances of three applicants in these OAs are similar and all of them seek similar reliefs through these OAs. Each applicant has sought for directions relating to disciplinary proceedings initiated by the Respondents against him and in the second OA, he has sought relief against the decision to cancel his ad hoc promotion and not to promote him on regular basis as the

disciplinary proceedings against him is pending. The disciplinary proceedings against the applicant arise from their tour to Berhampur from 17.09.2008 to 26.09.2008. Hence, these OAs were heard together with the consent of the counsels for both the parties and are disposed of by this common order for which the OA No. 17/2016 & OA No. 355/2016 filed by Shri Janaki Nandan Hota are taken as the leading OAs.

OA No. 17/2016 & OA No. 355/2016

3. The facts of both the OAs are that the applicant while working as Statistical Investigator (in short SI) under the respondents, were deployed on duty at Berhampur which was visited by him from 17.9.2008 to 26.9.2008. On return from the tour, he submitted the TA bill in which it was shown that he had stayed in Nandan Plaza Hotel of Berhampur during the period of his tour from 17.9.2008 to 26.9.2008. The applicant was promoted to the grade of SI Grade-I. Instead of paying the TA bill for the month of September, 2008, the respondents initiated a disciplinary proceeding against the applicant with the charge that the bill of Nandan Plaza Hotel amounting Rs. 7300/- submitted by him with his TA bill was a fake and fraudulent bill and a charge memo dated 5.9.2013 (Annexure-A/2) was served on the applicant.

4. The applicant submitted his reply to the charge memo on 19.9.2013. Inquiry Officer (in short IO) was appointed to inquire into the charges vide order dated 11.4.2014. The IO submitted his report to the disciplinary authority (in short DA) who, instead of taking further action under the rule 15 of the CCS (CCA) Rules, 1965 (in

short 'rules'), passed an order dated 17.7.2015 (Annexure-A/4) under the rule 15, asking the applicant to show cause on the decision of the competent authority to get the charges inquired afresh through a different IO. Since no reason for disagreement with the report of the IO was communicated and copy of the inquiry report was enclosed with the order, the applicant submitted a representation to the DA to supply a copy of the IO's report to the applicant. Then the applicant was supplied a copy of the report of the IO on 6.8.2015, but no disagreement note was supplied. On 24.8.2015, the applicant submitted the representation and also approached the Tribunal in OA no. 262/2015 which was disposed of with a direction to the DA to dispose of the representation/ reply of the applicant dated 24.8.2015. Thereafter, the respondents rejected his representation dated 24.8.2015 vide order dated 4.1.2016 (Annexure-A/11 to the OA No. 17/2016) which is impugned in the OA No. 17/2016.

5. The applicant has also filed the OA No. 355/2016 since his case was not considered for promotion to the grade of Senior Statistical Officer (in short SSO) on regular basis from his substantive grade of Junior Statistical Officer (in short JSO). Regular promotion was denied by the respondents as the disciplinary proceeding (in short DP) against him was pending. Since the applicant was promoted on officiating basis as SSO and his regular promotion to SSO was stalled, the respondents reverted the applicant from SSO to the post of JSO vide order dated 25.6.2015 (Annexure-A/7 to the OA No. 356/2016, which has been impugned in the OA No. 356/2016 alongwith the order dated 13.8.2015 (Annexure-A/10) by which the representation of the applicant on the issue of his promotion/reversion was rejected.

The case of the applicant in the OA No. 356/2016 is that when the IO's report exonerated the applicant from the charges and no disagreement note has been communicated by the DA on the inquiry report.

6. The OA No. 17/2016 has been filed mainly on the ground that the DA has not followed the provisions of the rule 15 while passing the order dated 17.7.2015 (A/4) and for that reason, the order dated 4.1.2016 (A/11) was also passed by the respondents rejecting the representation of the applicant and no disagreement note for disagreeing with the report of the IO was supplied by the DA. It is stated in para 5.5 of the OA that there was delay in finalizing the DP although the inquiry was completed on 13.11.2014.

7. The respondents have filed Counter in both the OAs opposing the OAs. It is stated in the OA No. 17/2016 that the applicant had not stayed in the hotel for the period for which he has claimed in the TA bill and this was revealed from the occupancy register of the hotel. It is further stated that the inquiry report did not take into account the replies to some of the questions and other deficiencies for which, the inquiry report of the IO was rejected by the DA who decided to get the inquiry done through another IO. The allegation of delay in finalizing the DP has been denied by the respondents. The Counter in the OA No. 356/2016 stated that the applicant was promoted on ad-hoc basis as a temporary measure which can be cancelled at any time without assigning any reason and that such ad-hoc promotion cannot give rise to any claim on the part of the applicant. The case of the applicant for regular promotion to the post of SSO was considered by the DPC on 31.3.2015 and the findings of the DPC in respect of the

applicant was kept in the sealed cover due to the pending disciplinary case. Then the order of the Ministry for promotion to the post of SSO was issued excluding the applicant. Then as per the circular dated 15.6.2015 and dated 25.6.2015, the ad-hoc promotion of the applicant was cancelled by the respondents and the representation of the applicant was also rejected.

8. We have heard learned counsels for both the parties and perused the pleadings on record as well as the written notes submitted by both the parties including the copy of the judgments relied upon by the parties. Important questions which need to be decided are:

- (i) Whether the order dated 17.7.2015 (Annexure-A/4) and order dated 04.01.2016 (Annexure-A/11) of the OA No. 17/2006 violate the rule 15 of the CCS (CCA) Rules, 1985; and
- (ii) Whether the order dated 25.6.2015 (A/7 to the OA No. 356/2016) cancelling the ad-hoc promotion of the applicant is sustainable under law.

9. The applicant in his Rejoinder filed both the OAs has highlighted the issue of delay in disposal of the disciplinary proceedings which has resulted in his harassment and financial problems for his family. Hence, a relevant issue to be decided in the case is as under:

- (iii) Whether the disciplinary proceeding against the applicant is vitiated due to delay in processing the same by the respondents.

10. It is noted that in OA No. 17/2016, vide order dated 2.2.2016 in which the following order was passed while staying further progress of the DP:-

"Till such time no such proceeding in pursuance of the letter dated 17.7.2015 (Annexure-A/4) as well as order dated 04.01.2016 (Annexure-A/11) will continue."

Further, vide order dated 22.3.2016, it was stated as under:-

"Interim order dated 2.2.2016 shall continue until further orders." Thus, the disciplinary proceedings against the applicant is stayed until further orders of this Tribunal."

11. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of **Punjab National Bank and others vs. Kunj Bihari Misra** reported in AIR 1998 Supreme Court 2713 to strengthen his argument that when the DA disagrees with the inquiry report, the DA should record tentative reasons for disagreement and the same should be given to the charged official to represent on the findings before proceeding further. Regarding facts, it is observed in the cited judgment as under:-

"In these two appeals the common question which arises for consideration is that when the inquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved than can the disciplinary authority differ from the tan give a contrary finding without affording any opportunity to the delinquent officer.

.....

On the receipt of the reports from the inquiry officer the disciplinary authority, namely, the Regional Manager of appellant bank, to whom the reports were submitted, did not agree, in the case of Misra, with the findings of the inquiry officer in respect of charges two to six and by a short order dated 12th December, 1983 passed an order holding that it was an undisputed position that Misra being Assistant Manager was in the joint custody of the keys of the currency chest and he had personal responsibility towards the safe custody of the cash and that no material had been placed during the

inquiry proceedings to establish that he had discharged his duties in the manner expected of him. The disciplinary authority accordingly held Misra to be responsible for the shortage in question and held that a minor penalty of proportionate recovery ought to be imposed on the respondent for the loss of Rs.1 lac caused to be the bank due to negligence on his part in the discharge of his duties. Similarly in the case of Goel the disciplinary authority did not agree with the inquiry report and passed an order dated 15th December, 1983 directing proportionate recovery of the loss of Rs. 1 lac caused to the bank by him. It may here be noticed that during the pendency of these disciplinary proceedings both Misra and Goel superannuated on 31st December, 1983. The disciplinary authority accordingly directed the recovery of the money from the bank's contribution to the provident fund of the respondent officers."

After examining the Regulation of the Bank applicable for the disciplinary proceedings and earlier judgments, Hon'ble Apex Court held as under:-

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case

(supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law."

12. Other judgment cited by the applicant's counsel is in the case of **K.R. Deb vs. The Collector Central Excise, Shillong**, reported in AIR 1971 Supreme Court 1447. In this case, while considering this case in which the DA considered the inquiry report submitted in a disciplinary proceeding to be defective and ordered fresh inquiry by another officer since the first inquiry did not find any conclusive proof against the charged official, it is held by Hon'ble Supreme Court in the case of K.R.Deb (supra) as under:-

"12. Rule 15(1) of the Classification and Control Rules reads as follows:

"(1) Without prejudice to the, provisions of; the [Public Servants \(Inquiry\) Act](#), 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) 'to (vii) of rule 13 shall be passed except after an inquiry, held, as far as may be,2 in manner hereinafter provided."

Clause (2) of. rule 15 provides for framing of charges and communication in writing to the 'government servant of these charges With the statement of .allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such. of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under cl. (9) "the Disciplinary

Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice.

13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.

14. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

15. Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant.

16. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of art. 311(2) of the Constitution. The appeal is accordingly allowed and the order dated June 4, 1962 quashed. and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office....."

13. While examining the facts regarding the charge memo and disciplinary proceedings against the applicant, the inquiry report (copy submitted by the respondents while filing to the interim order

dated 2.2.2016 in the OA No. 17/2016 to stay further proceeding in the DP) has stated as under:-

“Inquiry Report -

As per the MOS&PI Order No. 11018/5/2013-SSS dated Nil of April, 2014, I was appointed as Inquiry Officer to inquire into the charges framed under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 against Shri J.N.Hota, S.I Gr.I, NSSO (FOD), Regional Office, Bhubaneswar. Shri S.P.Srivastava, Deputy Director, NSSO (FOD), Hqrs. Office, R.K.Puram, New Delhi (now Joint Director, CPD, NSSO, New Delhi) was appointed as Presenting Officer vide MOS*PI Order No. 11018/5/2013-SSS dated Nil of April, 2014 to present the case, on behalf of the Secretary, MOS&PI, Government of India (Disciplinary Authority in support of article of charge.

The charge Memorandum No. 11018/2013-SSS dated 05.09.2013 issued to Shri J.N.Hota by Disciplinary Authority contained statement of article of charges, statement of the imputations of misconduct or misbehaviour, a list of documents by which and list of witnesses by whom, the article of charges proposed to be sustained as per under mentioned detailed.

.....

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI J.N.HOTA, SUPERINTENDING OFFICER, NSSO (FOD), REGIONAL OFFICE, BHUBANESWAR.

ARTICLE-I:

That the said Shri J.N.Hota while working as Assistant Superintending Officer (S.I.Gr.II) in the Regional Office of NSSO (FOD) at Bhubaneswar submitted his TA Bill for the month of September 2008 by annexing a fake and fraudulent bill No. 47 dated 26.9.2008 amounting to Rs. 7300/- purportedly issued by Hotel NANDAN PLAZA, R.C.Church Road, Berhampur for his having stayed in Room No. 201 (for 10 days) food and transportation charges (for 10 days) for the period from 17.09.2008 to 26.09.2008 without actually staying in the said hotel for the entire tour period. Shri Hota, however, managed to get the bill from the said hotel for the entire period of his tour from 17.09.2008 to 26.09.2008 without staying therein for the entire period of his approved tour for Berhampur and by his aforesaid act, the said Sri Hota has defrauded the public exchequer by an amount of Rs. 7300/- by claiming fake and fraudulent TA claim and getting the amount reimbursed as per his entitlement.

Shri J.N.Hota thus committed gross misconduct in as much as he failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant thereby violating Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.

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C. **Assessment of facts on Article-I.**

The Articles of charge has been evaluated on the basis of the (i) listed prosecution documents PE01 to PE-4, (ii) additional defence documents DE-1 to DE-6, (iii) deposition by prosecution witness PW-1, (iv) deposition by defence witnesses DW-1 and DW-3 (v) general examination of CO by IO, (vi) written statement of CO in reply to Charge memo (vii) prosecution brief submitted by PO & (viii) defence brief submitted by CO.

(1) The main document based on which the charge sheet has been framed is the photocopy of the 3 pages (page 49, 50 & 56) of occupancy register of the hotel Nandan Plaza (Ref:PE-4) where the CO claims to have stayed during his field tour at Berhampur in September, 2008. These 3 pages have been got authenticated by the Hotel Manager as claimed by the prosecution. The other document which is also of immense importance to the case is the Hotel Bill No. 47 of 26.09.2008 for Rs.7300/- submitted by the CO along with his TA claim (Ref: PE-3(iii)) since this document has been found to be fake and fraudulent by the Disciplinary Authority (DA).

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f) When Sh. B. Mahapatra (DW-1) was sent to that Hotel by DDG, Bhubaneswar for further enquiry on the occupancy register and genuineness of the certified photocopies on 13.07.2012, it was learnt that Original Occupancy Register had been lost and management has also changed. Even the occupancy register was not available with the Police station (Ref: D-11 to 15 of DW-1). Sh. Mahapatra was also not sufficiently equipped with all the pages whose authenticity required verification from the Hotel management. Though the hotel Managers (the then manager and present manager) & police officers were present he could not do the complete verification and obtain written confirmation to that effect from the Manager or police. From the deposition of Sh. Mahapatra, it appears that Sh. Mahapatra was sent to check if original occupancy register is available and if available compare the photocopy handed over to him by DDG, RO, Bhubaneswar with the original register to confirm its genuineness. However, this could not be achieved. The confirmation of reliability of the photocopies by the managers on the basis of name, logo, seal etc without any written statement (Ref: D-24 to 27 of DW-1) do not provide required strength to the argument of PO.

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CONCLUSION:

On the basis of averments made above, the finding of the inquiry can be summarized as under:

(i) Charges framed under Article-1 could not be established."

14. The objection to the interim order filed on 15.9.2016 has a copy of the order dated 28.1.2016 passed by the DA appointing another IO to inquire into the charges. The order dated 28.1.2016 stated as under:-

"AND WHEREAS, Sh. J.N.Hota raised objection to the genuineness of certain prosecution documents. The CO also mentioned that no specific lacuna and shortcoming have been pointed out and has required that the enquiry report may be referred back to the IO with specific shortcomings, if any, and finally the CO disagrees with the decision to hold further enquiry by a different I.O.

AND WHEREAS, the Disciplinary Authority, noted that the reasons given by the CO in his response disagreeing with the decision of the Disciplinary Authority to conduct further inquiry are not substantial and after considering the representation dated 24.08.2015 of Sh. J.N.Hota, JSO disposed of the same vide order of even number dated 4.01.2016 as per the directions of the Hon'ble CAT, Cuttack vide its order dated 5.11.2015 in the OA No. 260/00762 of 2015.

NOW THEREFORE, the Disciplinary Authority, in exercise of powers conferred by provisions of Rule 14 read with Rule 15 of CCS (CCA) Rules, 1965 appoints Sh. A.K.Mishra, Deputy Director General, NSSO (FOD), Bhubaneswar as Inquiry Authority to enquire into charges against Sh. J.N.Hota, JSO."

15. Learned counsel for the respondents has filed written notes of argument reiterating the stand taken in the pleadings of the respondents. It is stated that the disciplinary authority differed with the report of the IO for which he gave opportunity to the applicant to represent and after considering the representation, the DA has passed the order dated 4.1.2016 rejecting the representation. It is further stated in the written notes that ".... Annexure-11 & 12 specifically dealt with the irregularities in procedure and inherent incongruities with regard to material facts and conclusion drawn in respect of the article of charges and there are numerous lacuna and shortcoming in

the ongoing proceedings completely dictated at the threshold by the disciplinary authority it would not be just and proper to issue a separate copy of the disagreement for which on that score the proceeding need not be quashed." However, there is nothing on record to reveal the reasons for the disciplinary authority concluding about the inquiry report as above.

16. In the factual circumstances as discussed above, on the issue no. (i) of para 7 relating to violation of the rule 15, it is noted that the DA has not issued a note of disagreement indicating tentative reasons for which he did not agree with the report of the IO and after considering the representation of the applicant, the DA has passed the order to conduct the inquiry afresh through another IO. Applying the ratio of the judgment of Hon'ble Apex Court in the case of K.R. Deb (supra) as extracted in para 11 above, we are of the view that there has been gross violation of the rule 15 of the CCS (CCA) Rules, 1965 by the disciplinary authority in not communicating the reasons for his disagreement with the inquiry report and for ordering fresh inquiry by a different IO, which violate the provisions of the rule 15. We are unable to agree with the contentions of the respondents that there is no violation of the rules in this case. The ratio of the judgment of Hon'ble Apex Court in the case of K.R. Deb (supra) will be applicable to this case. Accordingly, the order dated 17.07.2015 and 04.01.2016 passed by the Disciplinary Authority have to be considered as violative of the Rule 15 of CCS (CCA) Rules, 1965 and **the issue no (i) of para 7 has to be decided against the respondents.**

17. Regarding the issue no. (ii) of para 7 relating to validity of cancellation of ad-hoc promotion of the applicant, undisputedly the applicant was given ad-hoc promotion to officiate as SSO and it was a temporary arrangement. The case of the applicant was considered by the DPC for regular promotion to the post of SSO, but the finding of the DPC was kept in a sealed cover as the disciplinary proceeding against the applicant is pending. There is nothing on record to show that the applicant was found by the DPC to be unfit for promotion to the post of SSO or the performance of the applicant against the higher post in which he was working on ad-hoc basis, was deficient so as to warrant cancellation. Regarding the reason for cancellation of the applicant's ad-hoc promotion, it is stated in the Counter filed in the OA No. 355/2016 that:-

"6..... In the meantime Departmental Promotion Committee (DPC) meeting was held on 31.3.2015 to consider promotion of Junior Statistical Officer to the post of Senior Statistical Officer. As the applicant was not cleared from the Disciplinary Proceeding and Vigilance Angle which is pending against him with the Disciplinary Authority, so the DPC did not consider the case of the applicant alongwith ten other incumbents of SSS for promotion from the post Junior Statistical Officer to the post of Senior Statistical Officer in the grade pay of Rs. 4600-00 and recommended to keep its recommendations as regard their promotion in sealed cover, in terms of DOPT OM No. 22034/4/2012-Estt(D) dated 2.11.2012 and other relevant instruction on the subject.

7. That the Ministry issued Order No 12016/1/2014 -SSS dated 16.4.2015 for promoting Junior No.A-32016/7/2014 E-II dated 15.6.2015, NSSO (FOD), RO, Bhubaneswar issued Order No A-23013/2/2014-ORE dt 25.6.2015 vide which ad-hoc promotion as Senior Statistical Officer to the applicant and others were cancelled with effect from 16.4.2015 with immediate effect....."

It is seen from the order dated 25.6.2015 (Annexure-A/7 to the OA No. 355/2016) that three officials whose ad-hoc promotion was cancelled are three applicants in these OAs before us. It is seen from the order dated 25.6.2015 that reference to the order dated 16.4.2015 of the Ministry has been made for such cancellation and the cancellation of the ad-hoc promotion has been made with retrospective effect from 16.4.2015 although the order of cancellation was issued on 25.6.2015. The respondents have not enclosed a copy of the Ministry's order dated 16.4.2015 instructing the respondents to cancel the ad-hoc promotions and it is not placed before the Tribunal if such ad-hoc promotion of any other officials whose case could not be considered by the DPC was also cancelled. On record, the ad-hoc promotion of three applicants who are facing the disciplinary proceedings was cancelled by the respondents with retrospective effect.

18. The applicant had filed the M.A. No. 388/2016 in OA no. 355/2016 on 29.6.2016, enclosing a copy of the DOPT OM dated 24.12.1986 in which it is provided that in case of initiation of a DP against persons officiating on ad-hoc promotion for more than a year and the vacancy is not short-term vacancy, then he need not be reverted on initiation of the DP. The M.A. was objected to by the respondents referring to the copy of the OM dated 25.8.2015 in which it is stated that the ad-hoc promotions made till 16.4.2015 are treated as cancelled due to change in the Recruitment rules and restructuring of the SSS. No copy of the order dated 16.4.2015 was enclosed by the respondents with the Objections.

19. It is noticed from the preceding paragraphs that the justifications furnished by the respondents necessitating the cancellation of applicant's ad-hoc promotion with retrospective effect w.e.f. 16.4.2015 are not at all convincing. The justifications given in the order dated 16.4.2015 have not been placed before us by the respondents. In addition, ad-hoc promotion of no other official of SSS except the present applicants has been cancelled in the order dated 25.6.2015 (Annexure-A/7 to the OA No. 355/2016). Further, there is nothing on record to show if any opportunity of hearing was given to the applicant before cancellation of the ad-hoc promotion. **Hence, retrospective cancellation of the applicant's ad-hoc promotion vide order dated 25.6.2015, is not justified and the said order is not sustainable under law and issue no (ii) of para 7 is decided accordingly.**

20. Regarding the issue of delay in disposal of the disciplinary proceeding, it is seen from the inquiry report (copy enclosed with the Counter filed in OA No. 355/2016) that the TA bill submitted by the applicant was settled after disallowing certain claims. The then Director, Sri Parida (PW-1) during his visit to Berhampur on 30.12.2009 verified the authenticity of the hotel bill submitted by the applicant from the concerned hotel and he found the claim to be false. Then he collected copy of some documents from the hotel and sent it to the head office for initiation of the disciplinary proceeding. No charge memo was issued till retirement of Sri Parida on 31.1.2012, The new Director sent another officer to the hotel for authenticity of photo copy some pages of the occupancy register which were obtained by Sri Parida. But this could not be verified as the original register

was lost and the ownership of the hotel had also changed. A report to that effect was furnished by the officer deputed by the new Director, who decided to proceed with the DP by issuing the charge memo dated 5.9.2013 was issued to the applicant after about 5 years of the cause of action which arose after the applicant's tour to Berhampur from 17.9.2008 to 26.9.2008. No reason has been furnished to explain the delay of about 5 years for issuing the charge-sheet to the applicant, particularly when the then Director had recommended for the DP after verification in the hotel by himself. Due to delay, the management of the hotel had been changed and the original occupancy register was lost. The then Director, Sri Parida did not think it appropriate to authenticate the photo copy of the occupancy register obtained by him and did not expedite the process for initiation of DP against the applicant within a reasonable time. In these circumstances the IO in his report has come to the finding that the charges against the applicant have not been established in the inquiry and the DA did not think it appropriate to record the tentative reasons for his disagreement with the inquiry report. The inquiry report was submitted to the DA on 27.5.2015. But a copy of the inquiry report was not supplied to the applicant till 6.8.2015 and on receipt of the representation, the DA passed the order for fresh inquiry through another IO which is against the provisions of the CCS (CCA) Rules, 1965. From these facts, it is clear that there is delay in initiation and disposal of the disciplinary proceeding against the applicant. But there is nothing on record to show that such delay is deliberate on the part of the Respondents. Hence, the disciplinary proceeding cannot be considered to be vitiated on the ground of delay and the issue No.(iii) of para 9 is answered accordingly.

21. We take note of the judgment of Hon'ble Apex Court in the case of B.C. Chaturvedi vs. Union of India & Anr., reported in 1996 AIR 484, in which it was held that whether delay in initiating or concluding the disciplinary proceeding will vitiate a disciplinary proceeding will have to be decided from the facts of each case. Although in this case the applicant has suffered due to delay in conducting the DP, it has not been demonstrated that the DP is vitiated due to delay.

22. From the discussions in the preceding paragraphs above, it is clear that the orders passed by the disciplinary authority in OA No. 17/2016 have violated the rule 15 of the CCS (CCA) Rules, 1965. Further, in OA No. 355/2016, the order dated 25.6.2015 (Annexure-A/7) cancelling the ad-hoc promotion of the applicant with retrospective effect without giving any opportunity of hearing to the applicant and order dated 13.08.2018 (Annexure-A/10) rejecting his representation are not sustainable under law. Hence, we set aside and quash the order dated 17.07.2015 (Annexure-A/4) and the order dated 04.01.2016 (Annexure-A/11) of OA No. No. 17/2016 and also the order dated 25.6.2015 (Annexure-A/7) and order dated 13.08.2015 (Annexure-A/10) to the OA No. 355/2016. The Respondents are directed to extend all consequential benefits including arrear salary to the applicant, as per law, ignoring the order dated 25.6.2015 (Annexure-A/7) of OA No. 355 of 2016. The disciplinary authority is directed to pass an appropriate order as per law on the inquiry report dated 27.5.2015 of the inquiry officer and conclude the disciplinary proceeding against the applicant in accordance with the provisions of the CCS (CCA) Rules, 1965 within

03 (three) months from the date of receipt of a copy of this order. After conclusion of the disciplinary proceedings, necessary action as per law will be taken by the respondents for regular promotion of the applicant to the post of SSO after considering the recommendation of the DPC kept in a sealed cover due to pending disciplinary proceedings.

**OA No. 16/2016, OA No. 355/2016,
OA No. 212/2016 and OA No. 929/2015.**

23. In accordance with the discussions above, the order dated 20.07.2015(Annexure-A/4) and order dated 04.01.2016 (Annexure-A/11) of the OA No. 16/2016 and the order dated 25.06.2015 (Annexure-A/7) and order dated 13.08.2015 (Annexure-A/9) of the OA No. 356/2016 are set aside and quashed. Similarly, the order dated 08.07.2015 (Annexure-A/4) and the order dated 11.02.2015 (Annexure-A/11) of the OA No. 212/2016 and the order dated 25.06.2015 (Annexure-A/7) and order dated 13.08.2015 (Annexure-A/10) of the OA No. 929/2015 are set aside and quashed. The Respondents are directed to extend all consequential benefits including arrear salary to the Applicants in these OAs, as per law, ignoring the order dated 25.06.2015. The Disciplinary Authority is directed to pass an appropriate order on the report of the inquiry officer in these OAs and to conclude the disciplinary proceedings against the Applicants in accordance with provisions of CCS (CCA) Rules, 1965 within 03 (three) months from the date of receipt of a copy of this order. After conclusion of the disciplinary proceedings, necessary action as per law will be taken by the respondents for regular promotion of the applicant to the post of SSO after

considering the recommendation of the DPC kept in a sealed cover due to pending disciplinary proceedings.

24. All the OAs are allowed to the extent as mentioned in paragraphs 22 and 23 above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)
MEMBER(ADMN.)

BKS