

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 10530 of 2017

State of Odisha and others

.....

Petitioners

Mr. A.K.Mishra, A.G.A.

Vs.

*Rama Krushna Pattnaik &
another*

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

22.09.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. A. K. Mishra, learned Addl. Government Advocate appearing for the State-Petitioners. None appears for Opposite Party No.1.

3. Though notice was issued to the contesting opposite party No.1 through registered post with A.D. pursuant to the order dated 10.07.2017, but the A.D. could not back from the said opposite party. Thereafter, this Court, by order dated 16.05.2022, directed the petitioners to take fresh notice to opposite party No.1 through registered post with A.D. Accordingly, notice was issued to the said opposite party, fixing 20.06.2022 for appearance and after valid service of notice, the A.D. was returned from opposite party No.1, as reveals from the office note. Even though notice was made sufficient on opposite party No.1, but none had appeared on 28.07.2022, when the matter was taken up. Similarly, today also none is there on behalf of opposite party No.1, in spite of

opportunity given to the said opposite party. Therefore, this Court disposes of the matter at the stage of admission, taking into consideration the pleadings available on record.

4. The State and its functionaries, as the petitioners, have filed the present writ petition seeking to quash the order dated 19.10.2016 passed by Orissa Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No. 479 of 2015 under Annexure-1, by which the Tribunal, by observing that the impugned order dated 14.08.2014 under Annexure-6 to the Original Application has not been passed following due procedure under Rule-18 of the OCS (CCA) Rules, 1962, quashed the same and directed the Disciplinary Authority to re-consider the matter afresh in accordance with Rule-18 of OCS (CCA) Rules, 1962 and the show cause filed by the opposite party No.1 on 17.09.2014 and pass order as deemed fit within a period of three months from the date of receipt of copy of the order.

5. The impugned order reveals that opposite party No.1 was appointed as a Forest Guard on 02.11.1981 and joined the post on 05.11.1981. While he was continuing as Forest Guard, a Vigilance case bearing No. 7/98 U/s. 13(2) read with 13(1) of P.C. Act, 1988 and U/s. 409/477-A and 34 of I.P.C. was instituted against him and others. The Vigilance Department again instituted another case bearing No. 24/98 U/s. 409, 471, 379, 120(B) and 34 of I.P.C. against opposite party No.1 and others. He was promoted to the post of Forester pending finalization of the vigilance case. Vigilance Case No. 7/98 was disposed of on 13.06.2014, wherein opposite party No.1 was found guilty of offences U/s. 13(2) r/w

13(1)(c) of P.C. Act 1988 and he was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.5000/- and to undergo R.I. for three months in default for payment of fine. After conviction of opposite party No.1, petitioner No.3 vide office order dated 25.07.2014 issued a show cause notice to opposite party No.1 as to why he should not be dismissed from Government service in terms of Rule-13 read with Rule 18(1) of OCS (CC&A) Rules, 1962 with a direction to submit show cause within three days. But opposite party No.1 preferred CRLA No. 312 of 2014 challenging the order of conviction passed in Vigilance Case No. 7/98 before this Court and this Court granted bail to opposite party No.1 on certain terms and conditions, but the sentence was not suspended by this Court in the said case. Opposite Party No.1, as required, did not submit any show cause reply within the stipulated time of three days. Therefore, petitioner No.3 vide office order dated 14.08.2014 dismissed him from Government service with immediate effect on the ground that he has not submitted his show-cause reply within the stipulated period of three days and such dismissal of the opposite party No.1 was in consonance with the provisions of Rule-18 of OCS (CCA) Rules, 1962 without giving reasonable opportunity to him. Therefore, opposite party no.1 approached the Tribunal and the tribunal passed the order with the observation and direction as indicated above.

6. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Petitioners contended that in the present case when opposite party No.1 was convicted in Vigilance Case No. 7/98 and same was challenged before this Court and this

Court only granted bail to opposite party No.1 and as such, there was no order with regard to suspension of sentence by this Court. More so, as required under Rule-18 of OCS (CCA) Rules, 1962, opposite party no.1 was given a show cause notice in compliance the said rule, but the tribunal held that there is non-compliance of Ruel-18 of OCS (CCA) Rules, 1962. But it is contended that in such type of matters it is not required to comply Rule-18 of OCS(CCA) Rules, 1962, as has been stipulated in the said Rule. This question has been considered by this Court in the case of ***Suresh Chandra Mishra Vrs. State of Odisha & another*** reported in 2020(II) ILR-CUT 383. The distinction between the present case vis-à-vis the reported judgment is to the extent that in the reported judgment this Court had passed an interim order of stay of the order of suspension of sentence as well as granted bail, whereas in the present case the sentence has not been suspended, but the bail was granted by this Court. But in spite of such position, this Court has already taken a view that Rule-18 of the OCS (CCA) Rules is not required to be complied with, in compliance to the principle of natural justice. But in the present case, opportunity of hearing was given to opposite party No.1 by issuing notice of show cause, which has not been in the reported judgment. In view of such position, taking into consideration the law laid down by this Court, the direction issued by the tribunal cannot sustain in the eye of law.

7. Having heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners and on perusing the pleadings available on record, since it is a certiorari proceeding and the correctness of the order passed by the Tribunal

is under scrutiny, the Court has to take into consideration Rule-13 of OCS(CCA) Rules, 1962, which deals with the nature of penalties that can be imposed on a Government servant for good and sufficient reasons and one of such penalties is dismissal from service, which shall ordinarily be a disqualification for future employment. For imposing major penalties, the procedure has been envisaged under the OCS (CCA) Rules. Rule-15 thereof prescribes the elaborate procedure for imposing penalty. But Rule-18 deals with special procedure in certain cases, which reads as follows:-

“18. Special Procedure in certain cases-
Notwithstanding anything contained in Rules 15, 16 and 17-

- (i) where a penalty is imposed on a Government servant on the ground of conduct which has lead to his conviction on criminal charge; or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded in writing by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rule; or
- (iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure.

The disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit;

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary.”

8. On perusal of the aforementioned Rules it is made clear that notwithstanding anything contained in Rules, 15, 16 & 17, the procedure, as envisaged under Rule-18, has to be taken into consideration and appropriate order is to be passed. The opening sentence of Rule-18 clearly indicates notwithstanding anything

contained in Rules 15, 16 and 17 means that though Rule 15 of the said Rules prescribes procedure for imposing such penalty, but in view of Rule 18, the procedure, as envisaged in Rule-15, may not be required to be followed, and, as such, under Clauses (i) (ii)(iii) of Rule-18, there is exception to the provisions contained in Rule-15. Therefore, the utilization of the non-obstante clause in Rule-18 is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions. While dealing with such Rule-18, this Court in the case of **Suresh Chandra Mishra** (supra) observed as follows:-

“Rule 18 starts with a non-obstante clause with the words, “notwithstanding anything contained in Rules 15, 16 and 18 17”. A non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions. (Ref: **Union of India -Vrs.- G.M. Kokil**, 1984 Supp Supreme Court Cases 241). Non-obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of any of the other provisions of the Act in the way of the operation of the principal enacting provision to which the non-obstante clause is attached. (Ref: **State of Bihar -Vrs.- Bihar Rajya M.S.E.S.K.K. Mahasangh** : (2005) 9 Supreme Court Cases 129). While interpreting a provision containing a non-obstante clause, it should first be ascertained what the enacting part of the section provides, on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in any other law which is inconsistent with the section containing the non-obstante clause. (Ref: **Aswini Kumar Ghosh -Vrs.- Arabinda Bose** : A.I.R. 1952 S.C. 369; **A.V. Fernandez -Vrs.- State of Kerala** : A.I.R. 1957 S.C. 657).

9. In view of the analysis made to the provisions contained in Rule-18, the requirement of principle of natural justice is not mandatory. Therefore, the Tribunal has committed gross error apparent on the face of record by quashing the order of punishment of dismissal passed by the authority and remitting the matter back to the disciplinary authority for reconsideration of the same by complying the principle of natural justice. Needless to say, in compliance to the principle of natural justice the opposite party no.1 had been given a show cause notice and that show cause had been taken into consideration and, thereafter, the order of penalty of dismissal from service was passed. In view of such position, this Court is of the considered view that the order passed by the Tribunal dated 19.10.2016 in O.A. No. 479 of 2015 cannot sustain in the eye of law and accordingly the same is liable to be quashed and, is hereby quashed.

10. The writ petition is accordingly allowed. No order as to costs.

(DR. B.R. SARANGI)
JUDGE

Arun /Kishore

(G. SATAPATHY)
JUDGE