

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 315 of 2019

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

Sanjeev Singh, aged about 49 years, S/o Kameswar Singh, at present working as A.G.M. (Material) Central Stores Smelter Plant, National Aluminum Company Ltd., At/PO/PS – Nalco Nagar, Dist-Angul, Pin – 759145.

.....Applicant

VERSUS

1. Director (Commercial), Disciplinary Authority, National Aluminium Company Limited, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.
2. The CMD, Nalco, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.
3. The Executive director, Smelter and Power Complex, National Aluminum Company Limited, Nalco nagar, Angul, Odisha, Pin- 759145.
4. Director (Production), National Aluminium Company Limited, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.
5. Director (HR), National Aluminium Company Limited, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.
6. Director (P&T), National Aluminium Company Limited, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.
7. Director (Finance), National Aluminium Company Limited, NALCO Bhawan, P/1, Nayapalli, Bhubaneswar, Dist-Khurda, Odisha, Pin - 751013.

.....Respondents

For the applicant : Mr.K.K.Bhuiyan, counsel
Mr.S.B.Jena, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 7.11.2019

Order on : 22.1.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant through this OA has prayed for the following reliefs :

“(a) To quash the letter dt. 16.4.2019 under Annexure A/6 passed by respondent No.1 and the consequential action thereof given effect to before and after issuance of the letter under Annexure A/6 by respondent No.1;

(b) To direct the disciplinary authority i.e. Respondent No.1 to provide/supply all the relevant detail materials under Annexure A/2 to the applicant within a stipulated time period which has not yet been supplied by him;

- (c) To direct the respondent NO.1 to give ample opportunity of hearing to the applicant during the time of hearing an compliance to the Nalco conduct, discipline and appeal Rules, 1984;
- (d) And pass such other order(s)/direction(s) as deemed fit and proper under the facts and circumstances of the case to give complete justice/relief to the applicant.”

2. The applicant has been issued a memorandum of charges dated 16.3.2019 (Annexure A/2) under NALCO Conduct, Discipline & Appeal Rules, 1984 (Annexure A/1). The applicant was asked to submit a reply within 15 days from the date of receipt of the letter. The applicant has submitted a representation (Annexure A/3) dated 1.4.2019 requesting the disciplinary authority to supply the details relevant materials/documents of Annexure I, II, III & IV of the chargesheet and requested for reasonable time to submit his reply. The respondents thereafter supplied the relevant materials listed under Annexure III of the charge sheet vide letter dated 6.4.2019 (Annexure A/4). The applicant is aggrieved that he has not received the documents under Annexure I, II & IV of the charge memo dated 16.3.2019. he submitted a further representation accordingly on 11.4.2019 (Annexure A/5). The applicant's case is that without considering the grievances of the applicant, the respondents passed an order dated 16.4.2019 (Annexure A/6) which stated as under :

“I have carefully gone through your request letter dated 11.4.2019 and as a last chance, inclined to allow you further 04 more working days from the date of receipt of this letter to submit your explanation/written statement of defense in specifically admitting or denying any of or all the articles of charge. Should you fail to comply the same, it shall be construed that you have nothing to offer and further course of action as deemed fit and proper as per the CDA Rules of the company shall be initiated.”

3. Being aggrieved by the order at Annexure A/6 the applicant has filed this OA on the main ground that without supplying the relevant papers and documents based on which the charge memo has been framed, the respondents are insisting the applicant to submit a reply which is a violation of the principle of audi alterem partem for which it is stated that a proposed enquiry is not tenable in the eye of law. Therefore it is liable to be quashed. The applicant further alleges vindictiveness towards the applicant. It is stated that the respondents have given only 3 working days' time to answer 128 pages

documents which is not possible and which shows the ulterior motive of the respondents.,

4. Preliminary counter affidavit is filed by the respondents denying the allegations and stating that the OA is not maintainable in the eyes of law. It is further stated that the applicant does not appear to intend to face the proceedings so as to delay the disciplinary proceeding against him. It is also stated that the OA is liable to be dismissed at the threshold since the applicant has not approached this Tribunal with clean hands. The respondents have followed the NALCO CDA Rules as well as principles of natural justice in this case for which the OA is not maintainable. It is further stated that the applicant has misled the Tribunal to obtain an ex parte interim order in his favour. It is also averred that ample opportunities have been provided to the applicant in the enquiry proceeding and all the documents relied upon for memorandum of charges have been supplied to him. It is stated that there has been series of complaints against the applicant for irregularities, corruption and violation of rules on which preliminary enquiry has been conducted by the vigilance department of NALCO and report has been submitted to the disciplinary authority. During preliminary investigation the vigilance department wanted certain information from the applicant which was avoided by him. It is further stated in the preliminary counter that the article of charges against the applicant as annexed to the OA indicate serious irregularities like visiting foreign countries without prior intimation to the management in violation of rules and submit false documents for availing leave during that period. It is further stated that Rule 28 of NALCO CDA Rules does not specifically provide for giving copies of all the documents along with the memorandum of charges before institution of enquiry proceeding. However, in order to be objective and fair the disciplinary authority has supplied all the relevant documents relied upon in the memorandum of charges of 128 pages, to him on 6.4.2019 but still the applicant is not submitting his reply to the charge sheet.

5. Rejoinder has been filed by the applicant reiterating the contentions in the OA. In reply to the averment in the preliminary counter that all relevant documents have been supplied to the applicant it is stated in the rejoinder that the present deponent is not competent to swear the affidavit and has objected to the fact that only 3 days' time have been given to answer 128 pages of documents. It is noted that no specific document has been listed in the rejoinder which has not been supplied by the disciplinary authority.

6. The applicant during pendency of the OA filed MA No. 774/2019 on 25.9.2019 with a prayer to direct the disciplinary authority to change the present Enquiry authority Mr. Pravakar Mishra allegedly for the reasons stated therein.

7. Respondents have also filed an affidavit dated 6.9.2019 enclosing the copy of the relevant documents for framing charges which have been handed over to the applicant. It was submitted that since the disciplinary authority has been following the principles of natural justice and rules have been adhered strictly the OA is liable to be dismissed.

8. The applicant has filed a rejoinder to this affidavit stating that Mr.P.Suresh Kumar, manager HRD is not the competent authority to sign the preliminary counter.

9. Learned counsel for the applicant was heard. He also filed subsequently written notes of submissions along with copy of the following judgments in support of his case :

- i) (2006) 4 SCC 348 – A.Sudhakar –vs- Postmaster General, Hyderabad & Anr.
- ii) AIR 2002 SC 204 – Gagandeep Pratisthan pvt. Ltd. & Ors. –vs- M/S Mechano & Anr.
- iii) Civil Appeal No. 2571/1977 – Kashinath Dikshita –vs- Union of India & Ors.
- iv) Civil Appeal No. 1603/1970 – State of UP –vs- Mohd. Sharif (dead) through LRs.
- v) Civil Appeal No. 146/1981 – Cjhandrama Tewari –vs- UOI through General Manager, Eastern Railways
- vi) State of UP –vs- Shtrughan Lal & Anr.
- vii) (2018) 7 SCC 670 – UOI & Ors. –vs- Ram lakan Sharma

10. Main point of submission on behalf of learned counsel for the applicant is that the documents based on which the Annexure I, II, III & IV of the charge

sheet has been framed should have been supplied and without supplying the said documents the applicant could not give reply. He mainly highlighted the need for getting a copy of the preliminary enquiry report made by the authorities against the applicant based on which the charge sheet has been framed.

11. The applicant's counsel has raised the point in his written note of submission that under the rule 28(3) of the NALCO Conduct Discipline and Appeal Rules, 1984 (in short 'CDA Rules'), the documents based on which the charges have been prepared against the applicant have not been supplied. It is stated that the documents/materials relating to the Annexure-I, II and IV of the charge-sheet dated 16.3.2019 have not been supplied to him, although he was supplied the documents related to Annexure-III of the charge-sheet containing 128 pages on 6.4.2019. It is further stated that the documents relating to the Annexure-I, II and IV have not been supplied to him to enable him to furnish his reply to the charge-sheet.

12. Another point raised in the written note of submission relates to ineligibility of Mr. P. Suresh Kumar to swear the affidavit for the preliminary counter under the NALCO Delegation of Power Rules, 2011, for which, the preliminary counter is not maintainable according to the applicant's counsel.

13. Learned counsel for the respondents was also heard. He has also filed a written note of submissions enclosing the copies of the following judgments :

- i) 2015 LabIC 2794 – Shiba Prasad Pattnaik –vs- State of Odisha
- ii) (2006) 3 SCC 150 – Sndicate Bank & Ors. –vs- Venkatesh Gururao Kurati
- iii) 2015 Lab IC 2794 – Shiba Prasad pattnaik –vs- State of Odisha
- iv) (2011) 2 SCC 316 – State Bank iof India & Ors. –vs- Bidyut Kumar Mitra & Ors.

14. The respondents' counsel in his written note of arguments submitted that the applicant has been supplied all the relevant materials listed in the charge-sheet vide letter dated 6.4.2019 (Annexure-A/4), which was received by

the applicant on 9.4.2019 (Annexure-R/2). It is stated that as per the explanation to the rule 28(3) of the CDA Rules, it is not necessary to supply the documents listed in the charge-sheet at the time of issuing the charge-sheet. However, considering the request of the applicant, all the documents listed in the charge-sheet have been supplied to the applicant. It is also mentioned that under the rule 28(8), the applicant can ask for additional documents at the inquiry stage. Regarding time, it is stated that as per the rule 28(3) maximum 15 days time has been allowed to admit or deny the charges.

15. From the submissions of the parties, the question to be decided in this case is whether the applicant's letter asking the documents relating to the Annexure-I, II and IV of the charge-sheet (Annexure-A/2) is in accordance with the CDA Rules or the principles of natural justice.

16. Before proceeding to answer the above question, the preliminary issue raised by the applicant regarding the eligibility of the signatory of the preliminary counter is required to be examined. The applicant has stated that the list of officials authorized to sign the affidavit specified under the NALCO Delegation of Power Rules, 2011 does not include Manager, HRD who had signed the preliminary counter. The respondents have replied that as per the resolution of the Board of Directors dated 20.3.2013 (Annexure-R/1), the Manager, HRD is eligible for swearing the affidavit. The list cited by the applicant from the NALCO Delegation of Power Rules, 2011 mentions the authorities who have inherent power to sign the affidavits. No rule has been produced by the applicant to show that the Manager, HRD cannot sign the affidavit even after he is authorized by the Board of Directors. In this case, although the Manager, HRD does not have the delegated power to sign the affidavit as per the Delegation of Power Rules, 2011, he was specifically authorized by the Board's resolution dated 20.3.2013. In the circumstances, we are of the view that the objection raised about the eligibility of the Manager, HRD to swear the affidavit in this OA cannot be sustained and the same has to be rejected.

17. Regarding the question framed above regarding the applicant's claim, we take note of the fact that the applicant is aggrieved as he was not supplied the documents relating to the Annexure- I, II and IV of the charge-sheet and he admits to have received the documents consisting of 128 pages relating to the Annexure-III of the charge-sheet. The Annexure-I is the substance of imputation of misconduct which is the charge-sheet itself. Annexure-II is the statement of imputation of misconduct giving the details of the charges. Annexure-IV is the list of witnesses whose evidence will be relied upon in the inquiry. Annexure-III is the list of the documents which will be relied upon to prove the charges. The respondents have supplied copy of all the documents listed in Annexure-III which has been received by the applicant on 9.4.2019. Nowhere in the pleadings of the applicant, the specific list of documents required by the applicant has not been mentioned, except stating the documents relating to Annexure-I, II and IV, which do not mention or refer to any document and how non-supply of these documents at this stage will prejudice the applicant has not been explained, except stating that the principle of natural justice will be violated.

18. It is noticed that the applicant has not specified any additional documents over and above the documents already received by him pertaining to Annexure-III of the charge-sheet and he has also not specified the provision of the CDA Rules under which he is asking for these documents. He has stated that for natural justice, he should be supplied these documents. The respondents, on the other hand, have referred to the rule 28(3) of the CDA Rules, which states as under:-

“Procedure for Imposing Major Penalties

(3) Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with a statement of the allegations, on which they are based, a list of documents by which and a list of witnesses by whom, the articles of charges are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement whether he admits or denies any of or all the articles of charge.

Explanation:- It will not be necessary to show the document listed with the charge sheet or any other document to the employee at this stage.”

19. It is seen that the rule 28(3) does not required supply of any documents alongwith the charge-sheet. The said rule has not been challenged in the OA. The rule 28(8) provides for supply of the required documents and additional documents to the applicant at the inquiry stage. Under which provisions of the CDA Rules the applicant is entitled to be supplied with the additional documents, have not been mentioned by the applicant in his pleadings in the OA. Since no provision of the CDA Rules has been challenged on the ground that the said provision violates the principles of natural justice and the rule 28(8) provides for supply of the documents required by the applicant at the inquiry stage, we are unable to accept the plea of the applicant that non-supply of the additional documents at this stage violated the principles of natural justice. Further, the applicant will have liberty to challenge the findings of the authorities after concession of the disciplinary proceedings if there is any violation of rules at the inquiry or any other stage.

20. Learned counsel for the applicant has cited the judgment of Hon’ble Apex Court in the case of Ram Lakan Sharma (supra) in which it was held that the principles of natural justice can be applied when the statutory rules are silent about applicability of such principles and do not specifically exclude or prohibit its applicability. As discussed earlier, there is no violation of the CDA rules or the principles of natural justice for non-supply of any additional documents at this stage, since the rule 28(8) specifically provides for supply of additional documents as may be required by the applicant at the inquiry stage to defend himself and all documents relied upon by the respondents for framing the chargesheet as listed at Annexure III of the chargesheet, have been supplied to the applicant. Hence, the judgment cited by the applicant will not help the applicant’s case.

21. Learned counsel for the respondents has cited the judgment of Hon’ble Apex Court in the case of Venkatesh Gururao Kurati (supra) in which it was

held that to sustain the allegation of violation of natural justice, it is necessary to establish prejudice caused due to such violation. In the judgment in the case of Bidyut Kumar Mitra (supra) cited by respondents' counsel, it is held that unless prejudice is established, the proceedings cannot be stated to be vitiated. As discussed earlier, the applicant has not specifically established the prejudice caused to him and he has not specified the list of additional documents except referring to Annexure I, II and IV of the chargesheet.

22. Learned counsel for the applicant also cited the judgment of the Hon'ble Apex Court in the case of A.Sudhakar (supra) in which it was held that in case of any deviation in the rules in a disciplinary proceeding it is necessary to see whether such non-observance of rules has resulted in denial of justice. Applying this ratio to this OA, it is seen that no deviation from the NALCO CDA Rules is established and also the principles of natural justice has not been violated as discussed earlier. Another case cited by learned counsel for the applicant is the case of Kashinath Dikshita (supra), in which it was held that if the applicant is denied reasonable opportunity to defend himself then the proceeding may be vitiated. By not supplying the additional documents which have not been specified by the applicant in this OA, it cannot be said that the applicant was not allowed reasonable opportunity, particularly since at the inquiry stage, he can ask for such additional documents under the rule 28(8) of the CDA Rules. In the cited case of Mohd. Shariff (dead) (supra), the copy of the preliminary inquiry, which had preceded departmental inquiry was not furnished to the applicant during disciplinary enquiry and the specific request of the employee to inspect the file was also rejected. Hence, the proceeding was held to be vitiated. In this OA, copy of the preliminary enquiry report can be asked for by the applicant under Rule 28(8) of CDA Rules at the inquiry stage. There is no rule that copy of the preliminary enquiry is required to be supplied along with the charge sheet. Hence, these judgments will not be helpful to the applicant. Similarly other judgments cited by the learned counsel for the

applicant will be of no help to the applicant in this case in view of the facts and circumstances as discussed above.

23. It is noticed that in the case of *Union Of India And Another vs Kunisetty Satyanarayana*, Hon'ble Apex Court in Civil Appeal No 5145 of 2006 has held as under:-

"It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghous and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

24. Applying the ratio of the above judgment to the present OA, the letter at Annexure-A/6 which is challenged in this OA does not give rise to any prejudice, particularly when no violation of the CDA Rules has been proved or established by the applicant. Hence, the issue of the letter at Annexure-A/6 does not give rise to any cause of action for the applicant. Further, the applicant has not specified the list of additional documents relating to Annexure I, II and IV of the chargesheet which are required under the rules to be supplied to him at this stage. No violation of the principle of natural justice has been established as discussed in paragraph 19 of this order. Hence, the question at para 15 of this order is answered accordingly against the applicant.

25. In view of the discussions above, we are of the considered view that the applicant has failed to advance adequate grounds in this OA to justify any interference of the Tribunal in the disciplinary proceedings initiated against him by the respondents at this stage. Accordingly, the OA is dismissed with no order as to costs.

(SWARUP KUIMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)