

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No.1401 of 2007

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

Manidhar Dudum

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Petitioner

Versus

State of Orissa & Ors.

....

Opposite Parties

For Petitioner

...

Mr.R.Mishra, P.Mohapatra &
G.R.Behera, Advocate

For Opposite Parties

...

Mr. S.Ghose, Addl. Standing
Counsel,

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 14.02.2022

Biswanath Rath, J. Initially the Original Application was filed in the Orissa Administrative Tribunal, Bhubaneswar. However, on abolition of the Tribunal, the matter has been transferred for adjudication by this Court.

2. Short background involving the case is that petitioner faced a Disciplinary Proceeding. Basing on service of show cause, a response being submitted by the petitioner, the Disciplinary Authority not being satisfied with the response of the petitioner, decided to go ahead with the

Disciplinary Proceeding. Accordingly charges were framed. Basing upon service of copy of charges and appointment of Inquiry Officer, the proceeding was undertaken under the Inquiry Officer so appointed. In the process, inquiry report was also submitted. Depending on the findings and recommendations in the inquiry report, it appears, vide Annexure-6, final order of punishment was passed. Petitioner being aggrieved by the final order of punishment of the Disciplinary Authority preferred an appeal. Pleading discloses, for no timely disposal of the appeal, petitioner was constrained to approach the State Administrative Tribunal. It appears, the proceeding has been disposed of in Original Application No.641 of 2004 directing early disposal of the appeal however keeping in mind the provision under Rule 29 of the OCS (CCA) Rules, 1962. It is pursuant to such direction of the Tribunal, appeal proceeding was over by imposition of set of punishment against the petitioner.

3. Taking this Court to the development in inquiry proceeding, Mr. Mohapatra, learned counsel appearing for the petitioner raised the ground that the delinquent challenged to the order of the Disciplinary Authority as well as the Appellate Authority vide Annexures-6 and 10 respectively. Taking this Court to the pleading and the affidavit, Mr. Parsuram Mohapatra, learned counsel for the petitioner submitted that for a Disciplinary Proceeding being initiated it was incumbent on the part of the Disciplinary Authority, based on submission of inquiry report at least to serve a copy of the inquiry report along with show cause notice on the punishment likely to be imposed before landing in imposition of punishment. Mr. Mohapatra, learned counsel also alleged that it is strange to find even there was no show cause notice served on the petitioner before imposition of punishment by the Disciplinary Authority. Taking this Court to the punishment order vide Annexure-6, Mr. Mohapatra,

learned counsel reading from the same also alleged that there is even no reference on taking note of consideration of the findings and or observations of the Inquiry Officer in passing of final order of punishment. Thus it goes without saying that there is no dealing with the inquiry report in the forming of opinion of the Disciplinary Authority. In reference to his challenge to the appellate order, Mr.Mohapatra, learned counsel taking this Court to the clear pleading in the memorandum of appeal to the effect non-supply of inquiry report vitiates the order passed by the Disciplinary Authority. Reading through the appellate order, Mr.Mohapatra, learned counsel attempted to establish that there is even no consideration of such serious allegation by the Appellate Authority. Mr.Mohapatra, learned counsel further in the challenge of the delinquent to the appeal order also reading through the award of final punishment by the Disciplinary Authority and the punishment awarded by the Appellate Authority submitted that there is change in the imposition of punishment by the Appellate Authority, in awarding a punishment not being proposed nor imposed by the Inquiry Officer and the Disciplinary Authority. It is argued that the Appellate Authority had no business in interfering in the order of punishment in the worse it had to concur the order of the Disciplinary Authority. It is in the above background, Mr.Mohapatra, learned counsel claimed interference in both the impugned orders and after setting aside both the same, to pass appropriate order.

4. Mr.Ghose, learned Additional Standing Counsel appearing for the State in his serious objection to the claim of the petitioner taking this Court to the counter plea contended that there has been consideration of the response of the petitioner by the Disciplinary Authority before passing the order of punishment. He however unable to demonstrate through records if there was supply of copy of the inquiry report and or

service of copy of show cause before awarding of final punishment. Mr.Ghose, learned counsel on the challenge on non-service of additional copy of the report or the copy of show cause on imposition of punishment but, however, taking into the discussion of the Appellate Authority attempted to satisfy the Court that the Appellate Authority even though did not disclose anything on this but must have taken into account the ground since it is raised in the appeal memorandum. Mr.Ghose, learned Additional Standing Counsel taking this Court to the scope of punishment for the nature of allegation/ charges contended that award of second punishment is not a surprise rather it is one of the punishment very much available. Mr.Ghose thus urged this Court for not interfering in the impugned orders.

5. Considering the rival contentions of the parties, this Court finds undisputedly the final order of punishment by the Disciplinary Authority is based on a submission of report involving the inquiry proceeding involving the petitioner. The inquiry proceeding was conducted under a set of principle particularly keeping in view the provision of Rule 29 of the OCS (CCA) Rules, 1962. The rule clearly prescribes the manner of the Disciplinary Proceeding. For the ruling on natural justice particularly in Disciplinary Proceeding supply of a copy of report in case of adverse report becomes compulsory. Further, there is clear prescription in the rule for service of copy of report and also a show cause being served, in the event the Disciplinary Authority desirous of confirming the proposal of the Inquiry Officer. This Court here looking to the factual development finds neither there is service of copy of inquiry report on the delinquent nor service of copy of show cause to answer before the final punishment is imposed. In the circumstance, this Court finds there is serious flaw in conducting of a Disciplinary Proceeding by the

Disciplinary Authority where bare minimum requirement of natural justice having not been complied with, the order of the Disciplinary Authority vitiates. It is here taking into consideration the other allegation at the instance of the petitioner that in spite of raising such question, the Appellate Authority passed the final order even without delving into such allegation, for the opinion of this Court and as this Court has come to hold the order of the Disciplinary Authority is not sustainable in the eye of law, there would be no necessity to enter into such question. This Court while setting aside the punishment order at Annexure-6 finds there is ultimate suffering in the order at Annexure-10, which is also set aside. It is needless to submit that when there is a set of proposal on punishment, the Disciplinary Authority decides a manner of punishment, the Appeal either is to be allowed or to be dismissed. Further there may be a case of reduction in punishment but there is no chance for enhancement of punishment unless there involves a notice on enhancement of punishment.

6. For there is requirement of recommencement of the inquiry proceeding from the stage of submission of copy of the report, this Court while remitting the matter to the Disciplinary Authority, directs to restart the inquiry proceeding from the stage of submission of inquiry report and reconclude the Disciplinary Proceeding after completing the formalities including by supplying a copy of the inquiry report and the copy of show cause before the punishment is imposed at least within ten days of receipt of copy of this Court's direction. In the event there is supply of copy of the inquiry report to the petitioner, within a period of ten days, the petitioner will be submitting his response and thereafter there may be service of show cause on the punishment likely to be imposed with permission for response to the same. The entire proceeding shall

however be concluded within a period of four months from the date of communication of this judgment by the petitioner.

7. In the result, the writ petition succeeds but, however, with the order of remand. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 14th day of February, 2022/SKS*

