

(2023) 01 CAT CK 0017

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00682 Of 2012

Satyananda Nayak

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Service. (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(iii)
Constitution Of India, 1950 — Article 20, 20(2), 21

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Hon'ble Judges : Swarup Kumar Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : S. Rath, G.R. Verma

Final Decision : Allowed

Judgement

Swarup Kumar Mishra, Member (J)

1. This case, as it appears from record, has a checkered career and is briefly stated that the applicant while working as Draftsman, Division –I in No. 11 Drawing Office, OGDC, Survey of India, Bhubaneswar retired from service on superannuation on 31.08.2014. He has filed this O.A. under Section 19 of the AT Act, 1985 seeking to quash the charge sheet No. C-209/2-A (Satyananda Nayak) dated 1st August, 2012 (Annexure-A/9) initiated under Rule 14 of CCS (CC&A) Rules, 1965 and subsequent orders passed thereon, mainly on the grounds of delay and laches in issuance of the charge sheet, the authority who issued the charge sheet has no jurisdiction and competency to do so, the charge sheet is vague and that with the same allegation which was the subject matter of another proceedings ended with punishment.

2. By way of ad interim order, the prayer of the applicant was to stay the inquiry sought to be held to the allegation in the charge sheet by the IO. The OA was

admitted on 18.09.2012. The prayer for interim order was rejected by this Tribunal vide order dated 11.10.2012. The applicant challenged the said order dated 11.10.2012 rejecting his prayer for stay of the inquiry before the Hon'ble High Court of Orissa in WP(C)No. 20523/2012 and the Hon'ble High Court of Orissa was pleased to stay the disciplinary proceedings. Therefore, on the submission of the Counsel appearing for the parties, this Tribunal kept its hands off from further proceeding in the matter due to pendency of the Writ Petition.

3. The memorandum of charge sheet contains three articles of charges, which are as under:

"ARTICLE OF CHARGE-1

That the said Shri Satyananda Nayak while functioning as Draftsman Division - I in the South Eastern Circle, Survey of India, Bhubaneshwar (reorganized as Orissa Geo-Spatial Data Centre, Bhubaneshwar) made an application to Director, South Eastern Circle to get one Ms Pramila Kabita Nayak stated to have TRESSPASSED in his Government Residence No. 49 of Type-III (Survey of India Residential Colony, Nayapally) evicted although the lady was kept in the said Government Residence by Shri Satyananda Nayak himself, with a malicious intention and ulterior motive, thereby behaving in a manner unbecoming of a Government servant, attracting the provisions of Rule 3(1) (1) & (iii) of CCS (Conduct) Rules 1964

ARTICLE OF CHARGE-II

That the said Shri Satyananda Nayak, while functioning as Draftsman Division 1, in the South Eastern Circle, Survey of India, Bhubaneshwar (reorganized as Orissa Geo-Spatial Data Centre, Bhubaneshwar) submitted representations to various authorities requesting them not to deduct License fee for the Government Residence No- 49 Type/III of Survey of India Residential Colony, Bhubaneshwar even though the said quarter was very much under his occupation, thus behaving in a manner unbecoming of Government Servant attracting the provisions of Rule 3(1)(i) & (iii) of CCS (Conduct) Rules 1964

ARTICLE OF CHARGE III

That the said Shri Satyananda Nayak, while functioning as Draftsman Division - 1, in the South Eastern Circle, Survey of India, Bhubaneshwar (reorganized as Orissa Geo-Spatial Data Centre, Bhubaneshwar) after the death of his first wife remarried to one Bilash Das and instead of intimating the actual name of his second wife, he intimated to the office that the name of his second wife was Ms Pramila Kabita Nayak, thereby he furnished false information to the office which is unbecoming of a Government servant attracting the provisions of Rule 3(1) (i) & (iii) of CCS Conduct Rules 1964.

4. It is relevant to record that earlier the prayer of the applicant to pay him HRA and refund the amount deducted from his salary from December, 1998 onwards in respect of quarters no. 49/T -III of Survey of India Colony with interest did

not yield any result, he had approached this Tribunal in OA No. 182/2001. This Tribunal dismissed the said OA vide order dated 9.2.2004. The applicant challenged the said order before the Hon'ble High Court of Orissa in WP(C) No. 3596/2004, which was disposed of by the Hon'ble High Court of Orissa vide order dated 24.08.2022, relevant portion of which is as under:

"6. The undisputed fact, as emerged from the records available before this Court, is that one Kabita Pradhan had occupied the quarters in question which was allotted in favour of the petitioner. The petitioner claims that Kabita Pradhan is not his wife and, as such, he is not liable to pay the house rent and the electricity charges for the said quarters. The facts which are now brought to the notice of this Court were not placed before the tribunal while passing the final order. Therefore, this Court is of the considered view that if by virtue of a civil court decree Kabita Pradhan has been declared as not the wife of the petitioner, she should have been declared as a trespasser to the quarters allotted in favour of the petitioner. Therefore, for un-authorized occupation of the quarters by Kabita Pradhan, who is a trespasser, the petitioner is not liable to pay the house rent as well as the electricity charges, which have been forcibly deducted by the authorities from his salary in spite of intimation given by the petitioner to them. In the above premises, without delving into the merits of the case itself, this Court is of the considered view that in the event the matter is remanded back to the tribunal, the tribunal shall take into consideration the subsequent developments, that have taken place in the meantime, in proper perspective on the basis of documents filed by the petitioner and readjudicate the same afresh by giving opportunity of hearing to all the parties.

7. In the above view of the matter, the order impugned dated 09.02.2004 passed by the tribunal in O.A. No. 182 of 2001 under Annexure-9 is hereby set aside. The matter is remitted back to the Central Administrative Tribunal, Cuttack Bench, Cuttack, for fresh adjudication on the basis of the documents to be filed by the petitioner by way of an additional affidavit, by giving opportunity of hearing to the parties."

In view of the aforesaid order, the writ petition no. 20523/2012 filed by the applicant challenging the order of this Tribunal dated 11.10.2012 was disposed of, and this OA was remitted back to this Tribunal for fresh adjudication in terms of the order dated 24.08.2022 in WP(C) No. 3596/2004 quoted above.

5. It is the case of the Respondents that the applicant was promoted to the post of Draftsman Division- I by the order dated 11.08.1997 in Group C Service which post was upgraded/reclassified as Group B (non gazette) w.e.f. 7th September, 2009. In view of the above, Additional Surveyor General became the appointing/disciplinary Authority in so far as Draftsman post is concerned. Thus, the allegation that the Additional Surveyor General being not the appointing/disciplinary authority the charge sheet is not sustainable is not correct and, accordingly, Respondents denied the said stand of the Applicant. It has been stated that Ms. Kabita Pradhan was brought into the quarters by applicant

himself and both of them were residing in the said quarters. Hence, the lady cannot be said to be a trespasser. Earlier the applicant was placed under suspension in connection with another disciplinary proceedings initiated against him. Later on, he was reinstated and the disciplinary proceedings initiated against him was culminated with imposition of punishment which punishment was set at rest after dismissal of the Writ Petition filed by the applicant challenging the order of dismissal of this Tribunal against the punishment earlier imposed on him. It has been stated that the allegation of charge sheet in earlier disciplinary proceedings is different to the allegation of the charge impugned in this OA. The Respondents have also denied the allegation of delay and laches in initiating the present disciplinary proceedings. The Respondents in their counter have also stated as to how the disputes relating to the quarters are going on long since. Further, it has been stated that justification of the charge sheet cannot be delved into by this Tribunal at this stage. Hence by placing reliance on the decision of the Hon'ble Apex Court in the case of Jagadish Prasad v State of MP, AIR 1961 SC 1070, the Respondents have prayed for dismissal of this O.A. Rejoinder has also been filed by the Applicant.

6. Learned Counsel for the Applicant has placed reliance on various decisions on different context which are summarized below:

(i) State of Madhya Pradesh vs Bani Singh and another –AIR 1990 SC 1308 – Hon'ble Supreme Court quashed the proceedings holding that department aware of involvement of officer in alleged irregularities. No satisfactory explanation for inordinate delay in issuing the charge Memo. Disciplinary proceedings initiated against the employer after more than 12 years. Liable to be quashed.

(ii) P.V.Mahadevan vs M.D., Tamil Nadu Housing Board, AIR 2006 SC 207-Hon'ble Supreme Court quashed the proceedings holding thatallowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

(iii) M.V.Bijlani, (2006) 5 SCC 88- Hon'ble Supreme Court quashed the proceedings holding that the Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and

it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer.

(iv) NOIDA Entrepreneurs Association vs NOIDA & Ors, AIR 2011 SC 2112- Hon'ble Supreme Court quashed the proceedings for delay and laches by holding that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud", which means "whenever a thing is prohibited, it is prohibited whether done directly or indirectly.

(v) R.Tirupathy and Ors vs the District Collector and Ors, MANU/TN/8516/2006- The Hon'ble High Court of Madurai Bench held that unexplained extraordinary delay in initiating disciplinary proceedings shall vitiate the claim;

(vi) C.M.Tiwari vs UOI & Ors, OA No. 3659 of 2012 disposed of on 13th February, 2014-CAT, PB, New Delhi quashed the proceedings on delay and laches so also bias;

(vii) Basavarajappa M. Nyamathi vs Chairman & MD, BSNL & Ors, OA No. 416/2020 disposed of on 11.06.2021- CAT, Bangalore Bench, Bangalore quashed the proceedings by holding that enormous delay in initiating of disciplinary proceedings, itself has vitiated the entire process. The explanation given by respondents for such a long delay in initiating disciplinary proceedings is not satisfactory. Undue delay in initiating departmental proceedings constitutes denial of reasonable opportunity and amounts to violation of principles of natural justice. By lapse of time on account of such delays some evidences are bound to vanish and as time passes by memories of incidents and occurrences get blurred. Thus, it would be unfair to permit a departmental enquiry after such a long period where the charged employee may not able to properly defend himself, since a huge delay has occurred from the time of incident till the time of conduct the enquiry.

(viii) Sawai Singh v State of Rajasthan, AIR 1986 sc 995-As charge sheet was framed and issued in vague the same was quashed by the Hon'bel Supreme Court;

(ix) Union of India and others vs J.Ahmed, AIR 1979 SC 1022 -Interference in the proceedings where charge does not constitute misconduct;

(x) State of Punjab vs V.K.Khanna and others, (2001) 2 SCC 330- Interference and quashing of charge sheet, if the same is actuated with mala fide exercise of power;

(xi) Union of India and others vs Sushil Kumar Rath, 2009 (Supp.II) OLR 861 – Hon'ble High Court of Orissa was pleased to hold that since the employee has not occupied or utilized the accommodation made available to him he is entitled to HRA and electricity deducted from his salary;

7. Learned counsel appearing for both sides have reiterated the stand taken in their pleadings and after giving thoughtful consideration to the arguments advanced by learned counsel for both sides perused the records.

8. It is seen that the allegation in article I is that the lady Ms Pramila Kabita Nayak was kept by the applicant with a malicious intention and ulterior motive and submitted application for her eviction and allegation in Article II is that the applicant has repeatedly submitted application not to deduct license fee of the accommodation which is unbecoming on the part of a Government servant. There is no iota of doubt that the said lady has been declared as not the wife of the applicant and was a trespasser to the quarters allotted in favour of applicant by the competent court of law and based on which the Hon'ble High Court of Orissa in the order, referred to above has been pleased to hold that in view of the order of Civil Court the applicant is not liable to pay the house rent as well as the electricity charges, which have been forcibly deducted by the authorities from the salary of applicant in spite of intimation given by the applicant. In view of the order of the learned Civil Court and the Hon'ble High Court of Orissa, referred to above, allowing the department to proceed with the allegation in Articles I & II become otiose except allowing the applicant, who has already retired from service, to continue with mental stress and strain due to pendency of the proceedings. Similarly, it is noticed that the allegation against the applicant in Article III is that after the death of his first wife he remarried one Bilash Das and instead of intimating the actual name of his wife he intimated the office that the name of his second wife was Ms Pramila Kabita Nayak, which is unbecoming on the part of a Government servant. After the order of the Hon'ble High Court of Orissa dated 23.09.2011 in CRLMC No. 1893 of 2011 (A/6), this allegation became academic and allowing the department to proceed with the enquiry would be a futile exercise. It is not out of place to mention that the allegations made in the instant charge sheet are more or less similar to the earlier disciplinary proceedings initiated and concluded against the applicant with imposition of punishment. In Article 20 and 21 of the Constitution, provisions are made relating to personal liberty to citizens and others. Article 20(2) expressly provides that no one should be prosecuted and punished for the same offence more than once. It is also well known maxim *nemo debet bis vexari (si constat curiae quod sit) pro una et eadem causa* meaning thereby no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. It is trite law as held by Hon'ble Apex Court in the case of *P.V.Mahadevan vs M.D., Tamil Nadu Housing Board, AIR 2006 SC 207* that the protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. Therefore, it is necessary to draw the curtain and to put an end to the enquiry. The mental agony and sufferings of Govt. employee due to the protracted disciplinary proceedings would be much more than the

punishment. In the instant case it is seen that the applicant has already suffered enough due to various litigations/Disciplinary Proceedings initiated against him. Hence, keeping in mind the order of the Learned Civil Court, Hon'ble High Court of Orissa, referred to above and keeping in mind the law laid down by Hon'ble Apex Court, allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant who has already retired from service. Hence, in the peculiar facts and circumstances of this case, charge sheet dated 1st August, 2012 is hereby quashed and sequel to the above, orders, if any, passed in pursuance of the impugned charge sheet stands quashed.

9. In the result, this OA stands allowed. No costs.