

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 19426 OF 2016

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

AFR

Raheman Mahammed Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s. S. B. Jena, S. Behera,
A. Mishra and S. Soren,
Advocates

For Opp. Parties : Mr. S.N. Nayak,
Addl. Standing Counsel

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: 29.03.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the order of punishment dated 08.12.2006 passed by the disciplinary authority under Annexure-10; the order dated 12.12.2008 passed by the appellate authority under Annexure-11; and the consequential order dated 28.09.2016 passed in O.A. No.

387 (C) of 2009 under Annexure-12, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, while dismissing the Original Application, has affirmed the order passed by the appellate authority by holding that Rule-29 of the OCS (CC&A) Rules, 1962 does not provide that such order is to be an elaborate and a speaking one.

2. The factual matrix of the case, in brief, is that the petitioner, while working as Junior Clerk in the office of the Sub-Treasury Officer, Athagarh, passed two GPF bills bearing Nos. 84 and 85 of 2003-04 of SDMO, Athagarh. Subsequently, he also passed and disbursed two other bills bearing No. 94 and 95/2003-04 of the said SDMO. Thereafter, the excess amount, which had been disbursed due to the above, were deposited vide challan No. 5 dated 03.07.2004. The SDMO, Athagarh, vide letter No. 803 dated 05.07.2004, intimated the Accountant General, Odisha regarding the excess drawal as well as deposit of the aforesaid amount. In spite of that, pending drawal of the departmental proceeding, the petitioner was placed under suspension. Though the SDMO, Athagarh

had admitted that he was at fault in submitting bills and the petitioner had no fault, the petitioner was served with a show cause notice relating to (i) negligence in duty; (ii) gross misconduct; and (iii) tampering of official record. The petitioner pointed out certain facts in his defence, such as, GPF bills are always passed by the Sub-Treasury Officer and the bills in question could not have been submitted without sanction order etc. and he refuted the charges of misconduct. He also denied the charges relating to tampering of official record.

2.1 The disciplinary authority in his order dated 04.06.2005 appointed the Director of Treasuries & Inspection, Odisha, Bhubaneswar as the Inquiring Officer and the STO, Athagarh as the Marshalling Officer. All the witnesses were examined behind the back of the petitioner. One Senior Clerk working in the office of the SDMO, Athagarh was examined and in his statement he pointed out that there were definitely two sanction orders in each case, otherwise the bills could not have been passed twice. In his statement, he further pointed out

that since one beneficiary was completely bed ridden, he requested the petitioner to help him by drawing the GPF amount and after much persuasion and observing the gravity of situation kept the sanction orders, along with the bills, before the STO who passed the same. From this, it could be seen that the petitioner is no way at fault. The Inquiry Officer finally submitted the inquiry report on 27.05.2006 pointing out that since the SDMO admitted his fault and accordingly the excess drawal amount was deposited in the Government Treasury, the petitioner should not be held responsible/ guilty of the charges levelled against him for any procedural lapses. The Inquiry Officer also pointed out that the claims were drawn knowingly and cunningly by the Sr. Clerk of the office of the SDMO when it was passed by the Sub-Treasury Officer only on humanitarian points of view.

2.2 But the disciplinary authority went ahead to propose penalty in his letter dated 11.10.2006, pursuant to which the petitioner submitted his reply. After considering the same, the punishment order was passed

on 08.12.2006 treating the period of suspension as such, which will not count for qualifying service, and one increment of the petitioner is withheld with cumulative effect. Against the said order, the petitioner preferred an appeal before the opposite party no.1, who disposed of the same, vide order dated 12.12.2008, stating that after careful consideration, the appeal petition filed by the petitioner is rejected. Against such order rejecting the appeal, the petitioner preferred O.A. No. 387 (C) of 2009 before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, but the same was dismissed vide impugned order dated 28.09.2016. Hence this writ petition.

3. Mr. S. Behera, learned counsel for the petitioner contended that when the Inquiry Officer in his report found that the petitioner should not be held guilty of the charges levelled against him for any procedural lapses, the disciplinary authority should not have inflicted on the petitioner the penalty that (i) the period of suspension is treated as such which will not be counted

for qualifying service; and that (ii) one increment is withheld with cumulative effect. As against the said order of punishment, the petitioner preferred appeal, but the appellate authority, without application of mind, affirmed the order of punishment by only stating that after careful consideration, the appeal petition filed by the petitioner is rejected as being devoid of merit. In such circumstance, the order so passed by the appellate authority cannot be sustained, as it is not supported by any reason. Although the petitioner took this stand before the tribunal, but, while considering the Original Application, the tribunal came to hold that as regards the appellate authority not passing any speaking order, Rule 29 does not provide that such order has to be an elaborate speaking order and no infraction of rules has been brought out. Thereby, it is contended that since the appellate authority has passed an order upholding the order of punishment, it must be supported by reasons. In absence of the same, the order so passed by the appellate authority cannot sustain. Therefore, the order impugned passed by the tribunal

confirming the order passed by the appellate authority cannot also sustain.

4. Mr. S.N. Nayak, learned Additional Standing Counsel for the State vehemently contended that once the disciplinary authority, while inflicting punishment against the petitioner, passed a reasoned order, when the said order of punishment is appealed against, Rule 29 of the OCS (CCA) Rules, 1962 does not require the appellate authority to assign reasons while rejecting the appeal. As such, the order dated 12.12.2008 passed by the appellate authority cannot be faulted with, so as to warrant interference by this Court at this stage. More so, while passing the order of punishment by the disciplinary authority, the procedure as envisaged under Rule 15 of the OCS (CCA) Rules, 1962 has been followed scrupulously by giving opportunity of hearing to the petitioner and subsequently the punishment has been imposed. Therefore, if the procedure has been adhered to and punishment has been imposed and the appellate authority has confirmed the same, it cannot be said that

the order of punishment is bad in law and, as such, the consequential order passed by the tribunal cannot be said to be illegal.

5. This Court heard Mr. S. Behera, learned counsel for the petitioner; and Mr. S.N. Nayak, learned Additional Standing Counsel for the State-opposite parties by hybrid mode, and perused the record. 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. As per the factual matrix, as delineated above, there is no dispute that after the GPF bills bearing nos. 84 and 85/2003-04 of the SDMO, Athagarh were passed, subsequently, two other bills bearing nos. 94 and 95/2003-04 of the said SDMO were also passed and disbursed. However, the excess amount, which had been disbursed due to the above, were deposited vide Challan No. 5 dated 03.07.2004. Thus, the procedural error so occurred has been denied by the petitioner. In any case,

this Court is not inclined to enter into the legality of the order of punishment, as the sole contention raised by learned counsel for the petitioner is that the order of the appellate authority confirming the order of punishment passed by the disciplinary authority, has been passed mechanically without assigning any reason and by only stating that “after careful consideration, the appeal petition filed by the petitioner is rejected being devoid of merit”.

7. Reasons being a necessary concomitant to passing an order, the appellate authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

8. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and

reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

9. Similar view has also been taken by the apex Court in ***Uma Charan v. State of Madhya Pradesh***, AIR 1981 SC 1915 and also by this Court in the cases of ***Patitapaban Pala v. Orissa Forest Development Corporation Ltd. & another***, 2017 (I) OLR 5 and in ***Banambar Parida v. Orissa Forest Development Corporation Limited***, 2017 (I) OLR 625.

10. In view of the settled principles of law, as discussed above, this Court is of the considered view that the order dated 12.12.2018 passed by the appellate authority under Annexure-11, being not supported by reasons, is a non-speaking one and thus cannot be sustained in the eye of law. But the tribunal in its order

dated 28.09.2016, while considering such aspect, has observed that Rule-29 of OCS (CCA) Rules, 1962 does not provide that the order of the appellate authority has to be an elaborate and speaking order.

11. For better appreciation, Rule-29 of OCS (CCA) Rules, 1962 is extracted hereunder:-

“29. Consideration of Appeals.-(1) *In the case of an appeal against an order imposing any of the penalties specified in Rule 13 the appellate authority shall consider-*

(a) whether the procedure prescribed in these rules has been complied with and, if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate; and, after consultation with the Commission if such consultation is necessary in the case, pass orders -

(i) setting aside, reducing confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that-

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (vi) to (ix) of Rule 13 and an inquiry under Rule 15 has not already been held in the case the appellate authority shall/subject to the provisions of Rule 18, itself hold such inquiry or direct that such inquiry be held and, thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(2) In the case of an appeal against any order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.”

The aforesaid provision nowhere provides that the appellate authority need not pass an elaborate and speaking order. Rather, it is categorically provided therein that in the case of an appeal against an order imposing penalty the appellate authority shall consider whether the procedure prescribed in the rules has been complied with and, if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice, and that the appellate authority shall consider all the circumstances of the case while passing such orders as it deems just and equitable. Therefore, there is an error apparent on the face of the order passed by the tribunal and, as such,

the order dated 28.09.2016 passed by the Orissa Administrative Tribunal in O.A. No. 387 (C) of 2009 also cannot be sustained and is hereby set aside. The matter is remitted back to the appellate authority to consider the appeal of the petitioner afresh by passing a reasoned and speaking order in accordance with law by giving opportunity of hearing to the petitioner, within a period of three months from the date of communication of this judgment.

12. With the above observation and direction, the writ petition stands disposed of. No order 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 29th March, 2022, Arun/GDS