CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Transferred Application No.260/22/2010

Date of Reserve: 06.02.2019
Date of Order: 18.03.2019

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

Bijay Kumar Gochhayat, aged about 41 years, S/o. Sri Krushna Chandra Gochhayat, resident of Village-KothiaSahi, PO/PS-Kujanga, Dist-Jagatsinghpur – at present working as Upper Division Clerk, Office of Executive Engineer, Hydrological Division, N.W.D.A., JalasampadBhawan, Salt Lake City, Kolkata-91

...Applicant

By the Advocate(s)-Mr.K.C.Kanungo

National Water Development Agency represented through:

1. Director General, N.W.D.A. Community Centre, Saket, New Delhi-17

2. Chief Engineer (South), N.W.D.A., 10-2-289/39, Santi Nagar, Hyderabad-28 (AP)

3. Superintending Engineer(W.E.) Investigation Circle, N.W.D.A., 759, 1st 'A' Main, 44 Cross, 8th Block, Jayanagar, Bangalore-560 082

4. V.V.RamanSarma, Executive Engineer & Inquiry Officer, Investigation Division-II, N.W.D.A. House No.10-2-289/39, Shanti Nagar, Hyderabad-500 028

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

PER SWARUP KUMAR .MISHRA,MEMBER(J)

Earlier, the applicant had approached the Hon'ble High Court of Orissa in OJC No.10524/2001challenging the legality and validity of disciplinary proceedings initiated against him, besides the order of punishment imposed on him by the Disciplinary Authority and the order of the Appellate Authority upholding the punishment. Vide order dated 29.10.2009 of the Hon'ble High Court, the above mentioned writ petition was transferred to the Central

Administrative Tribunal, Cuttack Bench and renumbered as Transferred Application (T.A.) No. 22 of 2010. In this T.A., the applicant has prayed for the following:

> "In view of the submissions set forth above, your Lordship may be graciously be pleased to issue "Rule NISI' calling upon the opposite parties to show cause as to why the charge sheet, the inquiry proceedings, the inquiry report, the order of punishment of OP No.2, confirming the order of punishment of the Opposite Party No.1 and the second order of punishment imposed by Opposite Party No.2 and other consequential orders should not be quashed and if the Opposite Parties fail to show cause or insufficient cause make the said 'Rule' absolute.
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> And
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> Be further pleased to issue a writ of certiorari or any other appropriate writ or any other appropriate writ or writs s quashing charge sheet at Annexure-1, the inquiry proceedings at Annexure-10, the inquiry report at Annexure-13, the order at Annexure-15, 17, 19 & 22 and the consequential orders of OP No.3 at Annexure-20 & 20A.
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> And
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> Be further pleased to pass any other writ(s) direction(s) or order(s) as deemed fit and proper in the facts and circumstances of the case.

2. Facts of the case in a nutshell are that the applicant while working as Lower Division Clerk (in short L.D.C.) in the office of the Executive Engineer, Investigation Division, National Water Development Agency (NWDA), Bhubaneswar under the administrative control of Opposite Party No.1 was transferred to Bangalore on promotion as Upper Division Clerk (U.D.C.) and consequently, he was relieved from Bhubaneswar on 15.09.1995 (AN) in order to join the new place of posting at Bangalore. Since he did not report for duty at the new place of posting and thus remained unauthorized absence without obtaining any prior permission, a Memorandum of Charge dated 12.08.1996(A/1) was issued to the applicant by Respondent No.2 asking him to submit his written statement of defence and also to state whether he desired to be heard in person. The applicant submitted his statement of

defence vide A/2 dated 3.9.1997 denying the charges, he pointed out that the copies of listed document vide Annexure-III to the charge sheet being unsigned, the signed copy along with some other required documents may be provided so as to enable him to submit his written statement of defence . Be that as it may, ultimately, the applicant having denied the allegations leveled against him, it led to initiation of Departmental Enquiry under Rule-14 of CCS(CCA) Rules, 1965. The Inquiry Officer and the Presenting Officer were appointed vide order dated 20.1.1998. OP No.4 in the capacity of Inquiry Officer directed the applicant to attend preliminary hearing in the office of the Executive Engineer, I.B.II, Hyderabad. Due to his ill health, the applicant requested the OP No.4 (IO) for change of the place of inquiry from Hyderabad to Bhubaneswar. Simultaneously, he also prayed for engaging a legal practitioner as his defence assistant. Both the requests of the applicant were turned down by OP No.4 vide communication dated 22.5.1998 (A/7). The applicant's further request for change of place of the inquiry having was not acceded to and OP No.4 conducted the inquiry ex parte. After the closure of the evidence, the P.O. and the applicant submitted their respective written briefs on the basis of which the I.O. submitted his report to the Disciplinary Authority (OP No.2) on 23.9.1998 holding that the changes leveled against the applicant have been proved. The applicant was supplied with a copy of inquiry report on 5.11.1998, in response to which, he submitted his representation to the Disciplinary Authority on 24.11.1998. Vide order dated 8.10.1999, the Disciplinary Authority imposed punishment of reduction of pay by one stage i.e., Rs.4100/- in the scale of Rs.4000-100-6000/- for a period of two years, with further direction that the applicant will not earn increments of pay during the period of such reduction and on the expiry of the period of two

years, the reduction will have the effect of postponing his future increments. Aggrieved with this, the applicant submitted an appeal dated 22.11.1999, which was rejected by the Appellate Authority vide order dated 21.7.2000. Applicant has pointed out that after awarding punishment vide order dated 18.10.1999, OP No.2 further imposed punishment of 'break in service' thus treating the period from 16.9.1995 to 19.7.1998 as unauthorized absence and thereafter, recovery of leave salary which had already been paid to the applicant was made vide A/20(A) dated 18.9.2000. The representation of the applicant against the order of break in service was rejected vide order dated 5.1.2001 whereafter, he submitted a further representation on 22.2.2001 and thereafter, the applicant approached the Hon'ble High Court in the writ petition as mentioned above.

3. In support of his case, the applicant has pleaded that there was no deliberate intention on his part to join the promoted post at Bangalore. It was due to his illness with effect from 7.9.1995 to 17.7.1998, he could not join in the new place of posting. In this connection, he has drawn the attention of this Tribunal to Annexure-18 dated 12.11.1999, by which the competent authority has granted leave from 7.9.1995 to 20.7.1998. Further, the applicant has submitted that copies of medical certificates for the period from 8.4.1996 till 5.3.1997 which were available had been sent to OP No.4 explaining the applicant's inability to attend the inquiry. Hence, it is submitted that in the face of medical certificates in support of his illness being available, drawal of charge against the applicant under Rule-14 of CCS(CCA) Rules, 1965, was uncalled for. According to applicant, this is the background for which he wanted to change the place of inquiry from Hyderabad to Bhubaneswar. According to applicant since he was deprived of a reasonable opportunity to

defend his case, the entire proceeding stands vitiated. It has been pointed out that the IO while taking note of the existence of representation of the applicant, along with the medical certificates did not assign any reason as to why he set the petitioner ex parte in the proceedings. In this backdrop, the applicant has submitted that the punishment, as imposed, is arbitrary and illegal, besides the same is disproportionate to the gravity of offence. The order of the appellate authority is bald and cryptic and bereft of the consideration given to all the points raised in his appeal.

4. Contesting the claim of the applicant, the Opposite Parties have filed a detailed counter. At the outset, they have raised the point of maintainability of the application on the ground that this Tribunal lacks territorial jurisdiction to adjudicate this matter. In this connection, we would like to mention that since the point of maintainability has been decided by the 3rd Member Bench vide order dated 11.09.2018 holding that the T.A.No.22 of 2010 is maintainable in the C.A.T., Cuttack Bench, the said aspect is no longer open to be revisited.

5. However, as regards the merits of the matter, the Opposite Parties have submitted that there has been no violation of the principles of natural justice in the conduct of disciplinary proceedings. Since the applicant consequent upon his relief from Bhubaneswar on 15.9.1995 did not join the promotional post at Bangalore and remained unauthorizedly absent from duty, disciplinary proceedings under Rule-14 of CCS(CCA) Rules, 1965 was initiated against the applicant. It is the case of the Opposite Parties that one Assistant Engineer, O/o. Chief Engineer (South) of NWDA at Hyderabad had been appointed as Presenting Officer and he being not a legal practitioner, the representation of the applicant for engagement of a lawyer to act as his Defence Assistant was rejected. It has been pointed out that diabetic and hypertension are common

diseases, which do not prohibit to undertake train journey. In the circumstances, the applicant could have attended inquiry, for which T.A. & D.A., as admissible would have been granted by the Agency. According to the Opposite Parties, in spite of several adjournments by the I.O., since the applicant did not attend the inquiry proceedings, the same was finally adjourned to 20.7.1998 on which date, the applicant also did not attend the inquiry. Therefore, there being no other alternative than to set the applicant ex parte under Rule-14(6) of CCS (CCA) Rules and to conclude the inquiry. The Opposite Parties have submitted that after hearing, the IO directed the applicant to send his written brief of defence in response to which, the applicant sent his written brief of defence vide A/12 to the IO. The IO, after considering all the materials on record, held the charges against the applicant proved on the basis of the following findings:

i) After relieve the CO (petitioner) has not joined on duty at his new place of posting on promotion as U.D. Clerk and remained absent from duty for a period of more than 2 years and 10 months.

ii) The charged official also well informed of the impending disciplinary action against him.

iii) The absence of charged official (petitioner) from duty amounts to unauthorized absence from duty as per Rule-11 of CCS(CCA_) Rules, 1965.

6. According to Opposite Parties, after a long stay for more than 2 years and 10 months of unauthorized absence, the applicant joined in his duty at the new place of posting at Bangalore on 20.8.1998. In this respect, the Opposite Parties have submitted that the punishment of reduction of pay for a period of 2 years and deduction of increments of pay for the same period vide Annexure-15 is just and proper in the facts and circumstances of the case. They have stated that the entire proceedings has been conducted after

following the due process of rules/law and there has not been violation of the principles of natural justice at any stage of proceedings.

7. Applicant has not filed any rejoinder to the counter. We have heard the learned counsels for the parties and perused the records. We have also gone through the written note of argument filed by the applicant.

8. In the written notes of submission, the applicant has raised a point that the findings of the IO that consequent upon his relief on promotion as UDC from Bhubaneswar with effect from 15.09.1995(AN), he did not report for duty at the new place of posting at Bangalore till 20.07.1998 (AN) and his absence from duty being without any proper permission is unauthorized in terms of GOI Instruction - 5 under Rule-11 of CCS(CCA) Rules, 1965 is perverse, since the findings so arrived at are based on extraneous consideration apart from the same being beyond the scope and extent of the charge sheet.

9. As regards unauthorized absence, the applicant has pointed out that the same was regularized by Respondent No.3 vide Abnnexure-18. The applicant has pleaded that the punishment of reduction in pay as well as break in service amounts to double jeopardy.

10. We have considered the rival submissions and given our anxious consideration to the arguments advanced at the Bar. Admittedly, after relief of the applicant from Bhubaneswar on 15.9.1995, he did not report for duty in the promotional post as UDC at Bangalore and that was the reason for which the disciplinary proceeding for unauthorized absence from duty was initiated against him. It is a fact that after the IO and PO were appointed to conduct disciplinary inquiry, the place of inquiry was fixed at Hyderabad. Applicant's representation for change of the place of inquiry from Hyderabad to

Bhubaneswar having been rejected, it was incumbent on his part to attend inquiry at Hyderabad by availing TA & DA. Despite repeated adjournments, since the applicant did not attend inquiry, there was no other course open for the IO than to proceed with the inquiry ex parte. The fact of unauthorized absence of the applicant from duty is not in dispute. In this connection, the relevant part of the findings of the IO are as follows:

> "2.Several official communications to the CO directing him to report for duty at Bangalore forthwith or within specified period have failed to heed positive response from the CO. The CO preferred to remain absent from duty by refraining to join at his new place of posting even though his first representation for retention at Bhubnaneswar by forgoing the said promotion was negatived by the Headquarter office of NWDA as early as on 26.9.96 (S-3) which also contained specific directions to him to report at Bangalore by 16.10.95, failing which necessary disciplinary action would be taken. This was further followed up by Superintending Engineer, Investigation Circle, Bangalore by serving 3 memos (S-4, S-5 & S-6) to the C.O. to report for duty in his office but were in vain. Finally, the Headquarters Office's memorandum dated 18.3.96 (S-7) also directed the CO to join immediately as UDC at Bangalore indicating that action as per rules will be initiated in case of failure to do so. Thus, the CO is well informed of the impending disciplinary action against him for not promptly joining duty at Bangalore, his new place of posting.
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> 3.Without going into the controversies in the versions of the CO and PO concerning the receipt of non-receipt of the time-to-time intimations of his illness sent under certificate of posting by the CO in the office of the Superintending Engineer, Investigation Circle, Bangalore and even allowing the benefit of doubt in favour of the CO, mere intimation of the fact of his illness cannot be construed to be the permission given to him to remain absent. Since no permission/sanction of any kind of leave to the CO for the period of his absence has been communicated by the said Superintending Engineer, the absence of the CO from duty remains unauthorized.
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> 4.The main alibi claimed by the CO for his long absence over 2 years and 10 months is his illness on account of chronic diabetes and hypertension. However this long period of his absence is far beyond the limits of 3 months and 6 months under Rule 32(2) (a) and 32(2)(b), respectively. The decease of diabetes and hypertension by which the CO suffered during his absence from duty is also not covered under 32(2)(d), where leave upto 18 months could be considered

> ASSESSMENT:
> Keeping in view, the foregoing conclusions, it is finally assessed that the CO consequent to his relief and promotion as UDC from Bhubaneswar on 15.9.95(AN) has not reported for duty at the new place of posting viz., Bangalore till 20.7.98(AN) and his absence being without any proper permission is unauthorized absence from duty in the terms of GOI instruction 5 under Rule 11 of CCS(CCA) Rules, 1965".

11. It is the case of the applicant that since he reported for duty on 20.7.1998(FN), the findings of the IO that the applicant had remained unauthorizedly absent from 19.5.1995(AN) till 20.7.1998(AN) is beyond the scope and extent of the charge sheet. In our considered view, it may be a fact that applicant's joining duty on 20.7.1998 might not be within the knowledge of the I.O. Be that as it may, unauthorized absence of the applicant from duty even prior to the date of his joining on 20.7.1998 is writ large and therefore, that by itself speaks volume.

12. At this juncture, we would like to note that the Hon'ble Supreme Court in a number of cases has emphatically defined the scope of judicial interference in a disciplinary matter. In **Surender Kumar vs. Union of India (2010) 1 SCC 158**, the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

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

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

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial

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

15. From the ratio of the judgments of Hon'ble Apex Court discussed above, it is clear that the scope of judicial review in disciplinary proceedings is limited to compliance of the statutory rules and if the conclusions are based on some evidence. As discussed in the preceding paragraphs adequate grounds to challenge the impugned punishment order dated 8.10.1999 (Annexure-15 to the OA) have not been made out in the OA so as to justify any interference in the said order dated 8.10.1999 and in the order dated17.07.2000 (Annexure-17) of the appellate authority.

16. It is noticed that before passing of this order by appellate authority, respondent no.3 sanctioned medical leave for the absence period from 16.9.1995 to 19.7.1998 on the basis of the medical certificate furnished by the applicant vide order dated 12.11.1999 (Annexure-18). Thereafter, the

disciplinary authority (respondent No.2) passed an order dated 25.8.2000 (Annexure-19) cancelling the medical leave sanctioned vide order dated 12.11.1999 and treating the applicant's period of unauthorized absence from 16.9.1995 to 19.7.1998, which was included as the charge against the applicant in the disciplinary proceeding resulting in the punishment order dated 8.10.1999, as 'break in service'. The applicant in the Ground No. 10 of the TA has stated as under:-

> "Disciplinary Authority after passing an order of punishment can impose second punishment (Annexure-19) which was implemented by O.P. No.3 as Administrative Authority. The 'break in service' is another major punishment imposed by the O.P. No-2 after he becomes functious-in-officio. The order of punishment at Annexure-15 cannot be reviewed or supplemented by the same Authority again."

In reply, the respondents have stated the following in para 2 of the Counter:-

> "2.....The word "second punishment" is used in this writ application is absolutely baseless. The Disciplinary Authority has taken the administrative action after imposition of a penalty. Therefore there is no question of violation of any natural justice or imposition of "Second Punishment" and he is not entitled to raise all such false and fictitious allegations in this writ petition, which is not maintainable here and therefore the writ petition is liable to be dismissed."

17. It is further stated in para 14 of the Counter that after imposition of penalty on 8.10.1999, the applicant cunningly applied for sanction of medical leave for regularization of his leave on medical ground. Such leave was inadvertently allowed by the respondent No.3 on 12.11.1999 (Annexure-18) and the respondent No. 2 passed the order dated 25.8.2000 (Annexure-19) stating that the applicant was not entitled for any leave and directing that the applicant's unauthorized period of absence from 16.9.95 to 19.7.98 should be entered as unauthorized absence in red ink in the service book with loss of pay and break in service and that the medical leave sanctioned vide order

dated 12.11.1999 be cancelled. Then the respondent No.3 vide order dated 14.9.2000 (Annexure-20) cancelled the medical leave sanctioned earlier by him and recovery of the leave salary drawn by the applicant was also ordered. The applicant terms these actions of the respondents as 'second punishment' where as the respondents have justified these decisions as consequential orders to the punishment order dated 8.10.1999.

18. Although the decision to treat the period of absence of the applicant as break in service is not a punishment as specified under the CCS (CCA) Rules, 1965, but it has implications of forfeiture of past service for the applicant as pointed out by him in his representation dated 18.10.2000 (Annexure-21). The implication of break in service as per the provisions of the CCS (Pension) Rules, 1972 is that the applicant's past services prior to the break in service period including the break in service period is not to be counted as qualifying service for the purpose of pensionary benefits. Effectively, the declaration of the period as break in service will deprive the applicant from the pension and pensionary benefits in respect of his past services till 19.7.1998. Hence, the decision vide order dated 25.8.2000 (Annexure-19) has adverse implications for the applicant and the said order dated 25.8.2000 was passed after the respondent No.2 concluded the disciplinary proceeding by passing the punishment order dated 8.10.1999 (Annexure-15). There is nothing on record to show that the applicant was given an opportunity of being heard before passing the order dated 25.8.2000. Hence, the punishment imposed on the applicant by the disciplinary authority vide order dated 8.10.1999 read with the order dated 25.8.2000 and 14.9.2000 (which the respondents have stated to be consequential administrative orders after passing of the order dated 8.10.1999), effectively means not only reduction in pay on account of the

order dated 8.10.1999 but also substantial reduction in pension and pensionary benefits of the applicant as the period of absence has been treated as 'break in service'. It is not the case of the respondents that the orders dated 25.8.2000 and 14.9.2000 were passed after giving an opportunity of hearing to the applicant since there is no such pleading of the respondents on record.

19. The respondents have not furnished any rules or the guidelines of Government to show that the period of the applicant's unauthorized absence is required to be treated as break in service and no medical leave can be sanctioned to regularize the period of unauthorized absence after imposition of punishment order dated 8.10.1999. Since vide the punishment order dated 8.10.1999, no decision was taken to treat the period as break in service, which was decided by the respondent No.2 subsequently by passing the order dated 25.8.2000 (Annexure-19) after a gap of about 10 months without giving any opportunity of hearing to the applicant, we are of the considered opinion that the impugned order at Annexure-19 is not legally sustainable as it violates the principles of natural justice. We reject the contentions of the respondent that the said order at Annexure-19 was passed as a consequence to the order dated 8.10.1999. Since the orders at Annexure-20 and Annexure-20A were passed by the respondents as a consequence to the order dated 25.8.2000, these orders are also not sustainable. Therefore, the order at Annexure-22 rejecting the applicant's representation in this regard at Annexure-21 of the OA, is also not sustainable under law.

20. In the circumstances as discussed above, we set aside and quash the order dated 25.8.2000 (Annexure-19), order dated 14.9.2000 (Annexure-20), order dated 18.09.2000 (Annexure-20A) and order dated 05.02.2001 (Annexure-22) and direct that the period of applicant's absence from duty

from 16.9.1995 to 19.7.1998 shall be treated as medical leave as already sanctioned by the respondent No.3 vide order dated 12.11.1999 (Annexure-18) and the applicant will be entitled for all consequential benefits as per law including refund of the leave salary if recovered from him. The respondents are directed to implement this order within 60 days of receipt of a copy of this order. As discussed earlier in this order, we are not inclined to interfere with the punishment order dated 8.10.1999 (Annexure-15) and the order of the appellate authority dated 17.07.2000 (Annexure-17).

21. The TA is allowed in part as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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