

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 12547 of 2015

Union of India and others

.....

Petitioners

Mr. D. Tripathy, CGC

Vs.

***Rabindranath Swain and
another***

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

10.08.2022

Order No.

13.

This matter is taken up through hybrid mode.

2. In compliance to the Orders of this Court dated 24.01.2020, 29.03.2022, 20.04.2022, 09.05.2022, 04.07.2022 and 18.07.2022, learned Central Government Counsel produced the Notification/ Circular dated 27.08.1990 issued by the Ministry of Communication, Department of Posts, Government of India, relating to Schedule of appointing/ Disciplinary/ Appellate Authorities in respect of Group 'B', 'C' and 'D' Employees of Postal Department, which was published in Gazette of India on 15.09.1990. The said document be kept on record.

3. The Union of India and its functionaries being the Petitioners have assailed the Order dated 23.02.2015 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 232 of 2010, by which the Tribunal quashed the Charge Sheet dated 11.07.2005, the order of the Disciplinary Authority dated 13.11.2007 and the Appellate Authority dated 27.10.2009 and gave liberty to the

present petitioners to take appropriate action in accordance with law.

4. Mr. D. Tripathy, learned Central Government Counsel contended that the Tribunal has committed gross error apparent in the face of the record by stating that the authority, i.e. SSPO, Bhubaneswar, who had taken action against the Opposite Party is not the Disciplinary Authority and as such he could not have initiated Disciplinary Proceeding against the Opposite Party No.1 under Rule-14 of the OCS (CCA) Rules, 1965 and, thereby the proceedings so initiated are *void ab initio*.

5. Though learned Central Government Counsel produced the aforementioned notification to justify that the SSPO is the Competent Authority, but fact remains such fact has not been taken in the Counter Affidavit filed by them before the Tribunal and as such in absence of any pleading to that effect before the Tribunal, the Tribunal came to a finding that the SSPO is not the Competent Authority to initiate a proceeding against the Petitioner.

6. On perusal of the record, it reveals that the Proceeding was initiated against the Opposite Party No.1 on the allegation of misappropriation of funds and as such Penalty was imposed by the Disciplinary Authority, which has been made confirmed by the Appellate Authority. However, such orders were quashed by the Tribunal by observing that the SSPO, Bhubaneswar is not the Competent Authority to do so. As such in the Counter Affidavit filed before the Tribunal, the Petitioners have never taken the stand that the SSPO is the Competent Authority to initiate a Disciplinary Proceeding against him, however contention is made that the Tribunal has committed gross error without taking into consideration the Notification dated 27.08.1990.

7. This Court called upon Mr. Tripathy, learned Central Government Counsel to point out this fact from the Counter Affidavit filed before the Tribunal, but he was unable to do the same. Though he referred to Paragraphs-2 and 8 of the Counter Affidavit filed before the Tribunal, but in none of the Paragraphs such stand has been taken that SSPO is the Competent Authority to initiate the proceeding. That apart, the Tribunal while quashing the orders passed by the Authorities has observed that the Petitioner may take appropriate action in accordance with law.

8. In view of the above, this Court is not inclined to interfere with the order passed by the Tribunal at this stage. However, the Petitioners are not precluded to take any step against Opposite Party No.1 in view of the order passed by the Tribunal.

9. The Writ Petition is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Padma