

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1688 of 2005

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

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Santosh Kumar Samantray **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Mr. Dhuliram
Pattanayak, N.S.Panda, A.K.
Routray, S.K.Das.

For Opp. Parties : M/s. N.K.Praharaj, Standing
Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संघनिक नयने

Date of Hearing: 18.04.2022 and Date of Order:27.04.2022

Biraja Prasanna Satapathy, J.

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. N. Biswal, learned counsel for the Petitioner and Mr. Praharaj, learned counsel for the State- Opposite Parties.
- 3.** The petitioner filed the present Writ Petition with the following prayer:-

“(i) To quash the charge memo vide Annexure-2.

(ii) To quash the order of suspension which was passed against the applicant for two times.

(iii) To quash the order of punishment order under Annexure-6.

(iv) To direct the Respondents to grant all service, monetary and consequential benefits.

(v) To allow the O.A. with costs”.

4. It is submitted by Mr. Biswal, learned counsel for the Petitioner that the Petitioner has prayed for quashing of the proceeding under Annexure-2 and the order of punishment passed under Annexure-6 on the ground that the Opposite Parties while proceeding with the matter and prior to imposition of the punishment in the Disciplinary Proceeding never followed the stipulations contained under Rule-15 of the OCS(CCA) Rules, 1962.

5. It is submitted by the learned counsel for the Petitioner that the proceeding against the Petitioner was initiated on 04.01.1990 under Annexure-2 and the Petitioner submitted his written statement of defence on 14.08.1990. The Petitioner, who was continued under suspension pending initiation of the proceeding was reinstated subsequently on 26.11.1990.

6. It is also submitted that after completion of the enquiry though the Enquiry Officer submitted his report on 31.07.1995, but the Disciplinary Authority remitted the matter for re-enquiry.

7. It is submitted that on such remand of the matter, the Enquiry Officer vide Annexure-R/1 forwarded the enquiry report so prepared by him on 31.07.1995.

8. It is further submitted that the Disciplinary Authority vide its letter dated 02.09.2002 under Annexure-4 directed the Petitioner to submit his representation to the enquiry report by enclosing the said enquiry report and by issuing the 1st show cause.

9. It is submitted that pursuant to the letter issued on 02.09.2002 under Annexure-4, the Petitioner submitted a detailed representation on 30.09.2002 under Annexure-5.

10. It is further submitted that without issuing the second show cause and without considering the representation submitted by the Petitioner under Annexure-5 to the enquiry report in its proper perspective, the Disciplinary Authority straight away passed the order of punishment on 10.02.2004 under Annexure-6.

11. Mr. Biswal, learned counsel for the Petitioner accordingly submitted that since the Disciplinary Authority has not followed to provision contained under Rule-15 of the OCS(CCA) Rules, 1962 and no second show cause having been issued proposing the punishment if any after submission of the representation under Annexure-5, the order of punishment imposed against the Petitioner vide order dated 10.02.2004 under Annexure-6 is illegal and needs interference by this Court.

12. Mr. Biswal in support of the aforesaid stand relied on the decision of this Court reported in the case of

Chandrabhanu Mishra vs. Governing Council of Institute of Physics and Others reported in **2019(III) ILR-CUT-112**. In the said decision, this Court in **Para-39** held as follows:-

“39. As has been already held, the entire proceeding initiated against the Petitioner is vitiated due to non-compliance of principle of natural justice, and as such, the same is a nullity. Therefore, this Court is of the considered view that the proceeding so initiated against the petitioner and the consequential penalty imposed on him in Annexure-26 dated 05.11.2014 cannot sustain in the eye of law and the same are liable to be quashed and are accordingly quashed. As a result thereof, the petitioner shall be entitled to get all the service and financial benefits, as due and admissible to him in accordance with law, which should be granted to him within a period of four months from the date of communication of this judgment”.

13. Per contra, Mr. Praharaj, learned counsel for the State-Opposite Parties made his submission relying on the stand taken in the counter affidavit.

14. It is submitted by Mr. Praharaj, learned counsel for the State-Opposite Parties that even though the Enquiry Officer submitted his report on 31.07.1995, but due to certain lacunae in the report, the Enquiry Officer was requested for further enquiry. But the Enquiry Officer did not take up further enquiry and return the same report vide letter dated 04.03.2002.

15. It is also submitted that the enquiry report was communicated to the Petitioner vide letter dated 02.09.2002 with a direction to the Petitioner to submit his representation against the finding of the Enquiry Officer.

16. It is also submitted that on receipt of the representation so submitted by the Petitioner against the enquiry report, the Disciplinary Authority after going through the same imposed the order of punishment vide order dated 10.02.2004 under Annexure-6.

17. Mr. Praharaj, learned counsel for the State-Opposite Parties accordingly submitted that no illegality has been committed by the Disciplinary Authority in passing the order of punishment against the Petitioner. This Court when put a specific question to Mr. Praharaj as to whether after receipt of the representation submitted by the Petitioner against the enquiry report under Annexure-5, the Petitioner was ever issued with a second show cause by proposing the order of punishment if any by the Disciplinary Authority, Mr. Praharaj failed to give any reply to the said query of this Court. In the Writ Petition, it is the specific stand of the Petitioner that after receipt of the representation vide Annexure-5, no second show cause was issued by the Disciplinary Authority by proposing the order of punishment. But the said stand of the Petitioner was not controverted in the counter filed by the Opposite Party No.1.

18. Heard learned counsel for the Parties at length.

19. Perused the materials available on record. After due perusal of all the materials available, this Court finds that the Disciplinary Authority prior to issuance of the order of punishment under Annexure-6 has never issued the second show cause by proposing the order of punishment in terms of Rule 15 of OCS (CCA) Rules, 1962 and accordingly the Petitioner was denied opportunity to show-cause against such proposed punishment. Therefore, the prayer made by the Petitioner in the present Writ Petition is squarely covered by the decision of this Court as cited (supra).

20. Since the proceeding is of the year, 1990 and in the meantime more than 31 years have passed, this Court

relying on the decision of this Court as cited (supra) allowed the Writ Petition by quashing the proceeding initiated against the Petitioner under Annexure-2 as well as the order of punishment passed under Annexure-6. While quashing the same, this Court directs the Opposite Parties to sanction all service and financial benefits as due and admissible in favour of the Petitioner within a period of six months from the date of receipt of this order.

21. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 27th of April, 2022/Subrat

