

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 23204 of 2015

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

AFR

Debabrata Das Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. Sameer Ku. Das,
S.K. Mishra and P.K. Behera,
Advocates.

For Opp. Parties : Mr. P.P. Mohanty,
Addl. Government Advocate.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and judgment: 07.04.2022

DR. B.R. SARANGI, J. The petitioner, who belongs to Orissa Finance Service-I (Senior Branch) cadre has filed this writ petition seeking to quash the order dated 20.06.2011 of the disciplinary authority by imposing penalty of “stoppage of one increment with cumulative effect” vide Anenxure-6, as well as the order dated

29.09.2015 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 722 (C) of 2013 vide Annexure-8 dismissing the Original Application.

2. The factual matrix of the case, in brief, is that the petitioner, having been selected by the Orissa Public Service Commission, on the requisition of the State Government, joined in Orissa Finance Service Cadre on 20.11.1989 pursuant to the OCS Examination, 1986 as against the vacancy of the year 1989-90. Thereafter, he was promoted to the post of Orissa Finance Service-I (Junior Branch) and also Orissa Finance Service-I (Senior Branch). He was placed at Sl. No.18 of the gradation list of Orissa Finance Service-I (Senior Branch), as on 14.05.2010.

2.1 The petitioner, while continuing as Accounts Officer in SCB medical College and Hospital, Cuttack during the period from 21.09.1998 to 02.04.2001, allegations were made against him with regard to negligence in duty and financial irregularities leading to

misappropriation of Government fund. As such, charge sheet was served on the petitioner upon institution of a disciplinary proceeding vide order dated 23.05.2007 of the State Government. The entire allegation was levelled against the petitioner on the basis of the audit report, without verifying the authenticity and sanctity of such report. On receipt of the memorandum of charges, the petitioner submitted his reply denying each of the allegations levelled against him. But, without considering the same in its proper perspective, the inquiring officer on verification of records and statement of defence submitted by the petitioner, held him guilty for negligence in duty and recommended for “stoppage of one increment without cumulative effect”, vide enquiry report dated 01.01.2010.

2.2 A copy of the inquiry report dated 01.01.2010 was also supplied to the petitioner directing him to file reply against such enquiry report, to which the petitioner filed his reply the same on 05.02.2010 pleading innocence in the matter and also requested to exonerate him from the charges leveled against him and to make him free from all encumbrance. Without considering the same in

its proper perspective, the petitioner received a second show cause notice from the disciplinary authority requiring him to show as to why the proposed punishment shall not be enhanced to “stoppage of one increment with cumulative effect”.

2.3 It reveals that the inquiring officer had recommended for imposition of penalty of “stoppage of one increment without cumulative effect”, whereas the disciplinary authority differing there from imposed the penalty of “stoppage of one increment with cumulative effect”. In essence, there is a huge difference between the word “without” and “with”. Such difference in the opinion of the disciplinary authority changes the punishment from a minor to a major penalty. Therefore, as per the requirement of law sufficient reasons should have been assigned by the disciplinary authority in order to substantiate such change of punishment from minor to major.

2.4 Rule-15 of the Orissa Civil Service (Classification, Control and Appeal) Rules, 1962

prescribes the procedure for imposition of major penalty, whereas Rule-16 thereof prescribes the procedure for imposition of minor penalty. Therefore, when the disciplinary authority differs with the recommendation made by the inquiring officer, he has to assign the reasons. In other words, if the minor penalty as recommended by the inquiring officer, is turned to a major penalty by the disciplinary authority, then the procedure, as envisaged under the relevant rules, is to be followed.

2.5 The petitioner was issued with the second show cause notice on 16.06.2010. In response thereto, he submitted his reply on 07.07.2010 pointing out the discrepancies in such second show cause notice and it was pleaded specifically that no reason has been assigned for such change of punishment. Therefore, he requested to exonerate him from the charges. But the disciplinary authority, vide order dated 20.06.2011 imposed major penalty to the extent of “stoppage of one increment with cumulative effect”, without following due procedure as per Rule 15 of the OCS (CCA) Rules, 1962.

2.6 Being aggrieved by such order, the petitioner approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No. 722 (C) of 2013. The tribunal, vide the impugned order dated 29.09.2015 under Annexure-8, came to hold that, so far as supply of copy of the advice of the Commission is concerned, disciplinary authority is required to furnish brief statement of reason for non-acceptance of the advice. After receipt of the advice of the Commission, when notice was issued to the petitioner to submit his show cause, there was sufficient compliance of the provision and nothing has been shown as to how prejudice was caused for non-submission of the advice of the Commission, which was accepted by the disciplinary authority. By holding so, the tribunal dismissed the Original Application filed by the petitioner. Hence this writ petition.

3. Mr. Sameer Kumar Das, learned counsel for the petitioner emphatically submitted that the order dated 20.06.2011 imposing penalty of “stoppage of one increment with cumulative effect” on the petitioner, is in

gross violation of Rule-15 of the OCS (CCA) Rules, 1962, read with non-compliance of the principle of natural justice, and more particularly, violates Rule 15 (10) (ii) of the OCS (CCA) Rules, 1962.

To substantiate his contention, he has relied upon the decision of the apex Court in the case of **Union of India and others v. R.P. Singh**, AIR 2014 SC 2541 and the decision of this Court in the case of **Lingaraj Khadanga v. State of Orissa and others**, 2006 (II) OLR 172.

4. Mr. P.P. Mohanty, learned Additional Government Advocate for the State, referring to the counter affidavit filed by opposite party no.1, contended that the order of punishment dated 20.06.2011 under Annexure-6 was passed by the disciplinary authority in compliance of the principle of natural justice and provisions of OCS (CCA) Rules, 1962, by applying his mind judiciously. According to him, the facts of **R.P. Singh** and **Lingaraj Khadanga** (supra) on which reliance is placed by learned counsel for the petitioner are

distinguishable from the case at hand. He further contended that the Orissa Public Service Commission has concurred with the proposed punishment of the disciplinary authority, vide office order dated 20.06.2011, communicated on the conclusion of the disciplinary proceeding indicting concurrence of OPSC with regard to the punishment to be imposed on the petitioner. As a consequence thereof, the petitioner was served with the 2nd show cause notice indicating the proposed punishment to be imposed by the disciplinary authority. Therefore, the tribunal is well justified in not interfering with the order of punishment, imposed by the disciplinary authority and confirming the same vide the impugned order under Annexure-8, which does not warrant any interference by this Court at this stage.

5. This Court heard Mr. S.K. Das, learned counsel appearing for the petitioner, and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties by hybrid mode, and perused the record. Pleadings having been exchanged between the

parties, with their consent this writ petition is being disposed of finally at the stage of admission.

6. On carefully examining the rival submissions of the parties and perusing the materials available on record, it is evident that admittedly a disciplinary proceeding was initiated against the petitioner, pursuant to which, inquiry was conducted and the inquiring officer, on verification of the records and statements of defence, submitted his report on 01.01.2010 with a recommendation to impose penalty of “stoppage of one increment without cumulative effect” holding the petitioner guilty of negligence in duty. On receipt of such inquiry report, the petitioner was directed to file his reply to such inquiry report, so that, if the disciplinary authority does not satisfy with the reply of the petitioner, he should impose the punishment recommended by the inquiring officer in the inquiry report, i.e. “stoppage of one increment without cumulative effect”. But the disciplinary authority, in the present case differed from the punishment recommended by the inquiring officer and imposed the punishment of “stoppage of one increment

with cumulative effect”. Once he differed from such report of the inquiring officer, he has to record the reasons for such deferment as per the procedures envisaged under OCS (CCA) Rules, 1962. The punishment recommended by the inquiring officer for “stoppage of one increment without cumulative effect”, comes under minor penalty and as such, the procedure as envisaged under Rule-16 of the OCS (CCA) Rules, 1962 is to be followed. But since the disciplinary authority differed from the recommendation of the inquiring officer in the matter of penalty and imposed penalty of “stoppage of one increment with cumulative effect”, that becomes a major as per OCS (CCA) Rules, 1962 and, thereby, the procedure as envisaged under Rule-15 has to be followed, which provided that when the disciplinary authority disagrees with the report/recommendation of the inquiring officer, the reasons thereof are to be supplied to the petitioner, otherwise it will amount to violation of principle of natural justice.

7. In the case of **Managing Director Ecil Hyderabad v. B. Karunakar Etc. Etc**, AIR 1994 SC 1074, it has been held as follows:-

“Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer’s report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee’s right to defend himself against the charges levelled against him. A denial of the enquiry officer’s report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

8. In **Ram Kishan v. Union of India**, (1995) 6 SCC 157 : AIR 1996 SC 255, it has been held by the apex Court that a notice must give specific reasons on the basis of which the disciplinary authority disagreed with the finding of the inquiring officer. The court observed to the following effect:-

“The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may

offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show cause notice is vitiated by an error of law, on the facts in this case.”

9. In **Joginath D. Bagde v. State of Maharashtra, AIR 1999 SC 3734**, at paragraph-33 of the judgment, the apex Court held as follows:-

“In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing

those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the 'right to be heard' would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

10. In view of the aforementioned judgments, the disciplinary authority, while disagreeing with the finding of the inquiring officer ought to have made known to the petitioner about the reasons for such disagreement. But he had not done so, nor asked the petitioner to submit his reply to the proposed disagreement by the disciplinary authority. He had only asked to show cause against the punishment, not against the reasons of disagreement.

This Court in the case of **Lingaraj Khadanga** (supra) held that such an action on the part of the disciplinary authority is violative of principle of natural justice.

11. Apart from what has been stated hereinabove, on consideration of the show cause reply submitted by the petitioner, pursuant to the show cause notice issued by the disciplinary authority for imposition of penalty of “stoppage of one increment with cumulative effect”, which is a major penalty under the OCS (CCA) Rules, 1962, the procedure as envisaged under Rule-15 was to be followed. But as it appears, nothing has been placed on record to indicate that such procedure has been followed. It is also apparent that Rule 15 (10)(ii) of OCS (CCA) Rules, 1962 which is extracted hereunder, has not been complied with.

“15. Procedure for imposing Major Penalties-

(10) (ii) The orders passed by the disciplinary authority shall be communicated to the Government servant, who shall also be supplied with a copy of the report of the inquiring authority and where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority, as well as a copy of the advice of the Commission, where the Commission

has been consulted, and brief statement of reasons for non-acceptance of the advice of the Commission, if the disciplinary authority has not accepted such advice.”

12. From the above quoted rules, it is clearly evident that the orders passed by the disciplinary authority shall be communicated to government servant, who shall also be supplied with a copy of the report of the inquiring authority and where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority. In the case at hand, the disciplinary authority has only issued a show cause notice to the petitioner for imposition of penalty of “stoppage of one increment with cumulative effect” in place of recommendation given by the inquiring officer, i.e. “stoppage of one increment without cumulative effect”. It is also provided in the above quoted rules, that along with the finding of the inquiring authority, a copy of the advice of the Commission, where the Commission has been consulted, and brief statement of reasons for non-acceptance of the advice of the Commission, if the

disciplinary authority has not accepted such advice, are also required to be supplied to the Government servant. The order imposing penalty of “stoppage of one increment with cumulative effect” was passed after obtaining advice of the Commission, namely, Orissa Public Service Commission, as defined under Rule 2 (b) of the OCS (CCA) Rules, 1962. As such, since the order of punishment was passed, after obtaining advice from the Orissa Public Service Commission, non-supply of the copy of advice of the Commission to the delinquent at the pre-decisional stage amounts to violation of principle of natural justice for making effective representation. Therefore, the stand taken by the State-opposite parties that after receiving due advice/views from the Orissa Public Service Commission, vide letter dated 16.05.2011, the order of punishment was imposed by the disciplinary authority cannot be of any use for them, in view of the fact that copy of the said advice of the Commission was not served on the petitioner in pre-decisional stage of imposition of penalty on him.

13. The tribunal, without taking into consideration this aspect in proper perspective, held that so far as supply of copy of the advice of the Commission is concerned, disciplinary authority was required to furnish brief statement of reasons for non-acceptance of the advice, but after receipt of the advice of the Commission, when notice was issued to the petitioner to submit his show cause, there was sufficient compliance of the provision. That itself is an error apparent on the face of the record and nothing has been placed on record to indicate that at the pre-decisional stage of imposition of penalty, on receipt of advice from the Commission, it was communicated to the petitioner calling upon him to give his reply in compliance to the principle of natural justice. Therefore, the finding of the tribunal, that sufficient compliance of the provision was made and, as such, nothing was shown as to how prejudice was caused for non-submission of the advice of the Commission, which was accepted by the disciplinary authority, is not in conformity with the rules, nor the law laid down by the

apex Court. As a consequence thereof, the finding arrived at by the tribunal cannot sustain in the eye of law.

14. In view of the facts and law, as discussed above, this Court is of the considered view that the penalty imposed by the disciplinary authority, i.e. “stoppage of one increment with cumulative effect” vide order dated 20.06.2011 in Annexure-6, as well as the impugned order dated 29.09.2015 passed by the tribunal in Annexure-8, cannot sustain and the same are liable to be quashed and hereby quashed.

15. The writ petition is accordingly allowed. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 07th April, 2022, Arun/GDS