

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA 260/00541 of 2019**

Reserved on: 29.04.2024

Pronounced on : 30.04.2024

**CORAM:**

**HON'BLE SHRI SUDHI RANJAN MISHRA, MEMBER (J)  
HON'BLE SHRI PRAMOD KUMAR DAS, MEMBER (A)**

Sri Biswa Nath Parida (Gr C), aged about 55 years, son of Shri Trinath Parida, At/Po Kumbharmunda Kate, PS. Bangiriposi, Dist. Mayurbhanj, presently working as Medical Assistant, ARC Hospital, Charbatia, Chowdwar, Dist Cuttack.

.....Applicant

**VERSUS**

1. Union of India through Cabinet Secretary to the Govt. of India, East Block-V, R.K.Puram, New Delhi, PIN-110 066.
2. Special Secretary, Aviation Research Centre Head Quarters, East Block-V, R.K.Puram, New Delhi, PIN-110066.
3. Director, Aviation Research Centre, East Block V, R.K.Puram, New Delhi-110 055.
4. Deputy Director (A), Aviation Research Centre, Director General of Security, Cabinet Secretariat, East Block-V, R.K.Puram, New Delhi-110 066.
5. Joint Director (Admn.), Aviation Research Center, Charbatia, Choudwar, Cuttack-754 028.

.....Respondents

For the applicant : Mr. S.K. Ojha, Counsel  
For the respondents : Ms. S. Behera, Counsel

**O R D E R****SUDHI RANJAN MISHRA, MEMBER (I):**

Shri B.N. Parida, the applicant who is working as Medical Assistant, ARC Hospital, Charbatia, Chowdwar, Cuttack has filed this O.A under Section 19 of the Administrative Tribunals Act, 1985 stating inter alia that chargesheet under Rule 14 of the CCS (CC&A) Rules, 1965, alleging committing of omission and commission was issued to him vide Memorandum dated 06.12.2012(Annexure-A/2). The matter was enquired into. The Inquiry Officer(IO) submitted its report holding the charge as proved. The Disciplinary Authority(DA) did not accept the report of the IO and directed for de-novo inquiry. The matter was inquired into by the IO and submitted its report. The denovo enquiry was challenged by the applicant before this Tribunal in O.A. No.561/2014. The said O.A. was disposed of on 19.01.2018 remitting the matter back to the DA to resume the proceedings from the stage where Rule-15 of CCS (CC&A) Rules, 1965, came into picture and complete the same within a period of 60 days. Thereafter, the DA appointed another IO who inquired into the allegation. Copy of written brief of the PO dated 10.6.2013 along with disagreement note was supplied to

applicant vide Office Memorandum dated 03.03.2018 (Annexure-A/3). On 17.04.2018 applicant submitted his reply. The applicant received another office Memorandum dated 30.05.2018 enclosing there to a copy of the report of the IO to submit his reply. The applicant submitted representation dated 14.06.2018 questioning the very exercise of the power by the DA. The DA issued the order of punishment vide Memorandum dated 27.07.2018. The applicant preferred appeal on 24.08.2018. The Appellate Authority (AA) rejected the appeal vide order dated 03.07.2019. Hence, the prayer of the applicant in this O.A. is to quash the order of the DA dated 27.07.2018 (Annexure-A/7), order of the AA dated 03.07.2019 and direct the Respondents to pay him all his service and financial benefits retrospectively.

2. The Respondents have filed their counter stating therein that applicant while performing duties as Medical Assistant, ARC Hospital, Charbatia, Chowdwar, Cuttack alleging grave omission and commission which is unbecoming on the part of a Government Servant, chargesheet under Rule 14 was issued to the applicant vide Memorandum dated 06.12.2012. The applicant submitted his defence denying the allegation on 28.12.2012. In consideration of the gravity of the offence, reply of

the applicant and the records, the DA decided to proceed with the inquiry. Accordingly, the matter was entrusted to the IO to inquire into and submit the report. The IO after inquiry submitted its report to DA. The DA found infirmity in the said report and therefore, in exercise of powers conferred under Rules ordered for denovo inquiry which decision was challenged by the applicant in O.A. No.561/2014. This Tribunal set aside the order of denovo inquiry and remitted the matter back to the DA to resume the proceeding from the stage where Rule 15 of CCS(CCA) Rules, 1965 came into picture. Obeying the order of this Tribunal the matter was inquired into and based on the report of the inquiry, after giving due opportunity to the applicant, the DA imposed the punishment which was upheld by the AA. It is also stated that the applicant in course of the inquiry on 29.05.13 and 30.05.13 admitted the misconduct.

3. In substance, it is the case of the Respondents that there was absolutely no infirmity or illegality or infraction of provisions of any of the Rules, the judicial interference in the matter is not warranted more so when adequate opportunity was afforded to the applicant starting

from the initiation of the proceedings till its culmination. Hence, the respondents prayed for dismissal of this O.A.

4 Applicant has also filed rejoinder. Learned Counsel for the applicant has submitted that after holding that the proceedings were vitiated by procedural anomaly vide order dated 19.01.2018 in O.A. No.561/2014 remitted the matter back to the DA with specific direction to resume the proceeding from the stage where Rule-15 of CCS (CC&A) Rules, 1965 came into picture and complete the same within a period of 60 days of receipt of this order. Therefore, after the expiry of 60 days the DA become functus officio to issue the order of punishment. Hence, the order of DA uphold by the AA are nonest in the eyes of law. The DA is estopped under law to act as IO because in compliance of the order of the Tribunal he has to strictly act in accordance with Rule-15(2) of CCS (CC&A) Rules, 1965 and Rule 15(2) does not confer any such power upon DA to do so especially when on consideration of the first report the DA appointed another IO to cause denovo inquiry instead of further inquiry as provided under Rules. By drawing our attention to the order of punishment it has been submitted that the DA adopted a noble procedure de hors the Rule 15(2) of CCS (CC&A) Rules, 1965 in as much

as imposed the punishment without discussing the points raised by the applicant in his representation dated 17.04.2018 and 14.06.2018 which is bad in law. The order of the DA imposed the punishment in unreasoned order which was also upheld by the AA without assigning any reason. Although, the IO is in service the DA redrawn the inquiry report assuming suo motu power even if no Rule permits the same. It is alleged that not a single daily ordersheet was signed on the date of proceeding and all the ordersheets were signed only on 16.06.2013 after making so many corrections and manipulation. On 10.06.2013, internal pressure was imposed on the applicant for signature on daily order sheet recorded by the IO. However, at the time of supply of inquiry report copies of the daily order sheets were also not supplied to him. Learned counsel for the applicant to substantiate is contention that the no disagreement note was supplied to the applicant and imposition of punishment without discussing the points raised by the applicant facilitate the proceeding has placed reliance on the decision of the Hon'ble Apex Court in the case of **S.P. Malhotra State of Punjab**, (2013) 2 SCC L&S page 673 Para-8, and the decision of the Hon'ble High Court of Orissa in the case of **Rabinarayan Bhoi Vs. State of Odisha & Others** in

W.P.C (OA) No.2231 of 2014 so also the DOP&T OM dated 12.11.2010. In nutshell, it has been submitted that this is a case of no evidence, no opportunity and the applicant was punished de hors the Rules. Accordingly, Learned counsel for the applicant has prayed for the relief as claimed in the O.A.

5. On the other hand, to torpedo and pulverize the argument advanced by the applicant, learned counsel for the Respondents has submitted that the Disciplinary Proceedings against Shri BN Parida, Applicant were initiated under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum No.ARC/Pers.V/81/2012-5372 dated 06-12-2012 for single Article of Charge, inter alia reproduce below:-

**“Article-I**

Sh. Biswanath Parida, while performing his duties as Medical Assistant at ARC Hospital, Charbatia took two photographs and made one video clip of a minor girl, Ms. Neha, daughter of Sh. N. K. Sivach, with his Mobile phone on 23.05.2012, despite her objection and kept on praising her beauty and dress. On her subsequent visit to the hospital on 04.07.2012, Sh. Biswanath Parida showed the hard copies of the photographs developed out of the soft copies in his mobile phone to Ms. Neha and insisted to present her on her birthday for which he asked her birthday date. Taking photographs and video clips of a minor girl with personal mobile phone and storing it for a long period and subsequently developing hard copies photographs without the consent of either the girl or her parents do reflect the sign of turpitude and uncivilized conduct on the part of Sh. Parida.

II. Past record of Sh. Biswanath Parida shows that he had committed the misconduct of abusing a female patient on 03.01.2006 at ARC Hospital, Charbatia for which Charge Sheet under Rule 14 was issued and after the charges were proven and he was awarded the penalty of reduction of pay by two stages for the period of 05 years w.e.l. 01.08.2006 with cumulative effect.

III. By this aforesaid acts of commission and omission, Sh. Biswanath Parida has conducted himself in a manner unbecoming of a Govt. Servant & thus has contravened Rule 3(1) (iii) of CCS (Conduct) rules, 1964.”

6. It is the case of the respondents that, the Memorandum of Charge was issued to the Charged Officer vide Memo No. ARC/Pers-V/81/2012 5372 dated 06.12.2012 was duly served upon him on 20.12.2012 and the Applicant had submitted his Written Statement of Defence dated 28.12.2012, wherein the Applicant did not accept the Charges as such but made submission of taking photographs on his Mobile and developing of these photographs and narrated his version of the events and further had requested the Disciplinary Authority with folded hands for kind consideration of his case with a lenient view and sympathetic consideration otherwise his family members and he would suffer due to a silly mistake (ANNEXURE-R/1). The DA after considering his Written Statement found the case fit for further proceedings.



7. It is the contention of the respondents that the Deptt. Proceedings were held under Rule 14 of CCS(CCA) Rules, 1965 and Inquiry Report was submitted to the Disciplinary Authority which having found infirmity in the Inquiry Report ordered de-novo Inquiry which was challenged by the Applicant in his previous O.A. No. 561/2014 and this Tribunal set aside the order of de-novo Inquiry and ordered that the Disciplinary Authority had the option of only acting on the report of Sh. Rajesh Parihar, the first Inquiry Authority within the framework of Rule 15 of CCS(CCA) Rules, 1965 and remitted the case back to the Disciplinary Authority to resume the Proceedings from the stage where Rule 15 of CCS (CCA) Rules, 1965 came into picture. Inquiry was culminated and it was found that misconduct committed by Sh. B. N. Parida was of grave and serious in nature and the CO had earlier committed similar misconduct made mentioned in his Charge Sheet at Para No. 2 of abusing the female patient for the same he had been awarded the penalty of reduction of 02 stage for the period of 05 years with cumulative effect (Major Penalty under Rule 11(v) of the CCS(CCA) Rules, 1965). It is submitted that repeating misconduct of similar nature speaks of the instinct of the CO (Applicant) which needs correction by

imposing stringent penalty than earlier. Thus, the Disciplinary Authority in exercise of powers conferred under Rule 15(iv) of CCS (CCA) Rules, 1965 ordered that pay of Sh. B. N. Parida be reduced by 03 stages for a period of 05 years with other terms & conditions (Major Penalty under Rule 11 (V) of CCS (CCA) Rules, 1963) order dated 27.07.2018. Thereafter the applicant made an appeal dated 24.08.2018 (Annexure-A/8 to the OA) which was considered by the Appellate Authority and having found no cogent reason in the contention of the Appellant, the Appeal of the Applicant was rejected vide its order dated 03.07.2019 being devoid of merit. There remains nothing substantive to object on the issue of timeline of Departmental Proceedings. Thus, the claim of the applicant to quash the Disciplinary Proceedings on the ground of meager delay is not sustainable and the steps taken by the Respondents were nowhere violative of any rules and guidelines. It is submitted that the DA had decided to go ahead with the Departmental Enquiry Proceedings by taking over as Inquiry Authority in accordance with Rule-14(2) of CCS (CCA) Rule, 1965 and order of this Tribunal dated 19.01.2018. In view of the facts and circumstances and the averments

made in the O.A is baseless and false allegations. Hence the instant application is liable to be dismissed.

8. We have considered the arguments advanced by the respective parties and perused the materials placed in support thereof.

9. It may be noted that the main contention of the Ld. Counsel for the applicant that the Tribunal in the earlier OA No. 561/2014 directed for completion of the proceedings within a period of sixty days and the proceedings to undergo as per Rule 15 of the CCS(CCA) Rules, 1965. When the inquiry conducted was questioned in the earlier OA and the Tribunal remitted the matter back to the authority concerned, the DA lacks any jurisdiction or authority to usurp the power of inquiry officer and redraw the report based on which passed the order of punishment. Further, his case is that the DA imposed the punishment without considering the points raised by the applicant in his defence such as (i) no summons were issued, (ii) DOS were not maintained, (iii) IO did not conduct regular hearing, (iv) the CO did not get opportunity to get himself examined (v) defence assistance was not allowed, (vi) copy of written brief from PO was not provided to him and (vii) inspection of document was not allowed and, therefore, since gross injustice was

caused to the applicant in the decision making process of the matter, the relief claimed in the OA is to be allowed. Admittedly, the applicant approached this Tribunal in OA 561/2014 earlier, which was disposed of on 19.01.2018. The relevant portion of the order is extracted herein below:

“10. A reading of the above rule makes it amply clear that as per the procedure laid down in Rule-15 of the CCS(CCA) Rules, **the Disciplinary Authority has the following two options : (i) he can keep record all the procedural lapses and infirmities in the inquiry report and remit the case back to the same Inquiry Officer for further inquiry or (ii) he may record the points of his disagreement with the Inquiry Officer’s report and communicate it to the delinquent officer. On receipt of the submission of the delinquent officer he may examine the same and pass his reasoned and detailed order. Rule-15 of CCS(CCA) Rules does not offer the option of a fresh/de novo inquiry to the Disciplinary Authority.** The judgments of the Hon’ble Supreme Court quoted in Para-8 above have firmly and conclusively laid down this position. **In this O.A. the applicant has mainly challenged the action of the Disciplinary Authority in ordering a fresh inquiry.** It is pertinent to note that the report submitted by the first Inquiring Authority had also held the charges as proved. So obviously, on merit there is no difference between the conclusions of the two Inquiring Authorities. But there was a serious difference in the procedures adopted during the two inquiries. However, inasmuch as there is no provision for a de novo inquiry under Rule-15(1), the proceedings conducted by Shri R.R.Nandy, the second Inquiring Authority are non-est. **The Disciplinary Authority has the option of only acting on the report of Shri Rajesh Parihar the first Inquiring Authority within the framework of Rule-15 of CCS(CCA) Rules.**

11. Taking the facts and points of law into consideration in the present O.A., we are of the view that the disciplinary proceedings against the applicant have been vitiated by a procedural anomaly. **However, taking the seriousness of the charge involved and considering that the applicant has already been punished earlier for abusing a female patient, we are not inclined to quash the disciplinary proceedings. We, therefore, remit the case back to the Disciplinary Authority to resume the proceedings from the stage where Rule-15 of CCS(CCA) Rules came into picture. He has to act strictly within the framework of Rule-15 and carry forward the disciplinary proceedings.** The O.A. disposed of with the above orders. The Respondents are directed to complete the disciplinary proceedings within a period of sixty days from the date of receipt of this order. The stay granted on 17.07.2014 stands vacated. All the Misc. Applications are closed. No order as to costs.”

10. Rule 15 of the CCS (CCA) Rules, 1965 provides as under:

15. Action on inquiry report

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority

within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.”

11. In the instant case, in compliance of the order of this Tribunal , the DA vide office memorandum dated 03.03.2018 forwarded a copy of the inquiry report of Rajesh Parihar, JDD (Logistic) along with copy of the written brief of the Presenting Officer stating therein as under:

“In accordance with the orders of the Hon'ble CAT Cuttack, the inquiry report submitted by Wg Cdr. (R) Rajesh Parihat, JDD(Logistic) is sent herewith with the observations that the Inquiring authority has prepared the inquiry report without sending a copy of the written brief of the Presenting Officer to the Charged Officer and seeking his response, In view of this, undersigned considers that the findings of the Inquiring Authority are subject to further consideration after getting written brief from the Charged Officer in response to the written brief submitted by the Presenting Officer.

2. The Charged Officer is hereby given an opportunity to go through the written brief and the inquiry report. Enclosed herewith **along with the disagreement of the disciplinary authority** as mentioned above and submit his written representation or submission to the disciplinary authority within 15 days from the date of receipt of the inquiry report.”

12. Thereafter, the applicant submitted his defence reply on 17.04.2018 . The Disciplinary Authority himself caused the inquiry, prepare the report and sent to the applicant vide OM dated 30.05.2018 as under:

“Consequent upon the Departmental Enquiry initiated against Shri B N Parida, Medical Assistant vide Memorandum No.ARC/Pers.V/81/2012-5372 dated 06-11- 2012, and in consonance with Hon'ble CAT Bench, Cuttack judgement

dated 19-01- 2018, the **Disciplinary Authority has gone through the departmental proceedings, reply dated 17-04-2018 from the CO in response to the Office Memorandum dated 03-04-2018 sending written brief of the PO and has recorded his finding in the inquiry report.**

3. In accordance with the Rule 15(2) of CCS (CCA) Rules 1965 a copy of the inquiry report is sent herewith with direction to submit written representation within 15 days from the date of receipt of the inquiry report.”

13. From the above, it is clear that the Disciplinary Authority himself conducted the inquiry afresh and, thus, he should have observed all the procedure provided in the rules by way of examining the witnesses, marshaling the evidences, giving opportunity for cross examination to the applicant so also opportunity to file written brief after the closure of the inquiry, which procedure appears to have not been observed by the DA more so the inquiry conducted by the DA was not in accordance with Rule 15 of the Rules and the observations of this Tribunal in OA 561/2014.

14. Sub Rule 18 of Rule 14 clearly provides that “the inquiry authority may, after the government servant closes his case, and shall, if the government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose



of enabling the government servant to explain any circumstances appearing in the evidence against him". The applicant had specifically raised this point before the DA but the DA held that it was incumbent upon the CO to offer himself to be examined and in that case he is liable to be cross-examined but document do not show that any point of time applicant offered himself for examination. The view taken by the DA in this regard is not in accordance with the aforesaid rules. Thus, there has been gross violation of the rules and principles of natural justice to the extent stated above.

15. This Tribunal is reminded of the decision of the Hon'ble Apex Court in the case of **State of UP & Others Vs. Saroj Kumar Sinha**, AIR 2010 SC 3131, wherein it was held that departmental inquiry cannot be treated as a casual exercise. The enquiry proceedings cannot be conducted with the closed mind. The Rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. Also, in the case of **Yoginath D. Bagde Versus State of Maharashtra and another**, (1999) 7 SCC 739, the Hon'ble Apex Court has observed that the 'right to be heard', being a constitutional right of the employee cannot be taken away by any

legislative enactment or service rule including rules made under Article 309 of the Constitution.

16. In the case of ***Mohd. Iqbal Khanday v. Abdul Majid Rather***, [1994] 4 SCC 34, it was held by the Hon'ble Apex Court that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order. Right or wrong, the order has to be obeyed. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order.

17. This Tribunal is also remanded by the legal maxim *quod contra legem fit, pro infecto habetur* means what is done contrary to law is considered as not done is a well accepted principle commonly applied to all proceedings. It is also trite law that if a thing is to be done in a particular manner then it has to be done in that manner and not in any other manner. Further, the maxim *sublato fundament cadit opus* is a well recognized principle that if the foundation is removed, the superstructure will collapse. It is also well settled proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same.

18. In disciplinary proceedings, the DA is obliged to follow the rules and principle of natural justice. On examination of the earlier order of this Tribunal with vis a vis the happenings and the position of rules and law discussed above, we do not have any iota of doubt that this is a case where there has been gross violation of the rules, procedures and principle of natural justice leading to miscarriage of justice caused to the applicant. In ordinary circumstances, this Tribunal would have quashed the proceedings and set the matter at rest but considering the earlier observation of this Tribunal on the allegation leveled against the applicant, the impugned order of punishment passed by the DA dated 27.07.2018 (A/7) and upheld by the Appellate Authority vide order dated 03.07.2019 (A/9) are hereby quashed. As a consequence, the matter is remitted back to the Disciplinary Authority to initiate the disciplinary proceedings from the stage where Rule-15 of CCS(CCA) Rules came into picture. He has to act strictly within the framework of Rule-15 and carry forward the disciplinary proceedings and the entire proceeding shall be completed within a period of sixty days from the date of receipt of a copy of this order.

19. In the result, this OA stands allowed to the extent stated above leaving the parties to bear their own costs.

(PRAMOD KUMAR DAS)  
MEMBER (A)

(SUDHI RANJAN MISHRA)  
MEMBER (J)

KB/PS