

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.12059 of 2006

In the matter of an application under Article 226 and 227 of the Constitution of India.

Panu Charan Rath

....

Petitioner

-versus-

***The Collector & District
Magistrate-cum-Management
Incharge of Nayagarh Bistrict
Central Cooperative Bank Ltd.
and another***

....

Opposite Parties

For Petitioner

:

Mr. R. Roy, Advocate

For the Opposite Parties

:

Mr. P.S. Samantra, Advocate

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :29.08.2022

DATE OF JUDGMENT: 29.08.2022

V. Narasingh, J.

1. The petitioner joined as peon in the Nayagarh District Central Cooperative Bank (Group-VII) in the year 1994. During his incumbency as such he was placed under suspension vide office order No.275 dtd 30.07.2005 pending drawal of proceeding due

to negligence in duty for disobedience of orders or showing improper behavior. As per order dated 30.07.2005 at Annexure-1, charges were communicated to the petitioner and in response thereto the petitioner submitted his explanation denying the same.

2. It is on record that the petitioner submitted a show cause within the stipulated period against the proposed penalty. On consideration of the same by order dated 16.01.2006 at Annexure-6, order of punishment was passed treating the period of suspension as such and dismissal from service with immediate effect, which was published in the newspaper. Such order was affirmed by the Appellant Authority vide Annexure-9 dated 12.05.2006.
3. Assailing the order passed by the Disciplinary Authority and Appellate Authority at Annexure-6 & 9 respectively, the present writ petition has filed inter alia on the ground of violation of principles of nature justice.
4. There is non appearance on behalf of the Opposite Parties-the Collector & District Magistrate-cum-Management Incharge of Nayagarh District Central Cooperative Bank Ltd.(O.P. No.1) and the Secretary (O.P. No.2).
5. Mr. Pattnaik learned additional Government Advocate for the State, has produced the file of the Departmental proceeding in terms of the earlier order of this Court.
6. It is submitted by the learned counsel for the petitioner that the petitioner received a show cause notice vide Annexure-4 dated

10.12.2005 calling upon him to show cause as to why the period of suspension shall not be treated as such and as to why he shall not be dismissed from service. Copy of the enquiry report was enclosed to such show cause vide Annexure-4/1 dtd. 10.12.2005.

7. It is urged by the learned counsel that the petitioner came to know about the imposition of such penalty only from the Newspaper publication and preferred an appeal before the Collector & District Magistrate-cum-Management Incharge of Nayagarh on 15.02.2006 in terms of the Rule 39 of the Central Cooperative Staff Service Rules 1984.

The memorandum of appeal so filed is at Annexure-7. It is on record that the appellate authority rejected the appeal and the petitioner after obtaining copy of such Appellate order under the Right to Information Act has annexed the same vide Annexure-9.

8. For convenience of ready reference the order of the Disciplinary Authority at Annexure-6 is quoted hereunder;

“NAYAGARH DIST. CENTRAL CO-OP. BANK LTD.

X X X X X X X X X

Order

In pursuance of resolution No.1(vi) dt.06.01.2006 of the Collector and District Magistrate Nayagarh-cum-Management-in-charge, Nayagarh District Central Co-operative Bank Ltd, the following punishments are hereby awarded to Sri Panu Charan Rath, Peon of the Bank (under suspension) in the matter of

*disciplinary proceedings No.3274 dt.15.09.2005
drawn up against him.*

- 1. The period of suspension from
30.07.2005 is treated as such.*
- 2. He is dismissed from service with
immediate effect.*

Sd/-”

9. On a bare perusal of the same and on verification of the record of proceeding submitted by the learned Additional Government Advocate, it can be seen that the same was passed by the Collector & District Magistrate-cum-Management Incharge of Nayagarh District Central Cooperative Bank Ltd.

Curiously enough, it is borne out from the record that the selfsame Collector & District Magistrate-cum-Management Incharge of Nayagarh District Central Cooperative Bank Ltd has acted as an Appellate Authority.

As rightly submitted by the learned counsel for the petitioner that it is a case of glaring irregularity in the matter of exercise of power by the Appellate Authority in as much as the appellate authority is one as same as the Disciplinary Authority and such action is contrary to the time tested principle as enunciated in the maxim ***Nemo Judex In causa Sua (77 ER 1390): “No one should be a Judge of his own cause”*** which is a facet of principles of natural justice.

10. The order passed by the Appellate Authority the Collector & District Magistrate-cum-Management Incharge of Nayagarh, is quoted hereunder;

X X X X X

“No action will be taken on his representation.”

Sd/-

Illegible 12.05.2006

Collector & District Magistrate

Nayagarh

-Cum-

Management in-charge

Nayagarh DCC Bank Ltd.”

11. On a bare perusal of the order passed by the Appellate Authority this Court has no hesitation to hold that the same suffers from the vice of a nonspeaking order and is a manifestation of gross non-application of mind.
12. It is trite law that reasons are heart and the soul of an order and the impugned order passed by the Appellate Authority is like “inscrutable face of sphinx”. In this context this Court respectfully refers to the judgment of the Apex Court in the Case of ***Kanti Associates vs. Masood Ahmed Khan*** reported in ***2010 (9) SCC 496***. In fact in the said case several judgments reiterating the principle of furnishing reasons have been succinctly stated in as much as the vanishing distinction between administrative and quasi judicial orders relating to giving reasons was also noticed referring to the celebrated judgment of the Apex Court in the case of ***A.K. Kraipak V. Union of India (1969) 2 SCC 262***.
13. Hence considering the order on the touchstone of the law cited above since there is patent infraction of the principles of natural

justice and the impugned appellate order being a non-speaking one, this Court is left with no alternative but to quash the order passed by the Appellate Authority at Annexure-9 and remand the matter back to **the appellate stage** for objective consideration of the grievance of the petitioner.

14. Since the petitioner is out of service from 2006, in the interest of justice and equity, it is directed that within a period of three months from the date of receipt/production of copy of the order along with Writ Petition the Appellate Authority shall consider the appeal and pass appropriate orders giving due opportunity of hearing to the petitioner /his representative and communicate the same.
15. The Writ petition thus stands disposed of.
16. No Costs.

(V.Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 29th of August, 2022/Santoshi*