

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 6703 OF 2018

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

AFR

Anita Kumari Dash Petitioner

-Versus-

State of Odisha and Others Opp. Parties

For Petitioner : Mr. Budhadev Routray, Sr.Advocate
appearing along with
M/s S.K. Samal, S.P. Nath,
S.D. Routray, B.R. Pattanayak and
S.S. Routray, Advocates

For Opp. Parties : Mr. A. K. Mishra,
Addl. Government Advocate
[O.P. Nos. 1 to 3]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing and judgment: 25.07.2022

DR. B.R. SARANGI, J.

The Petitioner, who was working as a Child Development Project Officer (CDPO) at Tarabha in the district of Kandhamal, has filed this Writ Petition seeking to quash the Order dated 12.10.2017 passed in O.A. No.1996 of 2015, by which the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar finding no infirmity in the Order passed by the Appellate Authority, dismissed the Original Application filed by the Petitioner.

2. The factual matrix of the case, in a nutshell, is that the Petitioner was working as a Lady Supervisor in Bataguda Sector of Baliguda Integrated Child Development Scheme (ICDS) Project. While working as such, a Departmental Proceeding bearing D.P. No.03 of 2011 under Rule-15 of the Odisha Civil Service (Classification Control and Appeal) Rules, 1962 (hereinafter to be referred as "OCS (CC & A Rules, 1962") was initiated against her by the Opposite Party No.3 vide Memorandum No.107 dated 15.01.2011. The articles of

charges framed against the Petitioner were willful absence, disobedience of Order of higher Authority and gross negligence in duty. She was directed to submit her written statement of defence within 30 days from the date of receipt of memorandum. The Departmental Proceeding was initiated against the Petitioner on the fact that she did not join her new place of posting despite being relieved from the earlier post on transfer and that she remained absent from Government duty willfully disobeying the higher Authority. The Petitioner submitted written statement of defence on 16.02.2011 denying the allegation stating therein that the absence was due to her illness and in support of his contention, he submitted the Medical Certificate and also contended that she had already submitted leave application before the appropriate Authority. Opposite Party No.3-Collector, Kandhamal-Cum-Disciplinary Authority, did not accept such reply submitted by the Petitioner and Vide letter No.596 dated 21.03.2011, appointed Sub-Collector, Baliguda, as Inquiring Officer, in view of the provision contained under

Rule 15(4) of the OCS (CC&A) Rules, 1962 to enquire into the allegations levelled against the Petitioner and directed to complete the inquiry within a period of three months. Simultaneously, the Opposite Party No.3, invoking the power conferred on him, also nominated CDPO, Baliguda, as Marshalling Officer vide the same letter to present the case in support of the charges before the Inquiry Officer, including conducting the inquiry on the charges framed against the Petitioner. The Inquiring Officer conducted the inquiry on the charges levelled against the Petitioner and without following the provisions of Rule 15(6) and also in violation of Rule 15(7) of the OCS (CC&A) Rules, 1962 submitted his Report on 18.07.2011. Thereafter, Opposite Party No.3 issued a show-cause notice on 23.08.2011 under Rule 15(9) of the OCS (CC&A) Rules, 1962 to the Petitioner instructing her to make representation, if any, against the findings of the Enquiry Officer. In compliance to the same, the Petitioner submitted representation on 19.09.2011 to the Opposite Party No.3-Collector-Cum-Disciplinary Authority. But the same was not accepted

and, as such, Opposite Party No.3-Disciplinary Authority, further issued 2nd Show-Cause Notice as to why punishment, as indicated, should not be imposed on her. Pursuant to such 2nd Show-Cause Notice, the Petitioner submitted her reply on 29.11.2011 highlighting therein all factual aspects. But the grounds taken in her representation could not satisfy Opposite Party No.3 and in turn, he passed an Order on 23.12.2013 imposing the following penalties:

- “1. Withholding two annual increments with cumulative effect*
- 2. Warning not to repeat in future,*
- 3. Censure”*

2.1. Being aggrieved by the aforesaid Order of punishment imposed by the Disciplinary Authority, though the Petitioner preferred Appeal on 15.03.2014 under Rule 22(1) of the OCS (CC&A) Rules, 1962 before the Opposite Party No.2-Director, Social Welfare Odisha, but the Appellate Authority also dismissed the Appeal on 02.01.2015 with the following penalties:

- “1. Stoppage of one increment with cumulative effect*
- 2. Warning not to repeat in future,*

3. Censure”

2.2. Against the aforesaid order of punishment, the Petitioner preferred Original Application No.1996 of 2015 before the Odisha Administrative Tribunal, Bhubaneswar, wherein in Paragraphs-6.8 and 6.9, it was pleaded as follows:

“6.8 That, respondent no. 3 being the disciplinary, also did not take in to consideration the submission made by the applicant in her representation at Annexure-6 and 8. The disciplinary authority did not record its finding on each charge as required to be done under Rule 15(9) of the CCA Rules. Therefore, in the instant case there was no proper application of mind before imposition of punishment on the applicant.

6.9. That, the appellant authority also without following the procedure contained in Rule 29 of the CCA Rules disposed of the appeal in bald order. The principles as lay down by the Apex Court that every quasi judicial order must be hedged with reasons has been lost sight of in the instant case. The applicant raised various grounds in her appeal memo while challenging the order of punishment. There is no whisper in the appellate order as to why such grounds are not acceptable.”

2.3. The Tribunal vide Order dated 12.10.2017 passed the following Order:

“8. On going through the entire inquiry report, I do not find any infirmity in inquiry report. Besides this, law is well settled that Courts and Tribunal are not the Appellate Authority to sit over the findings of the Inquiry Officer, unless the finding is perverse and unless it violate the procedure prescribed under the OCS (CC&A) Rules. I also do not find any infirmity in

the appellate order. Rather the Appellate Authority has been kind enough to reduce the stoppage of two increments with cumulative effect to stoppage of one annual increment with cumulative effect.

Hence, this Writ Petition.

3. Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned Counsel for the Petitioner, vehemently contended that the Order of punishment imposed by the Disciplinary Authority under Annexure-9 dated 23.12.2013, pursuant to 2nd Show-Cause Notice under Annexure-7, dated 25.10.2011, cannot sustain in the eye of law, in view of the fact that while imposing penalty, the Authority has not passed a reasoned order. He further contended that the Petitioner had preferred an Appeal under Rule 22(1) of the OCS (CC&A) Rules, 1962 and in Paragraph-9 of the Appeal Memo specific pleadings were made that on acceptance of the defence submission though the Disciplinary Authority reduced the punishment to some extent, but the same was passed without assigning any reasons and, as such, he was biased in passing the Order impugned. It is further contended that even if such plea was taken before the

Appellate Authority, but without considering the same in proper perspective and also without assigning any reasons, the Appellate Authority has passed the Order impugned on 02.01.2015. It is further contended that though specific stand was taken before the Tribunal in Paragraphs-6.8 and 6.9 of the Original Application, as mentioned above, but the Tribunal, without considering the same in proper perspective, passed the Order impugned confirming the Order of punishment imposed by the Appellate Authority, which itself is also without any application of mind. As such, the Tribunal, in Paragraph-7 has stated that from the pleadings of both the sides, the Tribunal find that there was no procedural irregularity in conducting the inquiry under Rule-15 of the OCS (CC&A) Rules, 1962. It is contended that such observation made by the Tribunal cannot sustain in the eye of law, as there is procedural irregularity with regard to award of punishment imposed by the Disciplinary Authority as well as Appellate Authority. Consequentially, he seeks for quashing of the Orders passed by the Disciplinary

Authority as well as Appellate Authority so also the Order passed by the Tribunal.

To substantiate his contention, he has relied upon the judgment of the learned Single Judge (Dr. Justice B.R. Sarangi) of this Court in the case of ***Narottam Pati v. North Eastern Supply Company and others***, 2017 (Supp-I) OLR 479.

4. Per contra, Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties, vehemently contended that imposition of penalty by the Disciplinary Authority and modified Order passed by the Appellate Authority are well justified and as such, the Tribunal has not committed any error apparent on the face of the record so as to interfere with the same. As such, the Tribunal has also well discussed the matter, so far as the evidence part is concerned. It is contended that since the Order has been passed by the Tribunal assigning reasons, the same may not be interfered with.

5. This Court heard Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned Counsel for the Petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this Writ Petition is being disposed of finally at the stage of admission.

6. On the basis of the undisputed facts, as mentioned above, this Court has to examine as to whether the Order passed by the Disciplinary Authority or the Appellate Authority suffers from any infirmity of assigning reasons while imposing penalty on the Petitioner.

7. After going through the Order itself, this Court finds that on 23.12.2013, under Annexure-9, the Disciplinary Authority passed the following Order:

“xxxxx Whereas, after careful perusal of the charges, enquiry report dated, 18.7.2011 of the Inquiring Office-cum-Sub-Collector, Balliguda, reply of the Delinquent Officer to the 1st show cause notice and 2nd show

cause notice and other connected papers ancillary and incidental to the proceedings, the Collector, Kandhamal -cum-Disciplinary Authority has been pleased to award the following penalties to the Delinquent Officer to meet the ends of justice.

- 1. Withholding two (02) annual increments with cumulative effect.*
- 2. Warning not to repeat in future.*
- 3. Censure.*

8. The above mentioned position does not reflect with regard to reasons assigned by the Disciplinary Authority to impose the penalty on the Petitioner. More so, against the said Order, when the Petitioner preferred an appeal, the Appellate Authority also passed the Order on 02.01.2015, under Annexure-11, to the following effect:

“xxxx After careful consideration of the charges in the proceeding and punishment imposed by the Disciplinary Authority and the appeal petition filed by the D.O., the Appellate Authority has been pleased to dispose of the appeal with the following orders.

- 1. Stoppage of one increment with cumulative effect*
- 2. Warning not to repeat in future.*
- 3. Censure”*

9. More so, the Order does not indicate any reason and, as such, when specific stand was taken before the Appellate Authority by the Petitioner that the

Disciplinary Authority while passing the Order of punishment has not assigned any reason, no findings to that extent has been given by the Appellate Authority. Thereby, both the Orders passed by the Disciplinary Authority as well s Appellate Authority, suffer from infirmity for not assigning reasons while passing such Orders and, therefore, the same cannot sustain in the eye of law.

10. Reasons being a necessary concomitant to passing an order, the Appellate Authority can thus discharge his duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original Authority.

11. In ***Travancore Rayons Ltd. V. The Union of India***, AIR 1971 SC 862, the apex Court observed that the necessity to give sufficient reasons, which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial Authority exercises judicial

functions is obvious. When judicial power is exercised by an Authority normally performing executive or administrative functions, the Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one that the party aggrieved in a proceeding before the Court has the opportunity to demonstrate that the reasons which persuaded the Authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the Executive Authority invested with the judicial power.

12. In **S.N. Mukherjee v. Union of India** (1990) 4 SCC 594, the apex Court held that keeping in view the expanding horizon of Principles of Natural Justice, the requirement to record reasons can be regarded as one of the Principles of Natural Justice, which governs exercise

of power by administrative Authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an Administrative Authority is required to record reasons for its decision.

13. In ***Menaka Gandhi v. Union of India***, AIR 1978 SC 597, the apex Court observed that the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set naught by an obdurate determination to suppress the reasons.

Similar view has also been taken by this Court in the case of ***Narottam Pati***, mentioned supra.

14. Since the aforesaid findings have been arrived at by this Court taking into consideration the law laid down by the apex Court, this Court is of the considered view that even though specific stand was taken before the

Tribunal in Paragraphs-6.8 and 6.9 of the Original Application, the Tribunal has not expressed any opinion in regard to the same and passed the Order impugned. Thereby, the Order so passed by the Tribunal, also cannot be sustained in the eye of law.

15. In view of the facts and circumstances, as well as the law, as discussed above, this Court is of the considered view that the Order passed by the Disciplinary Authority under Annexure-9 dated 23.12.2013; the Order dated 02.01.2015 passed by the Appellate Authority under Annexure-11 and the consequential Order dated 12.10.2017 passed by the Tribunal in O.A. No.1996 of 2015 under Annexure-14, having been passed without assigning any reasons, cannot sustain in the eye of law and are liable to be quashed. Accordingly, the same are hereby quashed and the matter is remitted back to the Disciplinary Authority to pass an appropriate reasoned Order justifying imposition of penalty in accordance with law.

16. In the result, the Writ Petition is allowed.

However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

S.K. MISHRA, J. I agree.

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S. K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 25th July, 2022, Ashok/Padma/GDS

