
(2014) 01 OHC CK 0013
In the Orissa High Court
Case No : W.P. (C) No. 15176 of 2006

State of Orissa

APPELLANT

Vs

M. Rajamani

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Citation : (2014) 142 FLR 144 : (2014) 141 FLR 952

Hon'ble Judges : Raghubir Dash, J;M.M. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Das and R. Dash, JJ.—Heard learned Counsel for the State-petitioner and Mr. J.K. Tripathy, learned Senior Counsel appearing for the opposite party. The State-petitioner in this writ petition has called in question the order dated 29.9.2005 passed in O.A. No. 180 of 2003 by the Central Administrative Tribunal, Cuttack Bench, Cuttack.

2. The opposite party filed the aforesaid original application while functioning as Joint Secretary to Government of India, Urban Development Department, Ministry of Urban Development and Poverty Alleviation, Government of India, New Delhi assailing the Memorandum No. AIS/V-19/02-26415.AIS-I dated 19.8.2002 issued by the Special Secretary to Government of Odisha, G.A. Department, Bhubaneswar framing the article of charges and the Order No. 4716/AIS-I dated 18.2.2003 communicated to the opposite party-applicant, appointing the respondent No. 3 before the Tribunal, as the Enquiry Officer under Rule 8(2) of the AIS (D & A) Rules, 1969. The opposite party as applicant sought for quashing the article of charges communicated under Annexure-2 as well as for quashing the institution of enquiry and appointment of Enquiring Officer under Annexure-4 to the Original Application and for any other reliefs.

3. Facts involved in the case, in brief, are that the opposite party was previously posted as Vice-Chairman, Bhubaneswar Development Authority (for short "BDA")

under the Housing and Urban Development Department, Government of Odisha during the period from May, 1995 to February, 1999. As Vice-chairman of BDA, he also functioned as Chairman of Development Plan and Building Promotion (for short "DP & BP) Committee. It was alleged that while the opposite party was working as such, he recommended for approval of the plan of "Harapriya Apartment" over Plot Nos. 2727 and 2727/3743, without raising any objection with regard to non-submission of "No Objection Certificate" from the Odisha State Electricity Board and Fire Prevention Officer as well as contravening the provisions of BDA Planning and Building (Standards) Regulations, 1993. It was further alleged against the opposite party that he also recommended for approval of the plan of a Multi Storied Building over Plot Nos. 110 and 244 of mouza Jayadev Vihar ignoring the provisions of Multi Storied Building Regulations, 1998. On the basis of such allegation, a disciplinary proceeding was initiated against the opposite party on 19.8.2002. On receiving the said memorandum of charges, he filed a written statement of defence on 30.10.2002. The grievance of opposite party before the Tribunal was that the disciplinary Authority did not consider his written statement of defence, but passed an order on 18.2.2003 in a routine manner directing initiation of the departmental proceeding against him and simultaneously appointing the respondent No. 3 before the Tribunal as the Enquiring Officer, merely because he denied all the charges. It was the case of opposite party that while directing initiation of the departmental proceeding, the Disciplinary Authority has not spoken any thing with regard to consideration of his defence for which he contended that there was total non-application of mind to his defence amounting to infraction of the principles of natural justice and also amounted to prejudice and mala fide. Referring to the letter dated 25.11.1981 issued by the Department of Personnel and Administrative Reforms, the opposite party submitted before the Tribunal that the disciplinary Authority has the inherent power to review and modify the article of charges or drop any or all the charges after receipt and examination of his written statement of defence. However, this was not adhered to in the case of opposite party.

4. The Tribunal after detailed discussion of such facts considering the objection raised by the State that the disciplinary proceeding is in the stage of enquiry and, therefore, the Tribunal lacks jurisdiction to go into the correctness or otherwise of the charges and relying upon the various case laws as mentioned in the impugned order as well as perusing the relevant record, which was called for by it, found the note of the ministry in the said file to the effect that all the officers who were involved in the approving plan are responsible. The Tribunal also considering the question as to whether a "wrong decision" can be said to be "showing illegal favours" to a party with mala fide intention, relying upon the various case laws of the Hon'ble Supreme Court as stated in paragraph-18 of the judgment, concluded that the explanation given by the opposite party to the Disciplinary Authority has not been considered by him before the Enquiry Officer was appointed. The Tribunal further found that steps taken to initiate the disciplinary proceeding against the applicant was not done strictly within the

parameters laid down in the Government of India letter dated 25.11.1981. Thus concluding, the Tribunal ultimately held that the cardinal principle of fair play and justice having not been adhered to, the disciplinary proceeding initiated against the opposite party-applicant fails. Article of charges levelled against the opposite party - applicant was set aside by the Tribunal. Appointment of Enquiring Officer was also set aside. Being aggrieved, the State has approached this Court in the present writ petition.

5. Upon hearing learned Counsel for the State-petitioner, who reiterated the arguments, which were advanced before the Tribunal and which have been considered in detail by the Tribunal, who by applying the principles of law as laid down in various case laws allowed the O.A., we find no reason to interfere with the impugned order passed by the Tribunal, as we do not find any illegality or impropriety in the impugned order. This writ petition is accordingly dismissed.

Urgent certified copy of this order be granted on proper application.