(2021) 09 OHC CK 0061

In the Orissa High Court

Case No : Writ Petition (Civil) No. 9168 Of 2014

Manoj Kumar Patel APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 16

Citation : (2021) 09 OHC CK 0061

Hon'ble Judges : Dr. S. Muralidhar, J;B.P. Routray, J

Bench : Division Bench

Advocate : G.A.R.Dora, P.K.Parhi, M.K.Pradhan, S.B.Jena

Final Decision : Dismissed

Judgement

B.P. Routray, J

1. The Petitioner has prayed for quashing of order dated 16th April, 2014 (Annexure-2) passed by learned Central Administrative Tribunal, Cuttack Bench, Cuttack along with the orders of the Disciplinary Authority under Annexures-2, 3 and 10.

2. During the year 2007, the Petitioner was serving as Dy. General Manager, ETR, Bhubaneswar in the office of the Bharat Sanchar Nigam Limited (BSNL).

3. The Disciplinary Authority in charge memo dated 28th May, 2010 framed thirteen charges against the Petitioner asking him to submit his reply. The Petitioner submitted his written statement of defense dated 1st June, 2010 denying all such charges. The Disciplinary Authority after consideration of reply of the Petitioner dropped Charges No.5 to 11 and 13. In respect of Charge Nos.1 to 4 and 12, the same were held proved and the Disciplinary Authority proposed for imposition of minor penalty of reduction to lower stage in the time scale of pay by one stage for a period of three years without cumulative effect not adversely affecting the pension. Then, the U.P.S.C. was consulted and their

opinion was sought for. The U.P.S.C. in their letter dated 25th November, 2011(Annexure-2) concurred with the opinion of Disciplinary Authority for imposition of the minor penalty. As such, aforesaid minor penalty was imposed against the Petitioner in order dated 26th December, 2011 (Annexure-3). The Petitioner then preferred review against the same to the President of BSNL (the minister, C & IT), which was rejected as per order dated 5th March, 2013, communicated in letter dated 12th March, 2013 by confirming the order of the Disciplinary Authority.

4. The Petitioner filed O.A.No.208 of 2013 before the Central Administrative Tribunal, Cuttack Bench, Cuttack challenging the orders of the Disciplinary Authority as well as the review authority. Upon adjudication, learned Central Administrative Tribunal rejected the prayer of the Petitioner and dismissed the aforesaid Original Application. Hence, the present writ petition has been filed.

5. The sum and substance of the Charges No.1 to 4 and 12 can be categorized into two heads. First, the Petitioner retained the excess advance amount towards T.A. Bills and did not refund the same in due time. Secondly, the Petitioner exceeded his financial limit in approving the tender bill for furnishing of the rest room at Puri i.e., amounting to Rs.1,95,667/- without approval of the higher authority.

6. Shri Dora, learned Senior Counsel appearing for the Petitioner submits that imputations in the charges against the Petitioner about reduction of excess advance amount may be a violation of T.A. Rules, but cannot be construed as misconduct. Further, post facto approval in respect of the financial order exceeding the limit has been accorded and therefore, the same cannot be termed as a misconduct against the Petitioner. As such the punishment imposed is illegal and liable to be set aside. The further contention raised that since no inquiry was conducted in the proceeding, the Petitioner was deprived of adducing any evidence in his defense. Had the enquiry been conducted, charges would have been not proved against the Petitioner.

7. Admittedly, the punishment imposed against the Petitioner is a minor penalty within the definition of Rule-11 of the CCS (CCA) Rule, 1965. Rule 16 of the said Rules prescribe the procedure for imposition of minor punishment and the same does not require conduct of any enquiry for the said purposes. So imposition of minor penalty against the Petitioner without conducting the enquiry by the Disciplinary Authority cannot be faulted with as violation of the procedure. The Disciplinary Authority in his discretion may conduct enquiry even for imposition of minor penalty but the same cannot be followed as a compulsory procedure. In other words, the Disciplinary Authority is not under any obligation to conduct the enquiry for imposition of minor penalty. Therefore no procedural irregularity can be alleged against the Disciplinary Authority.

8. Coming to the charges, the Petitioner has not produced any document in denial to the same. He does not deny retention of excess amount beyond the

prescribed time limit. His case is that such action on his part at best attracts violation of T.A./D.A. Rules, 2002 for BSNL, and cannot be amounted to misconduct. This contention of the Petitioner is misconceived because such a conduct on the part of Petitioner as an employee of BSNL is unbecoming. The conduct Rules (The BSNL Conduct, Discipline and Appeal Rules, 2006) prescribe that an employee should not do anything which is unbecoming on the part of a public servant. Retaining of excess the advance amount after adjustment of the T.A. bills beyond the prescribed time period is definitely an inappropriate conduct on the part of an employee in the stature of the Petitioner. Accordingly, no merit is found in this contention of the Petitioner.

9. The Petitioner approved the bill of a contractor amounting to Rs.1,95,667/- exceeding his financial limit. This is not denied by him. When the guidelines prescribe the financial limit in such matters commensurate to the rank of the employee, the admitted action of the Petitioner in approving the bill is a clear violation of the same. As seen from the record, the limit in the category of employees in the rank of DGM is within one lakh. But the bill amounting to Rs.1,95,667/- as approved by the Petitioner is admittedly exceeding his financial limits. Post-facto approval of the same may be for regularizing the financial irregularity, but this will not take away the financial irresponsibility of the Petitioner. This is clear misconduct and the Petitioner cannot get rid of the same. Moreover, this Court exercising writ jurisdiction cannot sit as an appellate authority to reappreciate the factual aspects against the decision of the Disciplinary Authority.

10. In view of the above discussion, we do not find any ground to interfere with the orders of the Disciplinary Authority as well as the order of the learned Central Administrative Tribunal. Accordingly, the writ petition, being devoid of any merit, is dismissed.

....