

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.654 of 2004

(In the matter of an application under Articles 226 and 227 of
the Constitution of India, 1950).

Kali Charan Mallick *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. J.K. Lenka, Adv.*

-versus-

For Opp. Parties : *Mr. H.K. Panigrahi, ASC*
(for O.P.1)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-29.09.2022

DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. The grievance of the petitioner in the aforementioned case is to quash the charge drawn in the Disciplinary Proceeding bearing Proceeding No.4116 dated 21.01.2000 wherein it was alleged that the petitioner during is incumbency as Dist. Sub Registrar, Balasore (hereinafter 'D.S.R.') admitted a number of sale deeds to registration and did not take any action under Sections 25, 47(A) of the Stamp Act and other relevant

provisions showing undue favour to his near relatives and other purchasers vendors and vendees.

I. FACTUAL MATRIX OF THE CASE:

2. The Petitioner was recruited through O.P.S.C. as Sub-Registrar in 1967. In 1992, he was promoted as D.S.R. and was at Balasore at the time of retirement on 31.01.2002. Three charges were communicated on 03.02.2000.
3. The first charge accords that while the petitioner was serving as DSR, Balasore, two documents were executed in favour of Alok Prava Mahallick, the daughter of the petitioner. In Document No. 3546 and No. 3547 both the executants and claimant (the daughter of petitioner) are one and same and in order to avoid the surcharge, the documents to be registered were splited /bifurcated to avoid the stamp duty of Rs.11,430/- on the total valuation of Rs.90,000/- @ 6½ percent (Rs.70,000/- + Rs. 20,000/-) and under such circumstances, as per Section 27 of the Stamp Act, the prosecution could have been lodged going by the provision as enumerated in Section 64 of the Stamp Act. Thus, there was suppression of misdeeds; violating Section 27 of the Stamp Act and also Sec.64 for not lodging prosecution.
4. The second charge accords that, during 1997, as many as 25 documents were admitted to registration out of which the 'Kisam' of the area shown in 16 documents for sale was

changed to get benefit of undervaluation. Instead of initiating action against the same u/s 47-A (2) of the Stamp Act, to the collector for determination of the value, the petitioner disposed of these cases as per Kisam set forth by the parties in the documents.

5. The third charge accords that one Smt. Swarnalata Mahalik (the niece of the petitioner) who purchased a land in a particular area for a consideration of Rs. 1,00,000/-. In the check list, the value of the said land was estimated to be Rs.8,02,326/- based on highest sale instances of the village. In addition, there was a change of 'kisam' from "Sarada 2" recorded in ROR to "Patita 2" in the sale deed made. Sarad land is meant for Agricultural purposes. It is alleged that this change was deliberately made by the petitioner. After that, the petitioner passed orders in the relevant file suggesting that the document is proper valued, notwithstanding, the suggestion of office that it was undervalued.
6. An enquiry was setup against the aforementioned charges in the Departmental proceeding case No.4116 dated 21.01.2000. After completing all procedure and due concurrence of OPSC as provided in the rules, Government has ordered recovery of Rs.1,17,485/- from the DCRG of the petitioner vide Order No.47981 dated 11.10.03 as a penalty on all charges. This amount relates to the first and the third charge. The second

charge has been dropped. Meanwhile, the petitioner has denied all the charges in his explanation.

7. The present writ petitioner mainly assails the impugned order on the ground that the charges, the enquiry and its findings are illegal, arbitrary, malafide, perverse and based on no evidence and liable to be set aside.

II. SUBMISSIONS OF THE PETITIONER:

8. Learned counsel for the Petitioner made the following submissions in support of their contentions and rebuttal of the aforesaid charges:
9. The petitioner stated that in respect of Charge No.1, One Sri Banchhanidhi Shaw executed two sale deeds in favour of Smt. Alokprava Mahallick (daughter of the Petitioner) for Rs.70000/- and Rs.20000/-. The petitioner found both documents undervalued and, referred it to the Stamp Collector under Section 47 (A) of the Indian Stamp Act, 1899, for determination of its value. The Stamp Collector, after verifying the documents, determined the market value of Rs.78,000/- in respect of the said documents. The deficit stamp duty of Rs.1009/- and deficit registration fees of RS.160/- in respect of Document No. 3546/97; deficit stamp duty of Rs.1463/- and deficit registration fees of Rs.200/- in respect of documents number 3547/97 was realised from the party.

Hence, no loss of revenue was accrued. Rather, an increased revenue was earned by the public exchequer for the petitioner who assessed the matter under Section 47 (A) of the Indian Stamp Act. Therefore, there is no significant difference in the accrued stamp duty on the above two documents even when they are computed together and separately. Even in the counter affidavit, the Opp. Parties have not denied the same. Hence, Charge No.1 is absurd. Neither the Enquiry Officer in his enquiry report nor the Government have taken into consideration of the above facts.

10. Nowhere in the Stamp Act, has a restriction been imposed on a person against execution of more than one document in the name of same person. The O.P.S.C has blindly accepted the same without assigning any reason and without taking into consideration the above facts and figure. Hence, the averments made in the first charge are wrong and is hereby denied.
11. In respect to Charge No.2, the Board of Revenue as per Order No.403 (14), dated 31/1/1991 ordered the checking of at least 5% of the total documents presented for registration. The petitioner verified 9 out of 25 documents which is 36% of the total documents.
12. In rebuttal of Charge No.3, the petitioner stated that the Sub-Collector after considering the enquiry report of the

Tahasildar, accorded sanction under Section 22 of OLR Act 1963, and permitted to sale the concerned land at a value of Rs.30,000/- to Sri Budhia Singh. It is to be noted that the land was registered at a value of Rs.1 lakh which is more than 3 times of the amount fixed by the Sub-Collector. These contentions have not been denied by the Opp. Party No.1 in the Counter.

13. It is also pertinent to mention here that in the charge sheet and enquiry report, the 'Kisam' of the land has been wrongly stated as "Sarad-2" instead of "Sarad-3". "Sarad-3" is the lower Kisam than Sarad-2 and as such is equivalent with Kisam Patita. Therefore, there is nothing wrong, in registering the document and imposition of penalty on the petitioner is not sustainable in the eye of law.
14. In order to buttress his argument, the petitioner submitted that at half a kilometre distance from the charged Ac.0.50 decimals land, one Brundaban Behera (S.C.) sold Ac.0.10 decimals to Arati Gopal in Khata No.256, Plot No. 362 as per document No.3308/95 for a consideration of Rs.10,000/-. This was referred under Section 47 (A) and the Collector enhanced the value from Rs.10,000/- to Rs.12,000/-. Moreover, the Charge Sheeted document of the Plot in Charge No.3 of village Ganeswarpur is situated in the extreme end of the village adjacent to the village Bhimapura. Therefore, there is

no justification against the reference of the said document to the Stamp Collector under Section 47 (A) of the Stamp Act.

15. Moreover, one S.K. Samtula had sold Ac.4.19½ land for a consideration of Rs.1,19,000/-. However, the estimated value of the property was Rs.45 lakhs. Ergo, it was referred to stamp Collector under Section 47(A) who determined its market value at Rs.2,51,700/-; Rs.600/- per decimal. In light of the said determination of market value by the stamp Collector of the land adjacent to the charged Ac.0.50 decimals land, the Petitioner had no reason to believe that the consideration amount was undervalued and that it should be referred to the stamp Collector under Section 47(A).
16. Under Section 47(2-a), the Collector may Suo-motu examine the instrument not referred to him. If the Opp. Parties doubted the transaction in question, they could have referred under Section 47(2-a) for determination of the market value before framing the charge. It is pertinent to mention here that the above facts have not been denied by the Govt.
17. The petitioner, after receiving the enquiry report under letter dated 17.10.2001, had requested the Respondents to supply the copy of the Preliminary enquiry report relied by the E.O. and other reports for submission of his reply in response to the enquiry report, but the same was not supplied to the

petitioner. On this score alone the entire proceeding should be vitiated/set aside.

18. The Section 47-A (2-a) of the Indian Stamp Act 1899 reads:

"The Collector may suo motu (three years) from the date of registration of such instrument examine the instrument, not already referred to him under Sub-Section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon and if, after such examination he has reason to believe that the market value of such property has not been set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-Section (2), and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty."

The word 'three years' was substituted by O.A. No.1/2003.

Prior to 2003, the provision was of 'two years.'

19. Under the said section, the Collector may *suo motu* examine the documents not referred to him for determination of the market value and the deficient amount of duty, if any, shall be recovered by the person liable to pay the duty. Instead of doing so, framing the charges and recovery the said amount from the petitioner is contrary to Section 47-A (2-a) and as such is not permissible under law. Likewise, as the Collector has not taken cognizance of the matter within 2 or 3 years, the

question of recovery in the same from the petitioner does not arise.

20. Next, it was argued that there is no provision under Indian Stamp Act, Registration Act or any Govt. Circular/Instruction that the Stamp Duty and Registration Fee shall be recoverable from the Registering Officer. Hence, the deficit amount as calculated in respect of stamp duty and registration fee is illegally termed as penalty.
21. The petitioner has also cited the judgement of Punjab and Haryana High Court in *Prem Kumar vs. State of Punjab*.¹ It was argued that the duty of the Opp. parties to furnish the copy of the preliminary enquiry report and failure to do so, while utilising the same in the enquiry has vitiated the departmental proceeding as it prejudiced the charged official in arranging his defence during the enquiry.
22. Ergo, the petitioner has prayed that the punishment order dated 11.10.2003 directing for recovery from D.C.R.G. of the petitioner, and the impugned order being non-speaking order is liable to be quashed.

III. OPPOSITE PARTIES' SUBMISSIONS:

23. Per *contra*, Learned counsel for the Opp. parties intently made the following submissions:

¹ 1989 (3) SL 127

24. As per the first charge, Smt. Alokprava Mallick is the daughter of the petitioner. As surcharge duty would be charged on a single document of the value of Rs.90,000/- @ 6½%, the documents are bifurcated by the petitioner to avoid surcharge deliberately and allowed his daughter to suppress material information resulting in payment of deficit stamp duty. Hence, there is a clear suppression under Section 27 of the Stamp Act.
25. The next charge (charge No.2) is about change of 'kizam' of land registered during 1988-1997 causing loss of Government revenue by the petitioner in as much as 25 documents.
26. The Charge No.3 is about Swarnalata Mahalik who purchased 50 dec. of land as narrated by the petitioner. Not only the mentioned value in the sale deed is less than the value in the check list, there was a change of kizam from "Sarada 2" recorded in ROR to "Patita 2" in the sale deed made. This was knowingly made by the petitioner for illegitimate personal gains which ensued losses on Government revenue. In addition, the petitioner passed orders in the relevant file declaring that the document is properly valued notwithstanding the suggestion of the office that it was undervalued.
27. It was submitted that the Sub-Collector has granted permission to sell the land at a value of Rs.30,000/- or at the

prevailing rate *whichever is higher*. As per the guidelines issued by the I.G.R., Odisha vide Letter No.3577 dated 04.09.1993, the value set forth by the party is not genuine. The document should have been forwarded to the Collector for determination of value in view of the dissenting note of the office specially when the claimant is the petitioner's own relation. As per the sale of the adjoining land at half a km away from the plot in question, it is not relevant in this matter.

28. It was submitted that when a note of dissent was submitted by the office regarding valuation of the plot and particularly when the claimant is a relative of the petitioner; the petitioner should have used his official powers in interest of Government but not in the interest of his relative. In the case, the deed should have been referred to stamp collector for valuation. The prudent administrative behavior demanded that he should have recused from his duty as it was a conflict of interest issue.
29. Finally, it was submitted that after due examination of the show cause submitted by the petitioner and all material evidence as well as after concurrence of OPSC as required under rule, the Government passed the speaking order dated 11.10.2003. Ergo, the charges, the inquiry, and the findings along with order of recovery is legal and justified as per rule

as the said process was concurred in by the OPSC. Hence, there is no violation of Natural justice.

30. So far as the Enquiry Report is concerned, it was submitted that the inquiry officer has strictly gone by the documents which were cited in the memo of evidence and there is nothing to show that the enquiry officer has admitted any document beyond the documents therein. If the totality of the findings of the inquiry officer is taken into consideration, it can be seen that the findings of the inquiry officer is on the basis of the principle, i.e., "preponderance of probabilities". Therefore, in no stretch of imagination, it can be said that findings of the inquiry officer are based on 'no evidence'.
31. The counsel has also cited a Supreme Court pronouncement in *Union of India v P. Gunasekaran*.² The relevant portion from the judgement is reproduced below:

"12.In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a) the enquiry is held by a competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is violation of the principles of natural justice in conducting the proceedings;*

² (2015) 2 SCC 610

- d) *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) *the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g) *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) *the finding of fact is based on no evidence."*

32. In view of the contention of the petitioner that the order of punishment is a non-speaking order. It was submitted that the punishment order dated 11.10.2003 showed that, while imposing punishment, the proposal of the inquiry officer imposing punishment of compulsory retirement was done away with and the appointing authority applying its own mind, had only imposed the punishment directing recovery. This being so, the allegation of malafide is also of no consequence.

33. In order to rebut the allegation of the petitioner concerning the non-speaking nature of the order, the counsel for the Opp. Parties has relied on the Apex Court Judgement in ***Boloram Bordoloi v. Lakhimi Gaolia Bank***³:

³ (2021) 3 SCC 806

"...Further, it is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10.12.2005, the Board's decision is communicated vide order dated 21.12.2005 in Ref. No.LGB/I&V/ Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that orders impugned are devoid of reasons."

IV. ISSUES FOR CONSIDERATION:

34. After having heard learned counsels for both sides, the following issues arise for consideration before this Court:
- A. Whether the disciplinary authority and the enquiring officer while conducting the inquiry have observed the procedure enumerated in OCS (CC&A) Rules, 1962?
 - B. Whether the non-supply of the inquiry report vitiate the legitimacy of the inquiry report against the edifice of natural justice?
 - C. Whether the punishment of recovery is in proportionate to the proved charges and considering evidences coming forth in the inquiry report?

V. ISSUE A: Whether the disciplinary authority and the enquiring officer while conducting the inquiry have observed the procedure enumerated in OCS (CC&A) Rules, 1962

35. 175. Procedure on presentation of documents in which the registering officer is personally interested. - (1) If any document in which a Registering Officer is personally interested, either directly or indirectly, is presented to him for registration or if he is asked to authenticate a power of attorney granted for registration of any such document he shall recommend the parties to present the document or power at some other registration office under the provisions of Section 29, Section 30 or Section 33 as the case may be.
36. Part V of the OCS(CC&A) Rules, 1962 deals with the subject of Discipline. It is manifest that whereas detailed provisions are made in the Rules as to the grounds on which an enquiry may be directed against a public servant for misconduct in the discharge of official duties, failure to discharge duties properly, general inefficiency or personal immorality, under the Classification Rules for "good and sufficient reasons" penalties may be imposed. Rule 13, to the extent it is relevant for our purpose, is as under:

"13. Nature of penalties: The following penalties may, for good and sufficient reasons and as hereinafter

provided, be imposed on a government servant, namely:

.....

[(iv) recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of Parliament or of the Legislature of a State. by negligence or breach of orders)

....."

37. Furthermore, Rule 14(1) of the OCS (CC & A) Rules, 1962 says:

"14. Disciplinary authorities: (1) The Government may impose any of the penalties specified in Rule 13 on any Government servant.

....."

38. The Rule 15 of OCS (CC & A) Rules, 1962 requires the disciplinary authority is required to make such enquiry as may be deemed appropriate and in conducting the enquiry the Tribunal is to be guided by rules of equity and natural justice. Clause (2) of Rule 15 further provides that before formulating its recommendations the disciplinary authority shall give a statement of the charges against the official, and give him an opportunity in writing, within one month to offer his explanation in respect of the charges.

39. It has been well established that the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justiciable: nor is the penalty open to review by the Court. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice.
40. Similarly, in *SBI vs Narendra Kumar Pandey*⁴, the Apex Court held as under:

“23. The inquiring authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and

⁴ (2013) 2 SCC 740.

came to the conclusion that most of the charges were proved. In a departmental enquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court in *Union of India v. Sardar Bahadur*⁵ and *R.S. Saini v. State of Punjab*⁶. The documents produced by the Bank, which were not controverted by the charged officer, support all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the Bank and not controverted, it is always open to the inquiring authority to accept the same.” [Emphasis Supplied]

41. Additionally, in *SBI vs. R. Periyasamy*⁷, the Apex Court held as under:

“11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In *Union of India v. Sardar Bahadur*⁸, this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in *SBI v. Ramesh Dinkar Punde*. More recently, in *SBI v. Narendra Kumar Pandey*, this

⁵ (1972) 4 SCC 618.

⁶ (1999) 8 SCC 90.

⁷ (2015) 3 SCC 101.

⁸ (1972) 4 SCC 618.

Court observed that a disciplinary authority is expected to prove the charges levelled against a bank officer on the preponderance of probabilities and not on proof beyond reasonable doubt.” Emphasis Supplied]

19. As observed in *R.S. Saini v. State of Punjab*⁹ in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows: (SCC p. 96):

”16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on

⁹ (1999) 8 SCC 90.

materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under [Article 226](#) of the Constitution and we do not find any fault with the findings of the High Court in this regard."

42. In this regard, this Court is not hesitant to iterate that that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. Therefore, it does not seem fit to interfere with the enquiry report. Thus, this Court is of the opinion that the disciplinary authority and the enquiring officer while conducting the inquiry have observed the procedure enumerated in OCS (CC&A) Rules, 1962.

VI. ISSUE B: Whether the non-supply of the inquiry report vitiate the legitimacy of the inquiry report against the edifice of natural justice?

43. The show cause notice was served on the appellant. That notice gave various particulars on the basis of which the charges had been founded. But, did the show cause notice make enough indication in regard to the nature of enquiry as also the conclusions thereof? In my opinion, it does.
44. The show cause notice gave a detailed account of the charges framed, reference of concerned laws and available options to the petitioner. The relevant paragraph is reproduced herein:

"You are, therefore, called upon to explain in writing within 30 days from the date of receipt of the charges as to why suitable disciplinary action shall not be taken against you as per the provision of the O.C.S. (C.C.A) Rules, 1962. You should submit your explanation in duplicate to the Commissioner-cum-Secretary to Government, Revenue Department within the stipulated period. You are also required to state whether you desire to be heard in person or will examine the witness, if any, in defence. You may peruse the relevant records and take extract thereof, if necessary, on the basis of which the charges. are framed, in the presence of the Officer with whom the records are available on prior appointment. If no explanation is received by the specified date it will be presumed that you have no explanation to offer and the proceedings. shall be disposed of on merit."

45. Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is

different. The position was illuminatingly stated by this Court in *Managing Director, ECIL, Hyderabad vs. B. Karunakara*¹⁰ which reads as follows:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of

¹⁰ 1993 (4) SCC 727

punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."
(Emphasis Supplied)

46. In ***Haryana Financial Corporation v. Kailash Chandra Ahuja***,¹¹ the Supreme Court followed up on the aforementioned case and held as follows:

"From the ratio laid down in B. Karunakar, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer's

¹¹ (2008) 9 SCC 31

report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective. It is for the delinquent-employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside."

47. Reliance on the judgment of the Supreme Court in *Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways*,¹² wherein the Supreme Court has held that it is not necessary that each and every document must be supplied to the delinquent government servant facing charges. Only material and relevant documents are necessary to be supplied to him. If a document, even though mentioned in the Memo of charges, is not relevant to the charges, or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges as proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the ground of non- supply of the copy of the order.

¹² 1993 (4) SCC 727

48. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem ("Hear the other side"). But it is equally well settled that the concept 'natural justice' is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula.

VII. ISSUE C: Whether the punishment of recovery is in proportionate to the proved charges and considering evidences coming forth in the inquiry report?

49. In the case of *Om Kumar v. Union of India*,¹³ this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.

¹³ (2001) 2 SCC 386

50. In the *Wednesbury case*,¹⁴ it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.
51. In *Ranjit Thakur v. Union of India*,¹⁵ the Supreme Court has also observed as under:

"25. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction."

52. In the case of *B.C. Chaturvedi v. Union of India*¹⁶, the Supreme Court observed and held as under:

¹⁴ (1948) 1 KB 223

¹⁵ (1987) 4 SCC 611

¹⁶ (1995) 6 SCC 749

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being factfinding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

53. In the case of **Lucknow Kshetriya Gramin Bank v. Rajendra Singh**,¹⁷ the Supreme Court held that:

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

¹⁷ (2013) 12 SCC 372

19.3. *Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*

19.4. *Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.*

19.5. *The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."*

54. In the present case, the matter pertains to the year 2004 and has travelled to various courtrooms. The petitioner was in charge of registration of the land deals in his area of jurisdiction and faltered in his rightful duty. Government officials should be extra diligent when their relations and

duty cross path for even in cases where an official makes a negligible or honest mistake, there would always exist a speculation of misconduct against him.

55. In their day-to-day lives, people play multiple roles; they naturally possess a wide range of interests and loyalties. These interests may become conflicting for a particular frame of reference. Conflicts of this kind are inevitable and a part and parcel of life. As stewards of the public trust, public servants must prioritize the public's interests. Impropriety occurs when an officeholder, faced with conflicting interests, puts his or her personal or financial interest ahead of the public interest. In the simplest terms, the official reaps a monetary, personal or other reward from a decision made in his or her public capacity. The most common conflicts in local government happen when officeholders face a vote on land use issues that affect their own or relational holdings. When a conflict of interest is possible, an officeholder is expected to take a responsible decision and abstain from the vote.
56. In this background, the penalty imposed in form of recovery of dues seems to be proportionate to the charges proved against the petitioner and thus, does not shock the conscience of this Court.

VIII. CONCLUSION:

57. As such, the impugned charges drawn in the Disciplinary Proceeding bearing Proceeding No.4116 dated 21.01.2000 is legal, fair and not in contravention with the aforesaid Rules. The Opposite Parties have not committed any illegality, and in that regard this Court is of the opinion that the powers of the High Court are limited and the cases pertaining to departmental enquiries should not be interfered with.
58. In light of the aforesaid discussion and having regard to the present position of law, this Court has come to the conclusion that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
59. The Writ Petition is, accordingly, dismissed.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 23rd Dec., 2022/B. Jhankar