

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 8759 OF 2018

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

AFR

Baisnaba Charan Nayak Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : Mr. Mohit Agarwal,
Advocate

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE G. SATAPATHY**

Date of hearing and judgment: 12.10.2022

DR. B.R. SARANGI, J. The Petitioner, who is a retired
Government Servant, has filed this writ petition
questioning the legality and propriety of the order dated
06.04.2018 passed in O.A. No. 1434 (C) of 2007, by which

the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, having found no infirmity in the penalty order and appellate order, has dismissed the Original Application being devoid of merit.

2. The factual matrix of the case, in a nutshell, is that while the petitioner was working as Assistant Agriculture Officer (Pulse) in the office of the Deputy Director Agriculture, Puri Range, a disciplinary proceeding was initiated against him, vide order no.1362 dated 05.02.1997, under Rule-16 of the Orissa Civil Services (C.A.&A) Rules, 1962 (hereinafter referred to as "the Rules, 1962") by opposite party no.2 for alleged violation of Rule-3 of Orissa Government Servant Conduct Rules, 1959. The petitioner was served with the memo of charges and the list of witnesses sought to be relied upon. From the imputation of charges, it transpired that during his previous posting as Junior Agriculture Officer (JAO) at Mahanga in Cuttack district, one Arakhita Behera, Ex-A.O. under suspension of Mahanga Input Sale Centre had misappropriated huge leftover stocks of seeds amounting

to Rs.2,73,210.20 during the year 1989-90, 1993-94 and 1994-95 as found in the P.L. stock book. The petitioner was charged for having failed to discharge his duty as primary supervising officer, resulting thereby occasions for Arakhit Behera to misappropriate the aforesaid amount. Consequentially, the petitioner was called upon to show cause against the charge of gross dereliction and negligence in duty, causing loss of Rs.2,73,210.20 from the P.L. account.

2.1 In response to the charge memo, the petitioner submitted explanation on 15.10.1997 by denying the allegations. In the explanation, the petitioner specifically asserted that he took over the charge of JAO, Mahanga during the month of October, 1992 and continued there till 18.09.1995. He was not at all responsible for verification of the stock register as well as the disposal of stocks of the Input Sale Centre since the Deputy Director of Agriculture, Cuttack Range was the authority to conduct the periods meetings of the staff of the Input Sale Centres and the verification of accounts as well as deposit

of the sale proceeds. The petitioner also furnished the dates on which Sri Behera had attended the meetings at the office of Deputy Director, Agriculture, Cuttack Range. The petitioner further indicated in the explanation that the left over stocks at the Input Sale Centre were being verified by an officer deputed by D.D.A., Cuttack from time to time, which was evident from the physical verification reports submitted to the higher authorities for disposal of leftover non-viable stocks. Therefore, the petitioner prayed for exonerating him from the charges.

2.2 But, after lapse of more than one year, the petitioner was served with an additional charge by opposite party no.2 on 25.11.1998 under Rule-16 of Rules, 1962. From the imputation of charge, the petitioner came to know that Arakhita Behera, Ex. A.O. was charge sheeted vide order no.6489 dated 21.12.1996 and had faced an inquiry conducted by the District Agriculture Officer, Cuttack as the Inquiry Officer. In the aforesaid inquiry, the Inquiry Officer found that during the year 1993-94, Q124.50 kg. of groundnut seeds were

supplied to Mahanga Sale Centre. From out of the aforesaid quantity, Q15.70 kg was sold and Q2.16 kg was shown as shortage and the balance stock of Q106.64 kg was allegedly received by the petitioner for diversion to V.A.Ws circle for sale. But there was no acknowledgement from the VAWs as regards receipt of the seeds and by way of the additional charge, the petitioner was called upon to show cause that the aforesaid balance stock of Q106.04 kg of groundnut seeds have been diverted to the VAWs circle for sale and that the petitioner has not misappropriated the seeds worth Rs.1,99,843.40. More so, such additional charge framed against the petitioner was based on an inquiry conducted by the District Agriculture Officer to the charges levelled against Arakhita Behera, Ex-A.O. for alleged misappropriation of Rs.2,73,210.20. Consequent upon initiation of proceeding against Arakhita Behera, the petitioner was also called upon to show cause as to why he shall not be held responsible for loss caused to the Govt. on account of such misappropriation committed by Sri Behera.

2.3 In response to the notice of additional show cause, the petitioner wrote to opposite party no.2, vide letter dated 21.01.1999, to allow him to peruse the relevant records for the purpose of preparing his defence by way of written statement and by that time he was deployed as Asst. Project Director (Scheme) under D.R.D.A. in the district of Sonepur. Since the additional charge was with regard to misappropriation of stock of Q106.04 kg of groundnut worth Rs.1,99,843.40 of Mahanga Input Sale Centre during the period 1993-94 and the six records, as mentioned by the petitioner in his letter dated 21.01.1999, were essentially required by him as opposite party no.2 had based his charges on those documents. Thereafter, the petitioner on 13.03.2006 received the order of punishment for recovery of an amount of Rs.1,99,843.40 from his salary in 23 installments and stoppage of two annual increments by holding the petitioner liable towards the charges levelled in the memo of additional charges. The disciplinary authority had not also supplied the copies of the inquiry

report alleged to have been submitted since 13.09.2001 on the basis of which the punishment order was passed. Being aggrieved by such order of punishment imposed by the disciplinary authority, the petitioner preferred appeal before opposite party no.1 on 24.04.2006. But, without any application of mind and without giving any reason, the appellate authority rejected the appeal preferred by the petitioner by confirming the order of punishment, vide order dated 24.03.2007. Aggrieved by the order passed by the appellate authority, though the petitioner approached the tribunal by filing O.A. No. 1434 (C) of 2007, but, vide order dated 06.04.2018, the tribunal dismissed the Original Application filed by the petitioner. Hence, this writ petition.

3. Mr. Mohit Agarwal, learned counsel for the petitioner vehemently contended that the proceeding was initiated against the petitioner under Rule-16 of Rules 1962, which provides the procedure for imposition of minor penalty, but not under Rule-15 of Rules 1962, which provides the procedure for imposition of major

penalty. But, without understanding the cardinal principles of Rules 15 and 16 of the Rules, 1962, even though the proceeding was initiated under Rule-16, the disciplinary authority appointed the District Agriculture Officer, Jagatsinghpur as the Inquiry Officer, who submitted the inquiry report on 13.09.2001, on the basis of which punishment was imposed against the petitioner by the disciplinary authority. As such, copy of the inquiry report was not supplied to the petitioner and, thereby, there is gross violation of principles of natural justice. It is further contended that the disciplinary authority committed a gross error of law by abdicating its powers in favour of the Inquiry Officer in contravention to Rule-16 of the Rules, 1962. As such, Rule-16 requires that the disciplinary authority to take an independent reasoned decision after considering the allegations levelled against a Government servant and the representation made thereto by the Government servant. But the order of punishment passed by the disciplinary authority on 13.03.2006 runs contrary to Rule-16 of the Rules, 1962 and thus the same

cannot be sustained in the eye of law. It is further contended that Rule-16(2)(iv) of Rules, 1962 mandates the disciplinary authority to take a reasoned decision after considering the defence raised by the Government servant. As such, the disciplinary authority has not passed a reasoned order as to how the allegations levelled against the petitioner were made out and on the other hand the disciplinary authority in a stereo type manner simply reiterated the recommendations of the Inquiry Officer and imposed the penalty. It is further contended that the appellate authority also without any application of mind confirmed the order of punishment passed by the disciplinary authority. Ultimately, the tribunal, before which both the orders were challenged, without appreciating the materials on record in proper perspective, dismissed the Original Application filed by the petitioner, which cannot sustain in the eye of law.

To substantiate his contention, learned counsel for the petitioner has relied upon the judgments of the apex Court in the cases of **Zuari Cement Ltd. v.**

Regional Director, E.S.I.C., Hyderabad, AIR 2015 SC 2764; **H.P. State Electricity Board Ltd. v. Mahesh Dahiya**, AIR 2016 SC 5341; **Managing Director, ECIL, Hyderabad v. B. Karunakar**, AIR 1994 SC 1074; and **Allahabad Bank v. Krishna Narayan Tewari**, AIR 2017 SC 330.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties, while refuting the submissions made by learned counsel for the petitioner, contended that the petitioner has not approached this Court with clean hands. As the petitioner had committed gross dereliction and negligence in duties, there was occasion for one Arakhita Behera, Agriculture Overseer to misappropriate stock of seeds of Input Sale Centre of Mahanga amounting to Rs.2,72,210.20 from the P.L. account. A memo of charge was served on the petitioner calling upon him to give reply. As the reply of the petitioner, on consideration, was not appreciated by the disciplinary authority, he was called upon for a personal hearing on 20.12.1997, 15.01.1998 and

07.02.1998, but the petitioner was found absent for the personal hearing. Thus, there is compliance of principle of natural justice and, as such, imposition of penalty is justified. It is further contended that the petitioner was absent on 16.12.2000, the date which was fixed for enquiry to the charges by the DAO, Jagatsinghpur. But he appeared in the enquiry on 09.02.2001, the records were produced as per memo of evidence by the Presenting Officers in presence of the petitioner and on the date of enquiry the petitioner furnished his written statement requesting to fix another date, i.e., 12.03.2001 for enquiry in order to produce the record of receipt obtained from the VAWs for diversion purpose. But, on 12.03.2001, the petitioner neither attended the enquiry nor produced any document showing to have diverted the groundnut seeds to the VAW circles. Consequentially, the inquiry was concluded and the Inquiring Officer submitted inquiry report holding that the delinquent officer, being the immediate supervising officer, has neglected his duties causing loss to P.L. account amounting to Rs.73,366.80

and further he is directly responsible for misappropriation of Rs.1,99,843.40, which was the cost of Q106.64 Kg of groundnut seeds. Thereby, the petitioner was given reasonable opportunity for perusal of record and extract thereof, but he failed to collect the records available at different quarters. Thereby, he was charged under Rule-16 of the Rules, 1962 for imposition of minor penalties, which does not require furnishing a copy of the enquiry report on him. Thus, it is contended that the order passed by the disciplinary authority having been confirmed by the appellate authority, above noted Original Application was filed and the tribunal with due application of mind dismissed the same by the order impugned, which does not require any interference by this Court.

5. This Court heard Mr. Mohit Agarwal, learned counsel for the petitioner; and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties by virtual mode, 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. The factual matrix, as delineated above, reveals that the petitioner is a retired Government employee. While he was in Government service, a proceeding was initiated against him under Rule-16 of the Rules, 1962 framed in exercise of powers conferred under Article 309 of the Constitution of India, on the allegation of dereliction in duty and misappropriation of Government money. For just and proper adjudication of the case, Rule-16 of Rules, 1962 is extracted hereunder:-

“16.Procedure for imposing minor penalties----

(1) No order imposing any of the penalties specified in clauses (i) to (v) of Rule 13 shall be passed except after-

(a) the Government servant is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make;

(b) such representation, if any is taken into consideration by the disciplinary authority; and

(c) the Commission is consulted in cases where such consultation is necessary.

(2) The record of proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of allegations communicated to him;
- (iii) his representation, if any;
- (iv) the advice of the Commission, if any;
- and
- (v) the orders on the case together with the reasons therefor."

Rule-13 of Rules, 1962, which deals with nature of penalties, is extracted hereunder:-

"13. Nature of penalties- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely-

- (i) fine;
- (ii) censure;
- (iii) withholding of increments;
- (iii -A) withholding of promotion;
- (iv) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (v) suspension;
- (vi) reduction to a lower service, grade or post or to a lower time -scale or to a lower stage in a time scale;
- (vii) compulsory retirement.
- (viii) removal from service which shall not be a disqualification for future employment;
- (ix) dismissal from service which shall be ordinarily be a disqualification for future employment.

Provided that the penalty of fine shall be imposed only on Class-iv Government Servant.

Explanation:- The following shall not amount to a penalty within the meaning of this rule-

(a) Withholding of increments of Government servant for failure to pass a departmental examination in accordance with the rules of order governing the service or post or the terms of his appointment.

(b) Stoppage of a Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar.

(c) Non-promoting, whether in a substantive or officiating capacity, of a Government servant, after consideration of his case, to a service, grade or post for promotion to which he is eligible.

(d) Reversion to a lower service, grade or post of a Government servant officiating in higher service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct.

(e) Reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of the probation in accordance with the terms of his appointment or the rules and orders governing probation.

(f) Replacement of the services of a Government servant whose services have been borrowed from the Central or State Government or an authority under the control of the Central or State Government at the disposal of the authority which had lent his services.

(g) Compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement.

(h) Termination of the services-

(i) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his

*appointment or the rules and orders governing probation; or
(ii) of a temporary Government servant in accordance with the terms of his appointment; or
(iii) of a Government servant employed under an agreement in accordance with the terms of such agreement.”*

7. In view of the provisions contained in Rule-16, as quoted above, no order imposing any of the penalties specified in clauses (i) to (v) of Rule-13 shall be passed except after compliance of clause-(a) to (c) of Rule-16. Thereby, a detailed procedure has been provided for imposition of minor penalty. A perusal of memorandum of charge under Annexure-1 dated 05.02.2017 would evident that proceeding was initiated under Rule-16 of the Rules, 1962. Therefore, if the proceeding was initiated under Rule-16, procedure for imposition of minor penalty has to be followed under the said Rules. If the inquiry would have been conducted by the District Agriculture Officer under Rule-15, which envisaged the procedure for imposition of major penalties, on the basis of such inquiry report, the disciplinary authority could have imposed the

penalty. It is the specific case of the petitioner that he was not given any opportunity and abruptly the enquiry was closed and inquiry report was not supplied to him by the disciplinary authority, knowing the fact that the proceeding was initiated against the petitioner under Rule-16 of the Rules, 1962. Thereby, if the inquiry which has been conducted against the petitioner does not contemplate under Rule-16 and basing upon such inquiry report if any punishment is imposed by the disciplinary authority, the same cannot be sustained in the eye of law, as Rules, 1962 has been framed in exercise of the powers conferred under Article 309 of the Constitution of India and it has got statutory force. Therefore, this Court is of the considered view that if procedure has been envisaged under the Rules, it should have been followed strictly and for non-adherence of such provision, the order of penalty cannot be sustained in the eye of law.

8. In the case of **Zuari Cement Ltd.** (supra) at paragraph-14 of the judgment the apex Court held that it is the cardinal rule of interpretation that where a statute

provides a particular thing should be done, it should be done in the manner prescribed and not in any other way. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. This rule has been recognized as a salutary principle of administrative law and exercise of jurisdiction by courts. Thereby, it can be safely concluded that since the proceeding was initiated under Rule-16 of the Rules, 1962, the inquiry should have been conducted under the said rule. But in the instant case, though proceeding was initiated under Rule-16 of the Rules, 1962, the inquiry was conducted as per procedure contemplated under Rule-15 of Rules, 1962 and, as such, punishment having been imposed on the basis of such inquiry report, the same cannot be sustained in the eye of law. Furthermore, if at all according to Rule-15 the inquiry was conducted, then the authority should have supplied copy of the inquiry report to the delinquent employee so that he could have made an adequate representation explaining his own stand. But in the present case the petitioner was not

supplied with copy of the inquiry report, basing upon which the punishment was imposed.

9. In ***H.P. State Electricity Board*** (supra), the apex Court held that an inquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand.

10. In ***Managing Director, ECIL*** (supra), the apex Court held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions. That right is a part of the employees' right to defend himself against the charges levelled against him. A denial of Inquiry 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. This will be the case whether there are rules governing the disciplinary

proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject and whatever be the nature of punishment.

11. The disciplinary authority without adhering to the procedure laid down for imposition of minor penalty under Rule-16 of Rules, 1962 and without taking an independent reasoned decision after considering the allegations levelled against the Government servant and representation made thereto by the Government servant, passed the order of punishment on 13.03.2006 without any application of mind to the fact of the case. Rather, reiterated the recommendation made by the Inquiry Officer, which is absolutely an outcome of non-application of mind. Rule-16(2)(iv) of the Rules, 1962 mandates the disciplinary authority to take a reasoned decision after considering the defence raised by the Government servant. But in the present case, it is evident that while passing the order of punishment on 13.03.2006, no reason has been assigned by the disciplinary authority as to why the allegations made against the petitioner were made out,

but, on the other hand, the disciplinary authority reiterated the recommendation made by the Inquiry Officer. Thereby, the same violates the principles of natural justice.

12. In **Krishna Narayan Tewari** (supra), the apex Court held that non-application of mind by the Inquiry Officer or the disciplinary authority, non-recording of reasons in support of the conclusions arrived at by them are grounds on which the Writ Courts are justified in interfering with the orders of punishment. If the disciplinary authority does not properly appreciate the evidence nor records reasons in support of his conclusion or records a finding unsupported by any evidence, then the Writ Courts can interfere.

13. As it appears, the disciplinary authority had not considered the fact that the groundnut seeds alleged to have been misappropriated by the petitioner were in fact put to auction by tender process at the Sale Centres, which is apparent from the letter dated 08.05.1996

annexed by the opposite parties as Annexure-C/2 to the counter affidavit. The groundnuts of Q106.64 kg were lying in the go-down and were auctioned but the bidder did not pick it up as they were lying in a damaged condition. Therefore, the entire allegation of misappropriation of Q106.64 kg of groundnuts, cannot sustain in the eye of law. Even if such plea had been taken before the appellate authority, the same was not considered. Consequentially, the petitioner though approached the tribunal, but the tribunal, referring to the judgment of the apex Court in the case of **Union of India v. P. Gunasekaran**, (2015) 1 SCC (L&S) 554, dismissed the Original Application. But in the judgment cited by the tribunal, the apex Court has elaborately discussed as to what the Court has to examine:-

- a) *The enquiry is held by competent authority;*
- b) *The enquiry is held according to procedure prescribed on that behalf;*
- c) *There is violation of principle of natural justice in conducting the proceeding;*
- d) *The authorities have disabled themselves from reaching a far conclusion by some consideration extraneous to the evidence and merit of the case;*

- e) *The authorities have allowed themselves to be influenced by irrelevant or extraneous consideration.*
- f) *The conclusion on the very face of it is so wholly arbitrary capricious that no reasonable person could ever have arrived such conclusion.*
- g) *The disciplinary authority erroneously failed to admit the admissible and material evidence;*
- h) *The disciplinary authority had erroneously admitted inadmissible evidence which influenced finding;*
- i) *The finding of fact is based under “no evidence”*

Under Articles 226/227 of the Constitution of India the High Court may note:-

- i) *Re appreciate evidence;*
- ii) *interfere with the conclusion in the enquiry, If the same are conducted in accordance with law;*
- iii) *go into reliability/adequacy of evidence;*
- iv) *interfere, if there is some legal evidence on which findings are based;*
- v) *correct error of fact however grave it may be;*
- vi) *go into proportionality of punishment unless it shocks conscience of court.”*

14. As it appears, the tribunal has not considered the law laid down by the apex Court, as mentioned above, and without delving into the issue involved in the case, has proceeded with the matter and come to a finding that nothing wrong in the impugned penalty order or in the appellate order and accordingly dismissed the Original

Application. Therefore, the question with regard to applicability of Rule-15 or Rule-16, as discussed above, has not been taken into consideration by the tribunal. There is no dispute with regard to the fact that proceeding was initiated against the petitioner under Rule-16 of the Rules, 1962. Therefore, the procedure envisaged under Rule-16 should have been followed. Without following the same and without adhering to the procedure as envisaged under Rule-16 of the Rules, 1962, inquiry was conducted behind the back of the petitioner and, as such, without complying with the principles of natural justice, major penalty was imposed by the disciplinary authority.

15. In the above premises, the order dated 13.03.2006 so passed by the disciplinary authority under Annexure-4, as well as the order dated 24.03.2007 passed by the appellate authority under Annexure-5, and the consequential order dated 06.04.2018 under Annexure-6 passed by the tribunal cannot be sustained in the eye of law and the same are liable to be quashed and are hereby quashed. The matter is remitted back to the disciplinary

authority to follow the procedure, as envisaged under Rule-16 of Rules, 1962, basing upon which the charge is framed for imposition of minor penalty in compliance thereof. Since the petitioner has retired from service long since, the disciplinary authority is directed to conclude the proceeding as expeditiously as possible, preferably within a period of four months from the date of communication/production of certified copy of this judgment. The petitioner is also directed to cooperate with the authority for early conclusion of the proceeding.

16. In the result, the writ petition is allowed. However, there shall be no order as to costs.

.....
DR. B.R. SARANGI,
JUDGE

G. SATAPATHY, J. I agree.

.....
G. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 12th October, 2022, Ashok/GDS