

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 260/191/2013

Date of Reserve:01.08.2019

Date of Order:12.09.2019

Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Debabrata Ray, aged about 58 years, S/o Late S.K.Ray, resident of Plot No. 685, Saheed Nagar, Bhubaneswar, Dist-Khurda, presently working as Divisional Forest Officer (Kendu Leaf), At/PO-Padampur, Dist-Bargarh.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Environment & Forest, Paryabharan Bhawan, CGO Complex, Lodhi Road, New Delhi- 110003.
2. State of Odisha, represented through its Chief Secretary, Secretariat Building, Bhubaneswar, Dist-Khurda.
3. Principal Secretary, Forest & Environment Department, Govt. of Odisha, Secretariat Building, Bhubaneswar, Dist-Khurda.
4. Special Secretary to the General Administration Department, Govt. of Odisha, Secretariat Building, Bhubaneswar, Dist-Khurda.
5. The Managing Director, Odisha Forest Development Corporation, A/84, Khravela nagar, Bhubaneswar-751001.

.....Respondents

For the applicant : Mr.B.A.Prusty, counsel

For the respondents: Mr.J.Pal, counsel (Resp. No. 1 to 4)
Mr.S.K.Patnaik, counsel (Resp. No.5)

Heard & reserved on : 1.8.2019 Order on :

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- "(a) Under the aforesaid circumstances, it is most humbly prayed that, this Hon'ble Tribunal may be graciously pleased to admit this original application and called for the records.
- (b) And, further humbly prayed that, to quash the memorandum of charges No. IF-Con-15/2011/21693/F&E, dtd. 25.11.2011 and Office order No. IF-Con-39/2012/1201/F&E, dtd. 19.1.2013, issued by the respondent No.3, directing initiation of enquiry against the applicant.
- (c) And, further humbly prayed that any other direction and or directions as this Hon'ble Tribunal deems fit and proper."

2. The applicant has challenged the charge-sheet dated 25.11.2011 (Annexure-A/2 of the OA) since the proceeding against him was initiated after

14 years from the date of alleged misconduct of the applicant with the allegation that he did not retrench the employees who were continuing without any authority. It is also submitted that the charge-sheet was issued mechanically by the respondent no. 3 without considering the written statement of the applicant. It is also the case of the applicant that two other similarly placed employees have been exonerated from similar charges. It is stated in the OA that the charges have been framed on the basis of the audit observations for which the compliance was sought from the applicant after a lapse more than 9 years and that he had not engaged a single person during his incumbency. It is also stated that the circular dated 30.8.1986 was never communicated to the applicant.

3. Vide order dated 24.6.2013, this Tribunal admitted this OA and directed the respondents not to pass any final order in the proceeding against the applicant.

4. In the counter filed by the respondents, it is stated that the MD, OFDC had instructed vide letter dated 29.3.1986 all Divisional managers that further engagement of daily rated /consolidated /adhoc appointments are stopped forthwith and the power to engage such workers was withdrawn from the officers of the corporation and in exceptional cases, it can only be made by the MD. It was also stated that the appointing authority will be held responsible for any recruitment without authority. It was further instructed vide letter dated 30.8.1986 to the field officers not to encourage the practice of engagement of temporary workers after expiry of their contract of appointment. It is further stated that the applicant during his incumbency as divisional manager, Bolangir (C) division of OFDC from 24.10.94 to 28.2.97 had violated the instructions by continuing such type of engagement. This was detected and objected by the audit in their IAR No. 31/99 and an amount of Rs. 396982.50 was found to have been incurred by him irregularly for this purpose. It is further stated that the applicant was asked to comply the objections vide letter dated 3.8.2010 (Annexure-A/5), but his reply did not comply the objections. Accordingly, the impugned charge-sheet was issued.

5. In the Rejoinder, the applicant stated that he was not given an opportunity to reply to the half margin memo issued by the audit prior to raising their objections. It is also stated that in absence of any clear order of the authorities to retrench the employees, the charges against him cannot sustain. It is also stated that two other officers whose names were there in the audit report did not face any disciplinary proceedings. It is therefore stated that taking action against the applicant is discrimination. It is also stated that calling for compliance from the applicant at such belated stage was arbitrary.

6. The respondent no. 5 (i.e. MD, OFDC) had filed his counter on 12.2.2015 and it was stated that the OA is not maintainable as it was filed before conclusion of the disciplinary proceedings. It is stated that the Tribunal vide order dated 25.11.2014 in OA No. 841/2014 did not admit the OA under similar circumstances. It is stated that there is no limitation period for initiation of the disciplinary proceedings, which can even be initiated after retirement as per the rule 9 of the CCS (Pension) Rules. The instructions of the OFDC not to engage nay temporary or daily rated workers vide circulars dated 29.3.1986 (Annexure-A/5 of the Counter). On the objection of the audit, Bolangir division was asked to comply. On receipt of the reply from the division, it was found to be inadequate. It was also discussed in the Triangular Committee vide Annexure-C/5 to the Counter. Then it was forwarded to the applicant vide letter dated 31.7.2010 (Annexure-A/5 to the OA). The applicant replied, but on compliance of the Triangular Committee, no reply was submitted by the applicant. After the charge-sheet was issued by the Government of Odisha, the applicant submitted his written statement on which, the order dated 19.1.2013 (Annexure-A/1) has been passed to appoint the Inquiry Officer. It is stated that the applicant has approached the Tribunal at a premature stage.

7. Heard learned counsel for the applicant. He submitted that in the charge-sheet, the amount in question was proposed to be recovered from the applicant. It is also submitted that the charge-sheet has been issued only on the basis of the audit report and it is in violation of the circular dated 21.5.2004 (Annexure-A/6 to the OA). Learned counsel for the applicant emphasized the question of delay in asking the applicant for compliance of the audit objection and the initiation of proceedings and also the issue of discrimination since against two other similarly placed employees no action was taken. It is also stated that the OFDC took a decision on 26.6.2001 to retrench the surplus employees, which was much after the alleged misconduct in the charge-sheet. He also filed a written note of submissions relying on the following judgments:-

- i) AIR 1990 Supreme Court 1308 (The State of Madhya Pradesh vs. Bani Singh & Ors.)
- ii) AIR 2006 SC 207 (P.V.Mahadevan vs. M.D.Tamilnadu Housing Board)
- iii) 1980 (1) SLR 324 (Gujarat High Court) (Mohanbhai Dungarbhai Parmar vs. Y.B.Zala & Ors.)

- iv) (2011) 14 SCC 379 (Anil Gilurker vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr.)
- v) AIR 1984 Supreme Court 630 (J.D.Shrivastava vs. State of M.P. & Ors.)

8. Learned counsel for the respondent no. 2, 3 and 4 submitted that the delay has been explained in the Counter filed by the respondent no.5. He stated that as per the judgment of Hon'ble Apex Court in a number of cases, no interference in the disciplinary proceedings is called for by the Tribunal. Copy of the judgment in the case of Anant R. Kulakarni vs. Y.P. Education Society and others reported in (2013) 6 SCC 515 has been filed by him. It is seen that the facts in the cited case are different and distinguishable. Learned counsel also handed over a sealed cover containing the copy of the record of the disciplinary proceedings against the applicant.

9. Learned counsel for the respondent no. 5 was also heard. He submitted that the charges being grave in nature should not be quashed at this stage. He also submitted regarding the ground of delay, there is no limitation period provided for initiation of disciplinary proceedings. He also submitted that the inquiry has found the applicant guilty. It was further submitted that if after disposal of the proceedings, the applicant is aggrieved, he can challenge the said order before the Tribunal. Learned counsel has also filed a written note of submission enclosing a copy of the order dated 25.11.2014 of the Tribunal in OA No. 841/2014 in the case of Man Mohan Mohapatra vs. The Secretary Department of Posts and others and citing the judgments in the following cases:-

- i) (1995) 3 SCC 134 (Deputy Registrar, Co-operative Societies, Faizabad – vs. Sachindra Nath Pandey)
- ii) AIR 2009 SC 2925 (Forest Department & Ors. Vs. Abdur Rasul Chowdhury)

10. We have considered the materials available on record through the pleadings as well as the submissions by learned counsels. The order dated 25.11.2014 of this Tribunal in OA No. 841/2014 in the case of Man Mohan Mohapatra (supra) has been cited by learned counsel for the respondent no. 5. In the said case, the ground urged in the OA was that the charge-sheet cannot be issued during last 6 month of the retirement and such a ground was not accepted by the Tribunal for quashing the charge-sheet. Clearly, the grounds as well as the factual circumstances in the present OA are different, for which, the cited order of the Tribunal is inapplicable for the present OA.

11. In the case of Sachindra Nath Pandey (supra), it was held by Hon'ble Apex Court that the charges cannot be set aside only on the ground of delay and whether the charges are serious in nature has to be considered. In the case of Abdul Rasul Chowdhury (supra), cited by the counsel for the respondent no.5, it was held by Hon'ble Apex Court as under:-

"16. The next issue is with regard to delay in concluding disciplinary proceedings. In our view that the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstance in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue."

12. In the above cited case, the charge-sheet was challenged on the ground of delay, like the present OA. Applying the above ratio, it is clear that only on the ground of delay, the charge-sheet cannot be annulled. The facts and circumstances of the case and seriousness of the charges are required to be examined. In the case of Abdul Rasul Chowdhury (supra), one of the reason for delay was due to the fact that the employee concerned had left the headquarters without taking permission of the authority as observed by the Tribunal.

13. In the case of Bani Singh (supra), cited by the applicant's counsel, the Tribunal had quashed the charges on the ground of delay, for which there was no satisfactory explanation. After examining the facts of the case, the decision of the Tribunal was upheld by Hon'ble Apex Court. In the case of P.V. Mahadevan (supra), the charge memo was issued after a delay of more than 10 years from the alleged incident for which no convincing explanation was available. Although the audit report was finalized in 1994-95 for the alleged conduct of the petitioner relating to the year 1990, the disciplinary authority initiated the proceeding in the year 2000. The plea taken in that case was that the audit report came to the notice of the disciplinary authority later and no delay was there from that date when the disciplinary authority was informed about the misconduct. That view was not accepted by Hon'ble Apex Court and the charge memo was quashed.

14. Learned counsel for the applicant has also cited the judgments in the case of J.D. Srivastava (supra) which related to compulsory retirement under the Fundamental Rules and not on the basis of a disciplinary proceeding. Another judgment in the case of Anil Gilurker (supra) related to the enquiry as a part of the disciplinary proceedings, which is not the issue in the present OA. Hence, both these cases are factually distinguishable. In the case of Y.B. Zala (supra), the charge related to delay in reporting for duty on a date about one and half year back. Hon'ble Gujarat High Court found the delay in initiating

departmental action was denial of reasonable opportunity to defend himself and hence, the order was struck down. In that case, the charges pertained to late reporting for duty for which delay in initiating action was unjust since an employee is not expected to remember the reasons for late reporting for more than a year. The cited case is factually distinguishable since in the present OA, the charges are based on audit report.

15. In the present OA, the alleged incident based on which the charges are framed pertains to the period 24.10.1994 to 28.2.1997 and the audit objection was issued during the year 1999. The audit objection was discussed in the Triangular Committee meeting was held in November, 2008 i.e. after a period of 9 years from the date of audit. Thereafter, the applicant was informed about the audit report when he was asked to comply vide letter dated 31.7.2010/3.8.2010 (Annexure-A/5 of the OA). The applicant has raised the issue of delay of about 14 years in issuing the charge-sheet against him on 25.11.2011 vide the averments in para 4.3 of the OA. In reply, the respondent no. 2, 3,4 and 5 in their Counters have failed to furnish any reasonable explanation for such abnormal delay.

16. This happened in spite of the instructions of the GA Department vide the circular dated 21.5.2004 (Annexure-A/6 of the OA) which clearly specifies the manner in which the audit objections are required to be examined by the authorities after giving an opportunity to the concerned officers to state their case. As per this circular, the applicant should have been informed about audit para immediately on receipt as averred in para 4.10 of the OA. In reply, it is stated in the Counter filed by the respondent no. 2 to 4 that the applicant did not furnish his compliance to para 10 of the audit report No. 31/99 in the year 2010, without replying as to the reason for delaying the communication of the audit objection to the applicant till 2010 when the report was received during 1999-2001. The delay of more than 9 years to communicate to the applicant was a clear violation of the circular dated 21.5.2004 (A/6). In the Counter filed by the respondent no. 5, it is stated that for para 4.10 of the OA, the respondent no.5 had nothing to comment, although the letter dated 31.7.2010/3.8.2010 (A/5) informing the audit objections to the applicant for the first time was issued by the respondent no.5, who should have explained the reason for not adhering to the circular dated 21.5.2004. It is clear that there is no explanation in the Counter filed by the respondents regarding the reasons for delay in communicating the audit objection received during 2001 to the applicant till 2010 in violation of the circular dated 21.5.2004 (A/6).

17. It is further seen from para 4.5 of the OA that the applicant claimed that he had not engaged a single person during his incumbency and he inherited

the same from his immediate predecessor. In reply, the Counter filed by the respondent no. 2,3 and 4 stated that the applicant should not have extended the engagement of the temporary employees. But no document has been furnished to show that the applicant has extended the temporary engagement of some of the employees. The charges framed did not allege that the applicant had extended the engagement period of the temporary employees and the details of order by which the applicant had extended the engagement of the temporary employees. In fact the allegation in the charge-sheet pertained to continuing the engagement of temporary and daily wage staff. Hence, the averment in the Counter of the respondent no. 2,3 and 4 that the applicant should not have extended the engagement of temporary employees is not correct as no such allegation was included in the charge-sheet dated 25.11.2011. It is clear that the averment of the applicant that he did not engage a single person during his incumbency and he simply continued the employees left by his predecessor, has not been contradicted by the respondent no. 2,3 and 4.

18. The Counter filed by the respondent no. 5 did not contradict such averments in para 4.5 of the OA. There was a reference to the circular dated 29.3.1986 (Annexure-A/5 of the Counter of the respondent no.5) prohibiting engagement of daily and temporary employees. But no other circular was issued during incumbency of the applicant from 1994-1997 as no such circular has been referred to in the charge-sheet. It is also stated in para 4.7 of the OA that no circular was issued by the respondents for retrenchment of the temporary employees. Such averment of the applicant in para 4.7 of the OA has not been contradicted by the respondents in their Counter.

18. The applicant in para 4.9 of the OA stated that for two other similarly situated employees named in the audit report, no action was taken by the respondents and hence, the applicant has been discriminated. There is nothing in the Counter filed by the respondents mentioning whether these averments are correct or not.

19. It is noticed that the case against the applicant is violation of the instruction of 1986 not to engage temporary employee, although he had not appointed a single person during his incumbency and temporary employees were continuing from the time of his predecessor. There was no instruction to retrench the existing workers during the incumbency of the applicant. The audit has objected to irregular engagement of temporary employees and non-maintenance of the Muster Rolls and fabricated vouches for the expenditure, for which the amount spent has been shown as objectionable by the audit. On these charges, prompt action should have been taken to fix up responsibility

through a preliminary inquiry or otherwise. The averment of the applicant that he had not engaged any of the continuing temporary employees, shows that some other officer may be the culprit. The respondents could have got the matter investigated/inquired to find out the officers responsible for violation of the instructions and non-maintenance of proper Muster Rolls in support of labour expenditure as pointed out by the audit. In case such investigation would have taken time for initiating the proceedings, it would have been an acceptable ground for delay for initiating the proceedings. No such effort was made and the responsibility was fixed on the applicant on the basis of the audit report without trying to identify the main culprit for the irregularities pointed out by the audit.

20. In case the respondents were serious about enforcing the circular dated 29.3.1986, then the respondent no.5 would have taken steps for its strict compliance from 1986 onwards and in that case, no temporary employee would have been left by the time when the applicant joined in the OFDC. There is nothing on record that the applicant was specifically issued any instruction in this regard during his incumbency under the respondent no.5.

21. In the circumstances as discussed above and applying the ratio of the judgments of Hon'ble Apex Court in the cases of Bani Singh (supra) and P.V. Mahadevan (supra), we have no hesitation to hold that the charge-sheet dated 25.11.2011 was vitiated by the fact that it was issued after an abnormal delay of about 14 years from the time the misconduct was alleged to have been committed as per the charge sheet and such delay is not satisfactorily explained by the respondents. The charge sheet was also issued only on the basis of the outstanding audit objections without conducting any preliminary inquiry or investigation to fix responsibilities on the applicant or any other officer for irregularities as pointed out by the audit. As a result, the OA is allowed and the impugned charge-sheet dated 25.11.2011 (Annexure-A/2 of the OA) and all subsequent orders relating to the charge-sheet are quashed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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