

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00641/2016

Date of Reserve:17.09.2019

Date of Order:20.11.2019

CORAM:

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

Shri Sudhiranjan Senapati, IRS, aged about 51 years, S/o.Shri B.C.Senapati, Additional Commissioner of Income Tax, Range-64, Room No.102, Block B, Civic Centre, Minto Road, New Delhi-110 002, Permanent resident Address-64, Sahidnagar, Bhubaneswar-751 007.

...Applicant

By the Advocate(s)-M/s.J.M.Pattnaik
C.Panigrahi

-VERSUS-

Union of India represented through:

1. The Secretary(Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
3. The Secretary, Central Vigilance Commissioner, Satarkata Bhawan, GPO Complex, INA, A Block, New Delhi-110 023.
4. Shri N.Jayasankar, IRS, CIT(TDS), Bhubaneswar cum Inquiry Officer, presently posted as Commissioner (Appeals), Kochi, Kerala.
5. Shri A.Tiga, IRS, Joint Commissioner (Exemption),Aayakar Bhawan, Annex Building, Bhubaneswar.
6. The Principal Chief Commissioner of Income Tax, Odisha, Aayakar Bhawan, Bhubaneswar.

...Respondents

By the Advocate(s)-Mr.Mr.A.K.Mohapatra

ORDERPER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Additional Commissioner of Income Tax at New Delhi. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) To quash No.CIT(TES)Vig./IO/SRS/2015-16/2 dated 08.10.2015 (Annexure-A/8), No.CIT(TDS)/Vig/IO/SRS/2015-16/3 dated 12.10.2015 (Annexure-A/9) of the Inquiry Officer and the letter No.C.14011/54/2014-V&L dated 08.04.2016 (Annexure-A/11) of the disciplinary Authority.
- ii) To direct the Respondents particularly respondent No.4(IO) to permit the applicant to be defended by his Defence Assistant nominated by him in the disciplinary proceedings initiated against him.
- iii) To pass any other order/orders as deemed fit and proper.
- iv) To allow this OA with costs.

2. The undraped facts of the matter are thus: While working as Joint Commissioner of Income Tax, Range-2, Bhubaneswar, a disciplinary proceeding under Rule-14 of CCS(CCA) Rules, 1965, was initiated against the applicant vide Memorandum dated 04.08.2014, which reads as follows:

"That Shri Sudhiranjan Senapati, while functioning as JCIT, Range-2, Bhubaneswar during the period from May, 2000 to June, 2003 committed gross irregularities in the matter of survey in the case of M/s.ARSS Stones Pvt. Ltd., conducted on 12.08.2002 at N-A/93, IRC Village, Nayapally, Bhubaneswar working under his administrative control within his knowledge and his failure to ensure its proper and timely assessment, etc. as elaborated in the Statement of Imputation of misconduct framed against him.

By the aforesaid acts of omission and commission, Shri Sudhiranjan Senapati failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Govt. Servant, thus violating the Provisions of Rules 3(1)(i), 2(1)(ii) & 3(10)(iii) of CCS(Conduct) Rules, 1964".

3. Before the inquiry into the matter could be taken place, the applicant submitted an application to the Inquiring Authority to appoint Shri S.K.Srivastava, Commissioner of Income Tax (A)-1, Noida as his Defence Assistant. The Inquiring Authority vide his communication dated 01.10.2015 did not accede to his request, inter alia, on the ground, as mentioned therein. Aggrieved with this, the applicant submitted a representation dated 26.10.2015 to the Disciplinary Authority viz., the Union Finance Minister reiterating his prayer as made to the Inquiring Authority in so far as appointment of Shri S.K.Srivastava, Commissioner of Income Tax (A)1, Nodia as Defence Assistant is concerned. Since, there was no response, the applicant approached the Central Administrative Tribunal, Principal Bench, which formed the subject matter of O.A.No.146/2016. In the said O.A., the applicant, had sought for an interim measure, which reads as follows:

"Restrain the Ld.Inqury Authority from proceedings with the inquiry over pending Charge-sheet dated 04.08.2014 during the pendency before this Hon'ble Tribunal of the instant O.A. as applicant is being denied fair inquiry and fair defence for extraneous consideration & oblique motive of Respondents".

4. In the above backdrop, the CAT, Principal Bench passed an order, as an interim measure on 12.02.2016, the relevant part of which reads as follows:

"8. We have considered the arguments put forth by the learned counsel for both the parties and have also perused the pleadings. Admittedly, the applicant's representation dated 26.10.2015 against the Annexure-A/1 order of the Inquiring Authority is pending before the Disciplinary Authority for more than 3 months. Unless a final decision is taken with regard to the appointment of a Defence Assistant by the applicant, the inquiry cannot proceed in a proper manner. At the same time, we also take note of the fact that the Disciplinary Authority is none other than

the Union Finance Minister who is a busy person and he would be presently more busy in view of the fact that he would be presenting union budget very shortly.

9. In view of the above, it would be prudent to allow sufficient time to the Disciplinary Authority to dispose of the applicant's representation dated 27.10.2015. Accordingly we allow 8 weeks time to the Disciplinary Authority to dispose of the said representation from the date of receipt of a copy of this order. It is also ordered that the Inquiring Officer is restrained from proceeding ahead with the inquiry till the representation of the applicant dated 26.10.2015 is disposed of by the Disciplinary Authority.,

List on 16.3.2016".

5. Thereafter, the order of the Disciplinary Authority was communicated to the applicant vide communication dated 08.04.2016 (A/11). For the purpose of clarity, the said order is extracted hereunder:

Sub: Representation against order of Inquiry Officer
Shri N.Jayasankar, Commissioner of Income Tax
(TDS) & IO, Bhubaneswar rejecting nomination
of Defence Assistant for Shri S.R.Senapati,
Addl.CIT – Reg:

Ref: Letter No.Addl.CIT/R-64/SRS-Vig/2015-
16/371 dated 26.10.2015 addressed to Hon'ble
Finance Minister

2. I am directed to state that the Disciplinary Authority has considered the contents of your above referred letter vide which order of Inquiry officer Shri N.Jayasankar CIT(TDS), Bhubaneswar, rejecting your request to nominate Shri S.K.Srivastava CIT(A), Noida, as your Defence Assistant has been challenged.
3. After carefully examining the contents of your above referred letter and considering the facts and circumstances of this case, the Disciplinary Authority has upheld the decision of Inquiry Officer as communicated to you vide his letter no.CIT(TDS)/VIG./IO/SRS/2015-16/2 dated 08.10.2015".

6. While the matter stood thus, on the prayer made by the applicant, the Principal Bench vide order dated 26.04.2016 allowed withdrawal of the O.A.No.146/2016, with liberty to the applicant to file fresh one challenging the order dated 08.04.2016. Hence, this Application with the prayer as mentioned above.

7. The grounds on which the applicant has based his claim are that Sub-rule-8(a) of Rule-14 of CCS(CCA) Rules, 1965, provides that a Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf. It further provides that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits. It is the case of the applicant his request to appoint Shri S.K.Srivastava CIT(A), Noida as his Defence Assistant was not acceded to by the I.O. without any rhyme or reason. Aggrieved with this, he preferred an appeal to the Disciplinary Authority, who upheld the decision taken by the Inquiry Officer thus, rejected the request of the applicant in that behalf. The applicant has pleaded that both the Inquiry Officer as well as the Disciplinary Authority, while disallowing his request, did not assign any justifiable reason and as such, the orders so passed, are liable to be set aside. According to applicant in *Maddada Chayanna vs. K.Narayana* (AIR 1979 SC 1320), it has been held by the Hon'ble Supreme Court that interpretation of statute, contextual or otherwise, must further and not frustrate the object of the statute and while rejecting the request of the applicant, no such principle has been scrupulously followed by the respondents. Besides, the applicant has stated that there has been violation of

the principles of natural justice while passing the orders which are impugned and called in question in the instant O.A.

8. Respondents have filed a detailed counter opposing the prayer of the applicant. According to Respondents Sub-rule(8) of Rule-14 of CCS(CCA)Rules, 1965 provides that a Government servant who has been charged with misconduct may take assistance of any of the Government servants posted in any office either at his headquarters or at the place where the enquiry is held, to present his case on his behalf. Based on this, the Respondents have pointed out that appointment of Shri S.K.Srivastava as Defence Assistant is not in conformity with the said Rules. They have, therefore, stated that there has been no infringement of instructions issued by the DOP&T vide OM No.11012/3/86-Estt.A) dated 29.04.1986.

9. Heard learned counsels for both the sides and perused the records including the rejoinder filed by the applicant. From the pleadings of the parties, the short point to be decided is whether the Inquiry Officer and the Disciplinary Authority, while not acceding to the request of the applicant to appoint Shri S.K.Srivastava as his Defence Assistant, have acted in consonance with the rules of law or whether any right of the applicant has been infringed thereby.

10. In this connection, we have gone through the communication dated 08.10.2005(A/8), whereby the Inquiry Officer did not accede to the request of the appointment for appointment of Shri S.K.Srivastava as his Defence Assistant. The relevant part of the said communication reads as follows:

"You are informed that Sub-rule (8) of Rule 14 of CCS(CCA) Rules, 1965 provides that a Government servant who has been charged with misconduct may take the assistance of any of the Government servants posted in any office either at his headquarters or at

the place where the inquiry is held, to present his case on his behalf.

Your present posting and position is that of the Addl. Commissioner of Income-tax, Range 64, Delhi which falls within the jurisdictional purview of the Pr.Commissioner/Commissioner of Income Tax, Delhi-22 and the Pr.Chief Commissioner of Income Tax, Delhi. This means that your present headquarters is Delhi. As against this position, it is seen that the position of CIT(A)-1, Noida does not fall under the jurisdiction of the Pr.Chief Commissioner of Income -tax, Delhi or any of the Chief Commissioner/Directors General of Income-tax with headquarters in Delhi or any Income tax office with headquarters in Delhi is headed by an officer of a rank sufficiently high to be directly reported to by a Commissioner of Income-tax (Appeals). The position of CIT(A)-1, Noida instead falls under the jurisdictional purview of the Pr.Chief Commissioner of Income-tax, UP(West), headquartered in Kanpur, Uttar Pradesh.

The above would mean that your headquarters and that of your proposed appointee as Defence Assistant are not the same as envisaged and required under Sub-rule (8) of Rule 14 of CCS(CCA)Rules, 1965. Consequently, any request by you to appoint Shri S.K.Srivastava, CIT (A)-I, Noida as your Defence Assistant in the inquiry proceedings under reference cannot be acceded to, since the same would violate the condition and principle laid down in Sub-rule(8) of Rule 14 of CCS(CCA) Rules, 1965".

11. The entire gamut of the case is that whereas under the proviso to Sub- Rule 8(a) of Rule-14 of CCS(CCA), Rules, 1965, it has been stipulated that the Government servant may take the assistance of any other Government servant posted at any other station if Inquiry Officer having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits, but, the latter did not consider the same in its proper perspective. Similarly, the Disciplinary Authority in a cryptic order upheld the decision taken by the Inquiry Officer in that behalf. In this connection, it is to be noted that perusal of the orders as passed by the Inquiry Officer, the gist of which

has been quoted above, are based on the rules on the subject. At the cost of repetition, it is to be noted that Sub-rule (8) of Rule 14 of CCS(CCA) Rules, 1965 provides that a Government servant who has been charged with misconduct may take the assistance of any of the Government servants posted in any office either at his headquarters or at the place where the inquiry is held, to present his case on his behalf. Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits. With regard to appointment of Defence Assistant posted in any office either at the headquarters of the delinquent or where the inquiry is held or from any other station, as it appears from the tenor of the Rules, is optional and not mandatory and in this connection, it is for the Inquiry Officer or the Disciplinary Authority, as the case may be, to consider the same having regard to the facts and circumstances of the case and within the four corners of rules. That consideration, the Inquiry Officer, as evidenced from the order passed by him, has shown while not acceding to the request of the applicant to appoint Shri S.K.Srivastava as his Defence Assistant. This apart, the Disciplinary Authority after examining and scrutinizing the orders of the Inquiry Officer found the same based on rules and hence, upheld the decision taken. Therefore, there has been no violation of any of the provisions under the rules by the Disciplinary Authority. In view of this, we answer the point in issue while rejecting the request of the applicant to appoint Shri S.K.Srivastava as his Defence Assistant the action taken by the Inquiry Officer or the Disciplinary Authority, as the case may be, is in consonance with the rules of law. Further, we are of the considered opinion that no right of the applicant

whatsoever in the matter of appointment of Shri S.K.Srivastava as his Defence Assistant has been infringed by the respondents.

12. Having regard to the discussions held above, we hold that the O.A. being devoid of merit is liable to be dismissed and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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