

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 12118 OF 2018

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

AFR

Narayan Mahali

.....

Petitioner

-Versus-

State of Odisha
and others

.....

Opp. Parties

For Petitioner : M/s S.K. Rath,
B.R. Barick and M. Behera,
Advocates.

For Opp. Parties : Mr. B.P. Tripathy,
Addl. Govt. Advocate

P R E S E N T:

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

Date of hearing and judgment : 21.04.2022

DR. B.R. SARANGI, J. The petitioner, by way of this writ petition, seeks to quash the order dated 21.06.2018

passed in O.A. No. 946(C) of 2015, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, by holding that the Addl. District Magistrate, Cuttack has got power to take steps for initiation of departmental proceeding against the petitioner, who was working as Head Clerk in the office of the Collectorate, Cuttack, dismissed the original application filed by the petitioner.

2. The factual matrix of the case, in brief, is that the petitioner had been working as Head Clerk in the District Record Room of the Collectorate Cuttack since January 2011. While so continuing, he was elected as Secretary of the Orissa Rajaswa Amala Sangha, Cuttack Unit. The Collector, Cuttack, vide office order dated 14.06.2012, transferred him to the office of the Sub-Collector, Banki. But subsequently, the same was modified, vide office order dated 29.06.2012, to Tahasil Office, Sadar Cuttack and direction was given to the Controlling Officer to relieve him immediately. Even though the petitioner was not

relieved from duty, but he was not allowed to discharge his duties and responsibilities in the record room. Subsequently, the petitioner challenged the order of transfer before the tribunal by filing O.A. No. 2055 (C) of 2012, but the tribunal did not entertain the original application and disposed of the same with the direction to the Collector, Cuttack to dispose of the representation dated 24.06.2012 of the petitioner and till then no coercive action would be taken against the petitioner. In pursuance of the order of the tribunal, the Collector rejected the representation of the petitioner. Therefore, again the petitioner approached the tribunal in O.A. No. 2946 of 2012 challenging the order of rejection of his representation. Subsequently, the said original application was withdrawn by the petitioner vide memo no.79/2012. But the tribunal in the order sheet reflected wrongly that learned counsel submitted that the petitioner has already joined at his transferred place and, therefore, he does not want to proceed with the case and, as such, he was allowed to withdraw the

original application. Consequentially, the Collector, Cuttack, vide letter dated 31.12.2012, called for a show cause from the petitioner within seven days for submitting misleading statement before the tribunal in O.A. No. 2946 (C) of 2012. Thereafter, the petitioner approached this Court by filing W.P.(C) No.23533 of 2012, which was disposed of by order dated 11.01.2013 directing the Collector, Cuttack to consider the representation of the petitioner. In pursuance of the order of this Court, the Collector rejected the representation of the petitioner, vide order dated 16.02.2013.

2.1 While O.A. No.1171(C) of 2013, which was filed challenging the rejection order of the Collector, was pending before the tribunal, the petitioner was transferred to Banki Damapada Block, vide order dated 25.04.2013. Thereafter, the petitioner submitted his joining report on 31.05.2013 before the Tahasildar, Sadar Cuttack, but he did not accept the same. Therefore, the petitioner again approached this

Court by filing W.P.(C) No. 6763 of 2014, which was disposed of, vide order dated 16.05.2014, directing the authority to allow the petitioner to join in Tahasil Office, Sadar Cuttack and also allow him to continue as such till expiry of his 2nd term as Union Secretary. This Court further directed that steps be taken for regularizing the period of service of the petitioner. Pursuant to direction of this Court, though the petitioner was allowed to join in the office of the Tahasildar Sadar, Cuttack, but his service was not regularized, as a result of which he instituted a contempt proceeding by filing CONTC No.613 of 2014. In order to avoid the contempt, he was served with memorandum of charge, vide letter dated 12.10.2014, in the wrong name, i.e., Narayan Chandra Mahali. Thereafter, again for the selfsame charges were issued in the name of Narayan Mahali, vide memo dated 05.02.2014, in which one of the charges was that he remained un-authorized absent. But the stand of the petitioner was that the authority had disturbed him

from Cuttack with a mala fide intention, and that to avoid the contempt proceeding instituted before this Court the authority had issued the charge memo on 05.12.2014 and subsequently appointed the enquiry officer.

2.2 Subsequently, additional verification was filed by the petitioner taking the stand that the charge memo was not issued by the Collector, Cuttack and, as such, the same was issued by the Addl. District Magistrate, Cuttack, who was not the disciplinary authority and, therefore, issuance of the charge memo itself is illegal. It was the further stand of the petitioner that at the relevant point of time, Sri S.N. Girish, Collector was absent for the period from 29.04.2013 to 21.06.2013 and during that period the Addl. District Magistrate, Cuttack was only in his charge and, therefore, he could not have issued the charge memo against the petitioner. But the tribunal, without considering the said facts in proper perspective, dismissed the original application filed by the

petitioner, holding that the Addl. District Magistrate, Cuttack has got power to take steps for initiation of departmental proceeding against the petitioner, who was working as a Head Clerk in the office of the Collectorate, Cuttack.

3. Mr. S.K. Rath, learned counsel for the petitioner contended that the Addl. District Magistrate, Cuttack is not competent authority to initiate proceedings against the petitioner, as he was not delegated with such power by the Governor or by a special notification issued in terms of Rule-14(2) of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962. Therefore, the order of the tribunal passed on 21.06.2018 in O.A. NO. 946 (C) of 2015 by holding that the Addl. District Magistrate, Cuttack is empowered to initiate disciplinary proceeding against the petitioner, is contrary to the provisions of OCS (CC&A) Rules, 1962 and the principles of law decided by the apex Court in the context of jurisdiction of the

disciplinary authority in initiating disciplinary proceedings.

4. Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State opposite parties contended that so far as delegation of power is concerned, the Government in General Administration Department, vide memo no.12526/Gen. dated 06.05.2013, allowed the Addl. District Magistrate, Cuttack to remain in-charge of District Magistrate and Collector, Cuttack in addition to his own duties during the absence of Sri S.N. Girish, IAS, who was on Phase-III Mid Career Training Programme. Thereby, the Addl. District Magistrate was delegated with financial power under Rule-2(xv-a) of OGFR Vol-II, as the Head of the Office, until joining of regular Collector in the Cuttack district. Therefore, in view of such delegation of power, the Addl. District Magistrate, Cuttack got power to initiate departmental proceeding against the petitioner. Thereby, no illegality or irregularity committed by the authority in initiating the departmental proceeding

against the petitioner and, as such, the tribunal is well justified in passing the order impugned, which does not warrant interference of this Court and, accordingly, he claims for dismissal of the writ petition.

5. This Court heard Mr. S.K. Rath, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Addl. Government Advocate for the State-opposite parties by hybrid mode. 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. In the above premises, the sole question arises before this Court for consideration is whether the Addl. District Magistrate, Cuttack is competent to initiate disciplinary proceedings against the petitioner, who was working as Head Clerk in the office of the Collectorate, by framing charge against him.

7. In order to effectively answer the above question, it is of relevance to mention, the Governor of

Odisha, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, framed Odisha Civil Services (Classification, Control and Appeal) Rules, 1962. Rule-2(c) thereof, being relevant for the purpose of this case, is extracted hereunder:-

“(c) “Disciplinary authority” in relation to the imposition of a penalty on a Government servant means the authority competent under these rules to impose on him that penalty;

For better appreciation, Rule-14(2) of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 (for short “OCS (CCA) Rules, 1962”) is also extracted hereunder:-

“14. Disciplinary authorities-

xxx

xxx

xxx

(2) Without prejudice to the provisions of the Sub-rule (4), any of the penalties specified in Rule-13 may be imposed on a member of a civil service or a person appointed to a civil post by the appointing authority or the authority specified in schedule or by any other authority empowered in this behalf by a general or special order of the Governor.”

8. It is evident from the materials available on record that the petitioner is a holder of Group-C post in the district cadre, as per the schedule enclosed to the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962. As such, the head of the office is the competent authority to impose penalty as per Rule-13 of the OCS (CCA) Rules, 1962. There is no dispute that the Collector is the head of the office, so far as office of the Collectorate in the district level is concerned. Thereby, it is the Collector, who is competent to initiate proceedings against the petitioner, but not the Addl. District Magistrate. Rule-14(2) envisaged that without prejudice to the provisions of the Sub-rule (4), any of the penalties specified in Rule-13 may be imposed on a member of a civil service or a person appointed to a civil post by the appointing authority or the authority specified in schedule or by any other authority empowered in this behalf by a general or special order of the Governor.

9. So far as the office memo no.12526/Gen. dated 06.05.2013 of the General Administration Department is concerned, on which much reliance was placed by learned Addl. Government Advocate appearing for the State-opposite parties, the same has not been issued by a general or special order of the Governor. Rather, it is the General Administration Department, which has issued such letter authorizing the Addl. District Magistrate, Cuttack to remain in-charge of the District Magistrate and Collector, Cuttack, in addition of his own duty during the absence of regular Collector, Sri S.N. Girish who was on Phase-III, Mid Career Training Programme. As such, the Addl. District Magistrate, Cuttack was only delegated with the financial power under Rule-2 (xv-a) of OGFR Vol-II, as the head of office, until joining of regular Collector in the Cuttack district. Thereby, the Addl. District Magistrate cannot be considered as the head of the office, so as to initiate proceeding against the petitioner, who was discharging his duties and

responsibilities as Head Clerk in the office of the Collectorate, Cuttack.

10. In such view of the matter, this Court is of the considered view that the so called framing of charge by the Addl. District Magistrate, Cuttack against the petitioner, cannot sustain in the eye of law. More so, the tribunal committed gross error apparent on the face of impugned order by holding that the Addl. District Magistrate was vested with the power to initiate proceedings in terms of Rule-14(2) of the OCS (CCA) Rules, 1962, cannot have any justification. As a consequence thereof, the order dated 21.06.2018 passed by the Odisha Administrative Tribunal, Cuttack, Bench, Cuttack in O.A. No. 946 (C) of 2015, cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed. However, it is open to the appropriate authority to proceed against the petitioner in accordance with law, if he is so advised.

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

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

SAVITRI RATHO, J. I agree.

.....
SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 21st April, 2022, Ashok/GDS

