

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) NO.9818 of 2018**

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

Sarat Kumar Sahoo

....

Petitioner

-versus-

***Odisha Forest Development
Corporation Ltd. and another***

....

Opposite Parties

For Petitioner

Mr. D. Mishra, Advocate

For Opposite Parties

***Mr. S.K. Pattnaik, Sr.
Advocate***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :05.09.2022

DATE OF JUDGMENT: 05.09.2022

V. Narasingh, J.

1. Heard Mr. D. Mishra, learned counsel for the petitioner and Mr. S.K. Pattnaik, learned Senior Counsel for the Opposite Parties.
2. The petitioner was working as a Senior Auditor in the Opposite Party Corporation (OFDC) has inter alia assailed the order passed by the Disciplinary Authority dated 19.02.2004 at Annexure-5

and of the Appellate Authority dated 25.05.2018 at Annexure-9 inter alia on the ground stated under III of the prayer which is quoted hereunder:-

x x x x x“(i) To hold and declare the impugned memorandum of charge under Annexure-1 is ultravires rule 124 (2) of OFDC Rules, 1986 and Article 14.

(ii) To quash the Enquiry Report Dated 02.05.2013 under Annexure-3 and supplementary compliance report of the enquiry officer dated 02.06.2003 under Annexure-3A is illegal and without authority of law.” x x x x x

3. It is apt to note here that this is the third journey of the petitioner to this Court.
4. Inasmuch as initially, he had filed W.P.(C) No.2366 of 2004 challenging the Disciplinary Proceeding, Charge, Enquiry Report and order of penalty.
5. By order dated 08.07.2009, the said Writ Petition was disposed of directing the petitioner to prefer an appeal to the Board.
6. In terms of the said direction, the petitioner preferred an appeal to the Board. Since the Disciplinary Authority i.e. the CMD was also a member of the Board assailing the decision of the Board, being violative of one of the limbs of the principles of natural justice, the petitioner again approached this Court by filing W.P.(C) No.5575 of 2013.
7. And by order dated 31.01.2013, the said Writ Petition was disposed of and the copy of the order is on record at Annexure-6. The operative paragraph of the order of the Division Bench of this Court is extracted hereunder:-

x x x x x *“The Appellate Authority shall consider all the questions raised by the petitioner before us by affording him with an opportunity of hearing.”* x x x x x

8. It is apposite to state here that assailing such order, a review was preferred by the Corporation being Review Petition No.91 of 2013 which was dismissed of by this Court by order dated 16.03.2018, dismissing the Review Petition but extending the period of consideration by the Appellate Authority.
9. Pursuant to such order of this Court, appellate order at Annexure-9 has been passed which is assailed in the present Writ Petition.
10. It is submitted by the learned counsel for the petitioner Mr. Mishra that on a bare perusal of the appellate order, it can be seen that it suffers from the vice of lack of reason and the same is also contrary to the specific direction issued by this Court and order dated 31.01.2013 in W.P.(C) No.5577 of 2010 filed by the petitioner that
“Appellate Authority shall consider all the questions raised by the petitioner before us affording him an opportunity of hearing.”
11. Hence it is submitted by the learned counsel for the petitioner since there is no application of mind whatsoever, the matter merits interference of this Court and the order passed by the Disciplinary Authority as well as the Appellate Authority are liable to be caused with consequential benefits and to fortify his stands the petitioner has relied on the judgment of the Apex Court reported in **(2009) 2 SCC 570** more particularly paragraph-23 thereof.

X x x x x *“Furthermore, the order of the Disciplinary Authority as also the Appellate Authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal Court on the basis of selfsame evidence should not have been taken into a consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding by the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”* X
x x x x

12. Per contra learned Senior Counsel Mr. Pattnaik, relies on the counter affidavit and controverts the allegations of the impugned appellate order being a non speaking one. It is submitted by Mr. Pattnaik, learned Senior Counsel that Annexure-9 is just a communication of the finding of the Board, drawing the attention of this Court to the proceedings of the Board extracted hereunder which are on record being part of Annexure-P:-

“A copy of the proceedings of the 257th Spl. Meeting of the Board of Directors held on 22.05.2018 and also on extract of Item No.2 thereof are being relevant to your Branch are enclosed for favour of your information and necessary action. Action taken in this regard

may please be communicated to the undersigned early for placing the same in the next meeting.”

13. It is submitted by the learned counsel for the petitioner that the appellate order suffers from lack of reasons. For convenience of ready reference, the relevant extract of the proceeding of the 257th Special Meeting of the Board of Directors which also dealt with the appeal of the present petitioner from which the impugned appellate order at Annexure-9 emanated is quoted hereunder:-

“Appeal of Shri Sarat Kumar Sahoo, Ex- Sr. Auditor against the final order passed by the Disciplinary Authority, Chairman-cum-managing Director in the Disciplinary Proceedings.

The Board of Directors perused the memorandum and noted the same. The Managing Director informed the Board that Shri Sarat Kumar Sahoo, Ex-Sr. Auditor has appealed to the Board of Directors, the Appellate Authority, against the final orders passed vide office order No.194 dated 17.02.2004 and office order No.05 dated 06.01.2005 of the Disciplinary Authority-cum-CMD, OFDC related to the Disciplinary Proceedings drawn up against him in the Head Office Order No.79 dated 21.01.2002 and No.593 dated 20.06.2002. The Managing Director also informed that as per order of the Hon’ble High Court, Shri Sahoo has filed its appeal petition on 02.04.2018 and was duly notified about the date and time of meeting of the Board of Directors for hearing of his

appeal petition and Shri Sahoo is present personally to be heard.

Thereafter Shri Sahoo was called upon to present his grounds of appeal before the Board of Directors personally.

The Board of Directors heard all the grounds of the appeal submitted by Shri S.K. Sahoo, Ex-Senior Auditor before them and examined in detail the factual position as well as all connected records and documents of the two cases, After due consideration, the Board of Directors decided to uphold the final orders passed by the Disciplinary-cum-Chairman – cum-Managing Director vide office order No.194 dated 17.02.2004 and office Order No.05 dt.06.01.2005 in relation to the Disciplinary Proceedings drawn up in the Head Office Order No.79 dated 21.01.2002 and No.593 dt.20.06.2002 respectively as the grounds of appeal were found not to be satisfactory. The inquiry has been conducted properly and Disciplinary Authority has rightly passed the order penalizing the appellant.

The Board of Directors authorized the Managing Director to issue office order communicating the decision of the Board of Directors to the appellant Shri Sarat Kumar Sahoo, Ex-Auditor. ”

14. This Court had occasioned to peruse both the orders passed by the disciplinary authority at Annexure-5 and the communication of the Board (the appellate authority) at Annexure-9 read with the proceeding of the Board (Annexure-P) relating memorandum of appeal preferred by the petitioner.

15. On a perusal of the disciplinary authorities order, it can be seen that no reason has been assigned to arrive at finding of guilt vis-à-vis the charges leveled against the petitioner.
16. Merely it has been stated that the disciplinary authority has read the material which was pressed into service against the petitioner including the orders passed by this Court and there is no clue as to the basis on which the finding of guilt has been arrived at and what weighed with the authorities in passing the order of compulsory retirement. The same vice seems to have afflicted the appellate authority notwithstanding the categorical direction of this Court that there must be “consideration” of the grievance of the petitioner. Though it is stated with vehemence, on behalf of the Corporation that the Appellate Order would stand the test of the reasonableness and hence the case at hand does not warrant interference, in exercise of jurisdiction under Article 226 of the Constitution of India.
17. The Apex Court had occasion to deal with the import of the word “consideration” and this Court respectfully extracts the same.

“The term consider means to think over; it connotes that there should be active application of the mind. In other words the term consider postulates consideration of all the relevant aspects of the matter.”:(Bhikhubhai Vithalbhai Patel v. State of Gujarat & Another., (2008) 4 SCC 144)

18. Evaluating the manner of consideration by the Appellate Authority on the touch stone on the Judgement referred to

hereinabove, this Court is of the considered opinion that the consideration by the Board is equally perfunctory and they have only went through the ritual of consideration without consideration in its proper sense.

19. It is trite law that reasons are the heart and soul of an order passed and the order must indicate as to what weighed with the authorities in passing the same and the same cannot be improved by either relying on the expertise of the counsel appearing at the time of hearing post facto in this Court nor in the counter affidavit. Reference:- ***Kanti Associates Vs. Masood Ahmed Khan: 2010 (9) SCC 496*** and ***Kraipak Vs. Union of India: (1969) 2 SCC 262***.
20. On perusal of the order passed by the disciplinary authority as well as appellate authority, this Court is left with no other alternative but observes that the same suffer from the vice of gross non application of mind and the reasons for arriving at the conclusions being conspicuously absent. Hence this Court in the matter of justice, equity and fair play, in the factual matrix of the case at hand when punishment of compulsory retirement has been imposed upon the delinquent petitioner deems it proper to remand the matter to the appellate stage with the fervent hope that the appellate authority shall discharge his responsibility as such by adverting to each of the contentions reached by the petitioner and pass an order in accordance with law after giving the petitioner an opportunity of hearing, in the event such a prayer is specifically made by the delinquent petitioner.
21. Since the matter is pending in this Court for over two decades, in different forms, the entire exercise be completed within a period of six months from the date of first appearance of the petitioner

before the Chairman Opposite Party on 26.09.2022 along with a copy of this order.

22. Before parting with the case to cut short any further litigation regarding the composition of the appellate authority it is made clear that the present Board of the Corporation shall hear and dispose of the appeal in terms of the direction and composition of such Board shall be specifically made known to the petitioner as above and if the petitioner has any objection, he shall raise it at the first instance.
23. The Writ Petition accordingly stands disposed of. There shall be no order as to cost.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 05th of September, 2022/Ayesha