CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.367/2015

Reserved on:04.05.2016
Pronounced on:20.05.2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)

Tushar Ranjan Mohanty,
Aged 56 years,
S/o Shri Rabi Narayan Mohanty,
SAG Officer of the Indian Statistical Service,
Deputy Director General,
Research and Publication Division,
Central Statistics Office,
Ministry of Statistics and Programme Implementation,
New Delhi (Under orders of Transfer)

Currently residing at :

G-31, HUDCO Place Extension,
New Delhi-110049. ...Applicant

(Argued by: Applicant in person)

VERSUS

1. Union of India through
   The Chief Statistician of India and
   Secretary, Ministry of Statistics and
   Programme Implementation,
   Sardar Patel Bhawan,
   Parliament Street,
   New Delhi-110001.

2. Prof. T.C.A. Anant,
   The Chief Statistician of India and
   Secretary, Ministry of Statistics and
   Programme Implementation,
   Sardar Patel Bhawan,
   Parliament Street,
   New Delhi-110001.

3. Shri Ajay Kumar Mehra,
   Director General and

Chief Executive Officer,
National Sample Survey Office,
Ministry of Statistics and
Programme Implementation,
Sardar Patel Bhawan,
Parliament Street,
New Delhi-110001.

4. Shri D.K. Sharma,
Under Secretary (ISS and Vigilance),
Ministry of Statistics and
Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001. ...Respondents

(By Advocate: Mr. R.N. Singh)

ORDER

BY JUSTICE M.S. SULLAR, MEMBER (J)

The challenge in this Original Application (OA) filed by applicant, Tushar Ranjan Mohanty, is to the impugned charge sheet dated 12.12.2014 (Annexure A-1).

2. The matrix of the facts and material, culminating in the commencement, relevant for deciding the instant OA, and emanating from the record, is that, applicant, Tushar Ranjan Mohanty, Deputy Director General in Indian Statistical Service, was stated to have committed certain misconduct, during the course of his employment. As a consequence thereof, he was served with the impugned Memorandum and following Articles of Charge dated 12.12.2014 (Annexure A-1):-

> "Vide Office Memorandum No. PF/M.36-ISS dated 13.7.1995, Shri T. R. Mohanty, ISS, DDG (RPU) when working in the grade of JAG in the Inter State Council Secretariat was granted approval of the Competent Authority under proviso to Rule 50(3) of the CCS (Leave) Rules, 1972 for undertaking research leading to Ph.D. in Economics on the subject Impact of Anti-Poverty Programme on SC/ST from Utkal University, Bhubaneswar.

Vide Memorandum No. A.19014/Ad.I (Pt.III) dated 9.1.98 Shri T. R. Mohanty, DDG was informed that the earlier permission granted to him for study for Ph.D. degree in Economics on the subject Anti-Poverty Programme on Scheduled Caste and Scheduled Tribes Population of Orissa" has been withdrawn by the Competent Authority. He was further informed that grant of study leave applied for by him, therefore, does not arise. It was further informed that if Shri Mohanty, feels inclined to take up his Ph.D. work, his request will be considered afresh on its own merit and in accordance with the rule.

Shri T. R. Mohanty, ISS, DDG while working as Officer on Special Duty (OSD) to the Ministry of Water Resources had applied for Study Leave for the period from 1.1.2001 to 31.12.2002 for pursuing Ph.D, in Economics at Utkal University, Bhubaneswar on the Subject Impact of Anti-Poverty Programmes on Scheduled Caste and Scheduled Tribes Population of Orissa." Shri T. R. Mohanty, DDG in the covering note dated 22.12.2000 for the study leave routed through Hon'ble Minister of Water Resources, with regard to one of the condition for grant of study leave, stated that the Director General, Central Statistical Organisation has approved the proposed study as well as institution to conduct his research. Shri T. R. Mohanty, DDG in his capacity of the then OSD to Minister (WR) in his note dated 22.12.2000 enclosed a copy each of the then Department of Statistics, Ministry of Planning, Office Memorandum No. PF/M-36-ISS dated 13.7.1995 and another letter of the then Department of Statistics letter No. A-19014/9/89-Ad.I dated 4.1.1995. Shri T. R. Mohanty, ISS DDG (RPU) while working as OSD to the Minister (Water Resources), referring to the OM dated 13.7.1995 and another letter dated 4.1.1995 informed through the Hon'ble Minister (WR) to the Administrative Authorities of erstwhile Ministry of Water Resources that his proposed study has the approval of the Competent Authority under his Cadre Controlling Authority.

Based on the note dated 22.12.2000 of Shri T.R.Mohanty, DDG (RPU), during his tenure as OSD to the Minister (WR), Ministry of Water Resources after taking into consideration the approval of the course of study vide OM dated 13.7.1995 by the then Department of Statistics sanctioned Study Leave to Shri T.R.Mohanty, in terms of provisions of the CCS (Leave) Rules, 1972 for 24 months from 1.1.2001 to 31.12.2002 vide Order No.22/457/2000-Admn dated 29.12.2000. Shri T.R.Mohanty, vide his note dated 22.10.2002 submitted that he is in the process of collection of data for the purpose of his study and he needed three more months after completion of study leave to complete his Ph.D dissertation. Accordingly, Shri T.R.Mohanty, referring to the provision of Rule 30(1-A) of CCS(Leave) Rules, 1972 requested for commutation of 180 days Half Pay Leave (HPL) from 1.1.2003 to 31.3.2003 for combining it with earlier sanctioned study leave for the period from 1.1.2001 to 31.12.2002. Vide Office Order No.22/457/2000-Admn dated 31.10.2002 granted 90 days of commuted leave with effect from 1.1.2003 to 31.3.2003 under Rule 30(1-A) of the CCS (Leave) Rules, 1972 read with Rule 54 (2) ibid, to enable him to pursue Ph.D in Economics at Utkal University, Bhubaneswar on the subject "Impact of Anti-Poverty Programmes on SC & ST Population of Orissa".

Shri T.R.Mohanty, DDG was well aware that the approval of the Competent Authority for study on the Subject "Impact of Anti-Poverty Programmes on Scheduled Caste and Scheduled Tribes Population of Orissa' from Utkal University, Bhubaneswar granted vide OM No.PF/M.36-ISS dated 13.7.1995 has been withdrawn vide Memorandum No.A.19014/9/89-Ad.I (Pt.III) dated 9.1.98 and that he was directed to seek fresh approval, yet Shri T.R.Mohanty, while making a request for grant of Study Leave vide his note dated 22.12.2000 suppressed the information about the withdrawal of permission for study leave vide Memorandum No.A.19014/9/89/Ad. (Pt.III) dated 9.1.89. By making a false statement and by suppression of information, Shri T.R.Mohanty, ISS, DDG (RPU), CAP Division, MOSPI, New Delhi while working as OSD to Hon'ble Minister of Water Resources got the study leave sanctioned for the period 1.1.2001 to 31.12.2002 initially which was followed with sanction of 90 days of commuted leave from 1.1.2003 to 31.3.2003. Therefore, Shri T.R.Mohanty has indulged in an activity which is unbecoming of a government servant and thus he has violated Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE II

Shri T.R.Mohanty, ISS, Deputy Director General while working as OSD to Hon'ble Minister of Water Resources, was granted study leave for 24 months from 01.01.2001 to 31.12.2002 for pursuing Ph.D. programme in economics at Utkal University, Bhubaneswar on the subject "Impact of Anti-Poverty Programmes on Scheduled Castes and Scheduled Tribes Population of Orissa" vide Order No.22/457/2000-Admn. dated 29th December 2000 of Ministry of Water Resources, New Delhi. Vide Office Order No.22/457/2000-Admn. dated 31.10.2002 of Ministry of Water Resources he was also granted 90 days of commuted leave w.e.f. 1.1.2003 to 31.3.2003.

In terms of para 4 & 5 of the said order dated (Order No.22/457/2000-Admn.) 29th December 2000, the following condition had been prescribed, which read as under:-

> "4. On completion of the course of study, Shri Mohanty, shall submit the certificate of examination passed or special course of study undertaken indicating the date of commencement and termination of the course with the remarks, if any, of the authority in charge of the course of study, to his parent Department.
>
> 5. If Shri Mohanty resigns or retires from Government Service or otherwise quits service without returning to duty after the period of study leave sanctioned above or within a period of three years after such return to the duty or fails to complete the course of study for which the study leave has been sanction and is thus unable to furnish the required certificates, he shall be required to refund the actual amount of leave salary and other expenses incurred by Government of India in terms of Rule 63 (1) of the CCS (Leave) Rules, 1972."

Rule 63 of the CCS (Leave) Rules, 1972 prescribes that failure to complete the course of study during the study leave will result in refund of actual amount of leave salary, study allowances, cost of fee, travelling and other expenses, if any, incurred by the

Government of India and actual amount, if any, of the cost incurred by other agencies such as foreign Government, foundations and trust in connection with the course of study, together with the interest thereon at rates for the time being in force on Government loans from the date of demand.

Shri T.R.Mohanty, presently posted as DDG (RPU), CAP Division, MOSPI, New Delhi, while working as OSD to Hon'ble Minister of Water Resources had executed a bond dated 22.12.2000 before proceeding on the said study leave laying down the condition that in the event of his failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry or termination of the period of study leave or failing to complete the course of study or at any time within a period of three years after his return to duty, he shall forthwith pay to the Government or as may be directed by the Government, on demand the said sum of Rs.6,00,000/- (Rupees six lakhs only) together with interest thereon from the date of demand at Government rates for the time being in force on Government loans.

Shri T.R.Mohanty, DDG (RPU) vide letter No.DDG-TRM/PF/CSO/2014/8606 dated 13th June 2014 first time informed that the study leave granted to him vide order dated 29-12-2000 by Ministry of Water Resources could not fructify into any degree.

Shri T.R.Mohanty, after completion of his study leave period did not submit the certificate of examination passed or special course of study undertaken. Shri T.R.Mohanty, presently DDG (RPU), CAP Division, MOSPI, New Delhi also did not refund the actual amount of leave salary and other expenses in compliance with in terms of conditions of the Order dated 29th December, 2000, provisions of Rule 63 of the CCS (Leave) Rules, 1972 and the terms of conditions of Bond dated 22nd December, 2000.

Shri T.R.Mohanty, DDG (RPU) after period of study leave neither informed till 13th June, 2014 about his non-completion of the course of study for which he was sanctioned study leave nor refunded the leave salary for failure to complete the course of study, thereby he has acted in a manner which is unbecoming of the Government servant. Therefore, Shri T.R.Mohanty, DDG has indulged in an activity which is unbecoming of a government servant and thus he has violated Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964."

3. In pursuance of the charge for minor penalty, the applicant filed the reply (Annexure A-3 Colly.).

4. Surprisingly enough, instead of awaiting the result of final departmental proceedings, the applicant has straightaway jumped to file the instant OA, challenging the impugned Memorandum and Articles of Charge on the following grounds,

invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985:-

"5.1 Because no Show Cause Notice was issued to the Applicant before the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) was issued, making the impugned Minor Penalty Charge Sheet dated 12.12.2014 bad in law.

5.2 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269 : 1967 SCR (2) 625.

5.3. Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of M. Gopala Krishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240 : 1968 SCR (1) 355.

5.4 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of A. K. Kraipak & Ors. etc v. Union of India & Ors., AIR 1970 SC 150.

5.5 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of D. K. Yadav v. J.M.A. Industries Ltd., 1993 SCR (3) 930 : 1993 SCC (3) 259.

5.6 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664.

5.7 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of R. B. Shreeram Durga Prasad & Fatehchand Nursingh Das v. Settlement Commission (IT & WT) & Anr., 1989 AIR 1038, 1989 SCR (1) 335.

5.8 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of M/s. Travancore Rayons Ltd. v. Union of India, A.I.R. 1971 S.C. 862.

5.9 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in Amal Kumar Ghatak v. State of Assam & Others, A.I.R. 1971 Assam 32.

5.10 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of State of U.P. and Ors. v. Renusagar Power Co. and Others, AIR 1988 SC 1737 : 1988 SCR Supl. (1) 627.

5.11 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of K. I. Shephard & Ors. Etc. v. Union of India & Ors., AIR 1988 SC 686 : 1988 SCR (1) 188.

5.12 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore & Anr., 1970 (2) SCR 600.

5.13 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of Mohd. Faruk v. State Madhya Pradesh and Others, AIR 1970 SC 93 : 1970 SCR (1) 156 : 1969 SCC (1) 853.

5.14 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of A. R. Antulay v. R. S. Nayak & Anr., (1988) 2 SCC 602.

5.15 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is bad in law as the same is violative of the Judgment in the case of S. L. Kapoor v. Jagmohan, 1981 (1) SCR 746.

5.16 Because the Respondent Ministry does not have its facts right, and allegations in the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) are false.

5.17 Because the Respondent Ministry does not have its facts right, and the allegations in the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) are motivated.

5.18 Because the Respondent Ministry does not have its facts right, and the allegations in the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) are manufactured.

5.19 Because there is total non-application of mind by the Competent Authority while approving the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1)

5.20 Because there is no misconduct made out from the face of the records of the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1).

5.21 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) is accentuated by malice.

5.22 Because there is total violation of the Principles of Natural Justice by the Respondent Ministry while dealing with the present case.

5.23 Because the impugned action [Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1)] is actually an expression of a pre-disposed mind, with an infinitely deep-routed institutional bias against the Applicant.

5.24 Because by their action [Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1)], the Respondents have infringed on the Fundamental Rights of this Applicant to live a life with dignity.

5.25 Because the official Respondent has misdirected itself in law, on several counts.

5.26 Because the illegal penal action of the official Respondent is, truly speaking, nothing but a colourable non-exercise of power.

5.27 Because the continued penal action of the official Respondents is nothing but another means of harassing the present Applicant by delaying his chances of proving himself innocent.

5.28 Because the continued penal action of the official Respondents is nothing but another mean of harassing the present Applicant and spoiling the future of the Applicant.

5.29 Because the allegations made in the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure : A-1) do not amount to 'Misconduct' in terms of the law laid down by the Hon'ble Supreme Court of India and the various Hon'ble High Courts in several Cases that have been quoted herein above.

5.30 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure-A-1) violates the law laid down by the Hon'ble Supreme Court of India in several cases that have been quoted herein above.

5.31 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure-A-1) is bad in law as the same is misuse of power by the Private Respondents to wreck personal vengeance against the Applicant.

5.32 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure-A-1) is bad in law as the same is violative of the Judgment in the case of Express Newspaper Pvt. Ltd. & Ors., v. Union of India & Ors., AIR 1986 SC 872.

5.33 Because the impugned Minor Penalty Charge Sheet dated 12.12.2014 (Annexure-A-1) is bad in law as the same is violative of the Judgment in the case of S. Pratap Singh v. State of Punjab, (1964 SC 733) and other cases."

5. Not only that, the applicant has termed the impugned Memorandum and Articles of Charge as arbitrary, illegal, mala fide, whimsical, against the relevant rules and the principles of natural justice. The same were stated to have been

issued due to malice and in violation of the observations of Hon'ble Supreme Court in a line of judgments mentioned therein.

6. The contesting respondents refuted the claim of the applicant and filed the reply, inter alia, pleading certain preliminary objection of maintainability of OA, cause of action and *locus standi* of the applicant. It was pleaded that the Memorandum and Articles of Charge have been issued to the applicant after approval thereof by the competent authority and in accordance with the relevant rules and no statutory provision of law has been violated. The applicant has prematurely approached the Tribunal, instead of waiting for the outcome of the departmental proceedings. Thus, the impugned Memorandum and Articles of Charge were stated to be legal, valid and in accordance with law and relevant rules. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

7. Controverting the allegations of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed the rejoinder. That is how we are seized of the matter.

8. Having heard the applicant in person and learned counsel for the respondents, having gone through the record with their valuable assistance and considering the entire matter, we are of

the firm view that there is no merit and the instant OA deserves to be dismissed as premature, for the reasons mentioned hereinbelow.

9. What cannot possibly be disputed here is that during the pendency of the OA, a minor penalty of reduction to a lower stage in the time sale of pay by one stage for a period of one year without cumulative effect and not adversely affecting his pension, has already been passed vide order dated 10.09.2015 by the President, in exercise of power conferred under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [hereinafter to be referred as "CCS(CCA) Rules]. It is not a matter of dispute that the applicant has neither challenged nor moved any application for amendment of this OA to challenge the main indicated penalty order, despite opportunity for the reasons best known to him.

10. Ex-facie, the arguments of the applicant that since there is a delay in issuing the impugned Memorandum, which is a result of malice and since the Articles of Charge have been served in violation of the law laid down by Hon'ble Supreme Court, so the same are liable to be set aside, are not only devoid of merit but misplaced as well, at this stage itself.

11. As is evident from record, as reproduced above, the applicant has only challenged the Memorandum/Articles of Charge mainly on the ground of delay and latches,

accentuated by malice & bias, violation of statutory rules, instructions and principles of natural justice etc. There is no material on record that when, how and in what manner the serving of Articles of Charge is vitiated on account of malice. Moreover, all other indicated issues pleaded and urged by the applicant, cannot be adjudicated upon while considering the validity or otherwise of charge sheet which has already merged and culminated into the final punishment order. Unless and until, the applicant assails and challenges the penalty order on legally permissible grounds, no relief can be granted to the applicant in the present OA.

12. The mere fact that this Tribunal in its interim order dated 09.06.2015 has observed, that any order passed in Departmental Enquiry proceedings, would be subject to the final outcome of this OA and that another Coordinate Bench has dismissed OA bearing No.3762/2012 on 21.12.2011 filed by the applicant on merits, challenging the similar Articles of Charge, *ipso facto*, are not the grounds, much less cogent, to entertain the present OA, at this stage unless and until the final penalty order is challenged by the applicant, particularly when this Tribunal has very limited jurisdiction to interfere in disciplinary proceedings.

13. An identical issue came to be decided by the Hon'ble Supreme Court in a celebrated judgment in the case of ***Union of India V/s. Upendra Singh (1994) 3 SCC 357,*** which was

followed in may subsequent judgments wherein having considered the scope of judicial review, at the stage of framing the charge, it was ruled as under:-

> "6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be..."

14. Again, the Hon'ble Supreme Court in the case of ***Union of India Vs. Ashok Kaker (1995) Supp1 SCC 180*** has ruled that it is premature for a court to consider a challenge to charge-sheet where the employee has just rushed to the court on receiving the charge sheet. Appellant (therein) should have made a reply to the charge sheet and raised all the points against the issue of charge sheet in his reply for consideration of the Disciplinary Authority. The stage for judicial review can arise only thereafter.

15. Therefore, it is held that the instant OA, challenging the Memorandum and Articles of Charge, is not maintainable at this stage unless and until the final penalty order passed by the competent authority, is challenged by the applicant on legally permissible grounds. The ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the facts

of the present case and is complete answer to the problem in hand.

16. No other point, worth consideration, has been urged or pressed by the applicant and the learned counsel for the respondents.

17. In the light of the aforesaid reason and without commenting further anything on merit, lest it may prejudice the case of either side during the course of any subsequent hearing at any appropriate stage, as there is no merit, the instant OA is hereby dismissed at this stage in the obtaining circumstances of the case.

18. Needless to mention that nothing observed herein above would reflect in any manner on the merits of the case at any subsequent stage, as the same has been so recorded for a limited purpose of deciding the present OA at this stage. No costs.

19. At the same time, applicant would be at liberty to file fresh OA to challenge the Memorandum/Articles of Charge dated 12.12.2014 (Annexure A-1) and punishment order dated 10.09.2015 on all permissible grounds in accordance with law.

(SHEKAR AGARWAL)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh