

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/499/2014

Date of Reserve:28.08.2019

Date of Order:07.11.2019

CORAM:

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

Prasant Ku.Padhi, aged about 60 years, S/o. Late Raghunath Padhi, Retired L.D.C.,  
O/o. I.N.S. Chilka – permanent resident of Vill-Alaidiha, PO-Balugaon, PS-Banapur,  
Dist-Khordha, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray  
Smt.J.Pradhan  
T.K.Choudhury  
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, south Block, New Delhi-110 001.
2. Flag Officer, commanding-in-Chief Headquarters, Eastern Naval Command, Naval Base, Vishakapatnam, Andhra Pradesh-530 014.
3. Chief Staff Officer (P&A), Headquarters, Eastern Naval Command Naval Base, Vishakhapatnam-530 014.

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the Memorandum dated 12.10.2012, Inquiry report dated 26.11.2011, order of punishment dated 10.07.2012 and order of rejection dated 10.03.2014 under Annexure-A/4, A/9, A/11 & A/15 respectively.
- ii) To direct the respondents to restore the applicant in his post and pay the consequential financial benefits.

2. Briefly stated, the facts of the matter are that the applicant while working as Lower Division Clerk, INHS Nivardini was issued with a Memorandum of Charge

dated 30.11.2008 (A/1) in contemplation of disciplinary proceedings against him under Rule-14 of CCS(CCA) Rules, 1965, containing a lone Article of Charge, which reads as follows:

“That the said Shri P.K.Padhi, while working as LDC, INHS Nivariini made misappropriation of money while crediting the arrears of pay and allowance in connection with VI pay commission in his account thereby violated Rule-3(1)(i) & (iii) of CCS(Conduct) Rules, 1964”.

3. By that Memorandum, the applicant had been directed to submit within 10 days a written statement of his defence and also to state whether he desired to be heard in person. In response to this, the applicant submitted his written statement of defence on 10.01.2009. However, the Disciplinary Authority vide order dated 03.02.2009 appointed Inquiry Officer to inquire into the charges. While the matter stood thus, vide order dated 17.04.2010 (A/3) the Surgeon Captain Commanding Officer cancelled the disciplinary proceedings initiated against the applicant vide Memorandum of Charge dated 30.11.2008. Thereafter, the Chief Staff Office (P&A), Eastern Naval Command, Naval Base, Visakhapatnam (Respondent No.3) issued a Memorandum of Charge dated 12.10.2010 (A/4) which reads as follows:

“That the said Shri P.K.Padhi, while working as LDC, INHS Nivariini did misappropriate public fund money amounting to Rs.7,100/- being the arrears of pay and allowances in respect of 29 Civilian Employees of INHS Nivariini, passed by the JDDA(Navy) on implementation of VI CP and deposited the same in his Personnel Account No.10704780510 held with State Bank of India, INS Chilka unauthorisedly. Thus he failed to maintain absolute integrity and exhibited conduct unbecoming of a Government Servant and thereby violated Rule-3(1)(i) and (iii) of CCS(Conduct) Rules, 1964”.

4. Aggrieved with this, the applicant had approached this Tribunal in O.A.No.823 of 2010 and this Tribunal vide order dated 10.08.2011 disposed of the

said O.A. with direction to respondents to complete the inquiry within a period of six months with a further direction to the applicant to cooperate with the inquiry so that the same could be completed within the stipulated time. The I.O. concluded the inquiry and submitted his report on 26.11.2011 (A/9) holding the charge proved. The applicant submitted his representation dated 14.02.2012 (A/10) to the report of the I.O. However, vide order dated 10.07.2012 (A/11), the Disciplinary Authority imposed punishment of compulsory retirement on the applicant with immediate effect. The applicant submitted an appeal dated 02.08.2012 (A/12) to the Appellate Authority/Respondent No.2. Since there was no response, the applicant submitted a reminder dated 28.09.2012 (A/13) with a request take an early decision on his appeal. Since his appeal was not disposed of, the applicant approached this Tribunal in O.A.No.260/00089/2014. This Tribunal, vide order dated 26.02.2014 disposed of the said O.A. with direction to Respondent No.2 to consider the appeal and pass a well-reasoned order to be communicated to the applicant within a period of two months. Complying with this direction, the Appellate Authority disposed of the appeal as communicated vide letter dated 26.03.2014 (A/15) by upholding the punishment of compulsory retirement from service, as imposed by the Disciplinary Authority. Hence, this Application seeking for the reliefs as aforementioned.

5. The grounds on which the applicant has based his claim are that during the course of inquiry, he had submitted two applications dated 22.10.2011 and 04.11.2011 to the I.O. regarding examination of witness and for supply of additional documents for examination of the witness. In spite of this, the applicant was neither supplied with the documents nor afforded an opportunity to examine the witnesses. The applicant finally submitted a detailed written brief

to the IO by answering all the questions and pleading innocence, inter alia, with a prayer to drop the proceedings. But the I.O. in his report dated 27.6.11.2011 did not take into consideration the written brief as submitted and on the other hand, submitted his report with the findings as under:

“On the basis of the documentary and oral evidence adduced before me, in view of reasoning, I find that the charge drawn at Article-1 of Annexure-1 and imputation of misconduct at Article-1 of Annexure-I framed against Shri PK Padhi, LDC, while serving as In-charge of CE Section, INHS Nivarni during the period from 13 Aug 08 to 31 Aug 08 vide Charge Memorandum CE/9108/41 dated 12 Oct. 2010 is proved”.

6. Therefore, it is the case of the applicant that had the I.O. taken into consideration the written brief, he would not have arrived at a conclusion as has been so arrived at. According to applicant, he submitted a second show cause dated 14.02.2012 to the Disciplinary Authority reiterating the stand taken by him earlier and thereby pointing out the procedural irregularities committed by the I.O., but the D.A. without considering the points raised therein, in a mechanically manner agreed with the findings of the IO and imposed penalty of compulsory retirement from service. Similarly, the Appellate Authority without considering the grounds urged in the appeal, upheld the punishment as imposed by the Disciplinary Authority. It has been pointed out by the applicant that in his appeal dated 02.08.2012, he had categorically stated that no money could be deposited in the bank without signature of Commander, M.C.Joshi. According to him, even though he requested the said Commander Mr.Joshi to be examined during the course of inquiry, the same was not at all considered.

7. Contesting the claim of the applicant, respondents have filed a detailed counter. According to respondents, consequent upon transfer of the applicant from INHS Nivarni to INS Chilka, the Memorandum of Charge dated 30.11.2008

stood cancelled without prejudice to further disciplinary action being initiated against the applicant and this is why, a fresh Memorandum of Charge dated 12.10.2010 was issued to the applicant. It has been submitted that all the Relied Upon Documents had been supplied to the applicant. As regards supply of additional documents, it has been pointed out that those documents had not been reflected in the Memorandum of Charge, besides, the applicant has not brought out that by the non-supply of those additional documents, any prejudice has been caused to him. In Paragraph-25 of the counter-reply, the Respondents have submitted as follows:

- "25. That in reply to 5C, it is submitted that during the course of inquiry, the applicant himself had admitted that he was the in-charge of CE Section of INHS Nivarini. The applicant had himself admitted that generally his duty was to ensure preparation of pay vouchers and forwarding letter to Bank and that they are correct in all respects. The applicant had also deposed before the Inquiry Officer that the payment voucher was partly prepared by him and completed by the office boy, Sri Brundaban Sahu. Thereafter, Sri Brundaban Sahu prepared the forwarding letter No.275/32 dated 25 Oct. 2008 and the nominal roll and deposited the same in the bank without the knowledge of the applicant. However, the handwriting mentioned in the forwarding letter i.e., INH Nivarini letter 275/32 dated 25 Oct 2008 and along with floppy and in the Nominal Roll of civilian staff towards arrears of VI CPC dated 25 Oct 2008 which correlates to the handwriting of the applicant which itself substantiates the fact that he is aware of the contents of the said letter while forwarding to SBI, INS Chilka. Also during the inquiry proceedings the applicant deposed before the Inquiry Officer that it is his own handwriting.

As regards the examination of Shri Brundaban Sahoo, office boy or the Departmental officer is concerned, it is at the discretion of the Presenting Officer as to how many witnesses he wish to present/examine on behalf of the prosecution before the Inquiry Officer, to the extent to establish the charge framed against the applicant. If at all the applicant had any such grievance he should have requested for the same during the inquiry proceedings or while submitting his brief in reply to Presenting Officer's brief wherein he failed to do so. Also the applicant in reply to the Inquiry Officer question "do you wish to say anything regarding your case" had not raised any

such issue. After accepting the same, the applicant harping on the issue at this juncture is not correct. However, the introduction of one witness did not vitiate the entire inquiry proceedings as all the other witnesses stood the test of cross-examination by the applicant and that he had utilized the opportunity afforded to him. Hence, no prejudice has been caused to the applicant in defending his case and to prove his innocence”.

8. With the above submissions, the Respondents have prayed that the O.A. being devoid of merit should be dismissed.

9. Applicant has filed a rejoinder to the counter-reply. In the rejoinder, the applicant has urged as follows:

“2....Moreover, from the very first day this applicant is making allegation about the mischievous activity of one Mr.Brundaban Sahoo, for which before the IO he had represented to call the said Brundaban Sahoo as an witness, but the I.O. did not agree the same.

It is pertinent to mention here that for transfer of any amount to any account of any employee so far Govt. Money is concerned can only be transferred after due approval of the disbursing authority. Further, before the final approval by the drawing and disbursing authority (Commander M.C.Joshi) on the arrear statement which contains the list of beneficiaries and their accounts numbers supported by pay bill and payment voucher (signed by the concerned employee). In the arrear statement the name of the applicant inducted by the drawing and disbursing authority otherwise in absence of any supporting document (either in bill or voucher) against the alleged name of the applicant how the drawing and disbursing authority gave approval is a question mark, which had to consider by the I.O. during inquiry

It is further respectfully submitted here that the I.O. during course of inquiry neither examine the drawing and disbursing authority nor produce any evidence to that effect to substantiate that this applicant is solely and fully responsible for the alleged misappropriation....”

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the grounds taken in the appeal preferred by

the applicant against the order of punishment as well as the order passed by the Appellate Authority. The Appellate Authority has exhaustively dealt with the matter in his order while considering the appeal preferred by the applicant. In the fitness of things, the Appellate Authority, while considering the point raised by the applicant, in Paragraph-4(g) has mentioned as follows:

“(g) During the course of inquiry, the appellate himself had admitted that he was the In-Charge of CE Section of INHS Nivarini and that he was dealing with the entire clerical job of CE Section of INHS Nivarini (Q/A.542 to 544 pg. 04 of 1pgs refers). The appellant had himself admitted that generally his duty was to ensure preparation of pay vouchers and forwarding letter to Bank and that they are correct in all respects (Q/A 553 of pg. 95 of IPdgs). The appellate had also deposed before the Inquiry Officer that the payment voucher was partly prepared by him and completed by the office boy Shri Brundaban Sahu (Q/A 546 pg. 94 of Ipdgs.). Subsequently, the signature of CEO on payment voucher was also obtained by Shri Brundaban Sahu. Thereafter, Shri Brundaban Sahu prepared the forwarding letter No.275/32 dated 25 Oct 08 and the nominal roll and deposited the same in the bank without the knowledge of the appellant. However, the handwriting mentioned on the forwarding letter, i.e., INHS Nivarini letter 275/32 dated 25 Oct. 2008 and along with floppy and in the Nominal Roll of Civilian Staff towards arrears of VIth CPC dated 25 Oct. 08 which correlates to the handwriting of the appellant which itself substantiates the fact that he is aware of the contents of the said letter while forwarding it to SBI, INS Chilka (PEs-5 & 8, pgs. 142 ^ 146 of IR is relevant). Also, during the inquiry proceedings the appellant deposed before the IO that it is his own handwriting (Q/A 550 & 551 pg. 95 of IR)”.

11. We have considered the rival submissions and closely scrutinized the materials adduced before us. We do not find any such deficiency on the conclusions arrived at by the Disciplinary Authority or for that matter the Appellate Authority. It is not even a case of no evidence nor the conclusion arrived at is perverse and/or based on no evidence. There has been no violation

of the principles of natural justice while conducting the disciplinary inquiry. The applicant, in our considered view, has been provided all the opportunities to defend his case and from the materials on record, we are of the opinion that the conclusion drawn up in the instant disciplinary proceedings is not flawed on any count, nor has there been violation of any statutory or procedural rules, as the case may be. Besides, we are of the view that the charges are based on materials on evidence. In view of this, interference by this Tribunal is unwarranted. In the result, the O.A. is dismissed. No costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(J)

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