

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22822 of 2020

An application under Articles 226 & 227 of Constitution of India.

AFR

T. Ravi

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Petitioner

-Versus-

**National Council for Teachers
Education (NCTE) & Others**

..... **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : Mr. S. Senapati, Advocate

For Opp. Parties : Mr. S.S. Mohapatra, Advocate
[O.P. No.4]

Mr. P.K. Parhi, DSGI with
Mr. J. Nayak, CGC
[O.P. No.3]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

1st November, 2022

SASHIKANTA MISHRA, J.

The petitioner joined as an Assistant in National Council for Teachers Education (NCTE) on 27.05.1996. He was promoted as Section Officer on 30.05.2003. While working as such in Southern Regional Committee,

Bangalore the petitioner was apprehended in course of a trap laid by CBI basing on a written complaint lodged by one M. Shivashankar Naik on 03.10.2012 alleging demand of illegal gratification. It is alleged that the trap team recovered Rs.30,000/- from the pocket of the petitioner inside the office premises. Upon completion of investigation, charge sheet was submitted against him under Section 7 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and trial commenced. After about a year and four months, the Member Secretary (opposite party no.3) issued a memorandum dated 06.02.2014 along with article of charges and statement of imputation on the self same facts and allegations as in the criminal case proposing to hold an enquiry under Rule-14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short Rules, 1965). The petitioner submitted his reply on 11.03.2014 specifically denying the charges.

The criminal case ended in a judgment of acquittal of the petitioner on 24.03.2016. In the meantime, the enquiry was concluded and the enquiring authority

submitted his report on 14.06.2018 holding that the charges as per the article of charges were not established. The disciplinary authority, however, disagreed with the findings of the enquiring officer and called upon the petitioner vide memorandum dated 14.01.2019 to submit his reply. The petitioner submitted his reply on 28.01.2019. The disciplinary authority however, did not accept the reply submitted by the petitioner and by order dated 13.03.2019 imposed the penalty of removal from service against him. The petitioner approached this Court in W.P.(C) No. 6346 of 2019 challenging the order of punishment. This Court vide order dated 13.05.2019 disposed of the writ petition granting liberty to the petitioner to prefer appeal before the appellate authority. Accordingly, the petitioner filed an appeal before the Chairman-cum- Appellate Authority on 23.05.2019. The appellate authority did not accept the contentions raised by the petitioner and rejected the appeal by confirming the order of punishment imposed by the disciplinary authority.

It is the petitioner's case that according to the complainant he had demanded illegal gratification for

issuing a Letter of Intent (LOI) in his favour but fact remains that he was not the authority to do so rather the Regional Director was the competent authority to issue the same. It is the further case of the petitioner that on the self same charges, the competent court of law, namely, the Special Judge, CBI acquitted the petitioner of the charges on the ground that there was no evidence regarding demand, acceptance and recovery against the petitioner. The enquiring officer also held that the charges were not proved. Moreover, the complainant himself had not come forward to face cross-examination by the petitioner during the enquiry, which vitiates the proceeding. The disciplinary authority interfered with the proceeding, which shows his bias and prejudice. The appellate authority also did not consider the contentions raised by the petitioner in its proper perspective. Thus, challenging the impugned order of punishment passed by the disciplinary authority, as confirmed by the appellate authority, the petitioner has approached this Court seeking the following relief:

“It is therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi calling upon the Opp.Parties to show cause as to why appropriate writ/writs shall not be issued

quashing/setting aside the impugned order of punishment dated 13.03.2019 under Annexure-8 and the order of the Appellate Authority dtd.27.02.2020 under Annexure-11 and as to why they shall not be directed to reinstate the petitioner in service and release all service benefits and on perusal of causes shown if any or insufficient causes shown, make the said rule absolute and may pass any appropriate order as deemed just and proper.

And for this act of kindness the petitioner shall, as in duty bound ever pray.”

2. Counter affidavit has been filed by opposite party Nos.1, 2 and 4. It is basically stated that there is no bar to conduct disciplinary enquiry on the same charges on which a criminal case is instituted. In the enquiry, it was clearly proved that the petitioner was responsible for processing the file of the concerned Society and he had made unauthorized contacts with the Society's representative. Further, the tainted money was recovered from the petitioner's possession and all witnesses including the trap laying officer unequivocally narrated the facts against him. Thus, the allegation of illegal demand and acceptance of gratification for issuing LOI was clearly proved for which the disciplinary authority rightly disagreed with the findings of the enquiring authority.

3. The petitioner filed a rejoinder to the counter affidavit filed by the opposite parties. It is stated that a co-

employee having a similar name as the petitioner, namely, B. Ravi Kumar used to demand money from various persons which was informed by the petitioner to the authorities in writing. It is plausible that the said B. Ravi Kumar may have demanded money from the complainant but not the petitioner. This aspect was never taken into account. That apart, when the CBI court disbelieved the prosecution witnesses, it was entirely wrong on the part of the disciplinary authority to disagree with the findings of the enquiring authority. Furthermore, the petitioner was not given opportunity to cross-examine the complainant, who is the most vital witness and therefore, the principles of natural justice stood violated. The disciplinary and appellate authorities have ignored these vital aspects while passing the impugned orders.

4. Heard Mr. S. Senapati, learned counsel for the petitioner and Mr. S.S. Mohapatra, learned counsel appearing for NCTE.

5. Mr. S. Senapati would contend that when the criminal case instituted on identical facts and allegations ended in honourable acquittal of the petitioner it was

completely unjustified on the part of the disciplinary authority to impose punishment on him in the disciplinary proceeding more so, by disagreeing with the findings of the enquiring authority. Secondly, the complainant, at whose instance the criminal case was instituted, did not turn up for cross-examination despite repeated opportunity, for which his testimony is of no value. Thirdly, the disciplinary authority by interfering with the enquiry proceeding has displayed bias and prejudice for which the whole proceeding is vitiated. Fourthly, neither the disciplinary authority nor the appellate authority took note of the significant fact that there was clear proof of multiple telephonic conversations between the co-employee, B. Ravi Kumar and the complainant prior to the alleged occurrence and therefore, the needle of suspicion ought to have been pointed at him instead of the petitioner.

6. Per contra, Mr. S.S. Mohapatra would argue that it is not an inviolable rule that acquittal in a criminal case entails automatic exoneration from the charges in the disciplinary proceeding. Both proceedings are conducted on different parameters and on different principles relating

to burden of proof. On merits, Mr. Mohapatra argues that the very recovery of tainted money from the petitioner's pocket during the trap laid by the CBI is adequate to prove his guilt. The enquiring officer wrongly exonerated him from charges on technical grounds for which the disciplinary authority exercised his power by disagreeing with the findings of the enquiring officer. The appellate authority has also considered each of the contentions raised by the petitioner in his appeal and answered them in accordance with law. This Court exercising extraordinary jurisdiction under Article 226 of the Constitution may not go into such intricate factual details.

7. From the facts narrated in the writ petition and the counter it appears that one M/s. Sree Lakshmi Venkateswara Educational Society in the district of Ananthapur (Andhra Pradesh) had applied for D.Ed. course during the month of October, 2011. On 27.09.2012, the said Society came to know from the website of NCTE that the institution was sanctioned/approved with LOI for D.Ed Course. Since the President of the institution was not well, an authorization letter was issued to M. Shivashankar

Naik (complainant) to collect the LOI on behalf of the Society. The complainant is said to have met the petitioner in his office on 01.10.2012 for the purpose but the petitioner demanded an amount of Rs.2 lakhs as bribe. The complainant having expressed his inability to pay such amount, the petitioner agreed to reduce it to Rs. 30,000/-. The complainant, thereafter, lodged a written complaint on 03.10.2012 before the CBI, Bangalore and on such basis a trap was laid at about 6.30 p.m. on the same day during which the petitioner was caught by the trap team and Rs.30,000/- was recovered from his pocket. On such basis charge sheet was submitted and the case was put to trial in the court of XXXII Addl. City Civil & Sessions Judge and Spl. Judge for CBI Cases, Bangalore in Spl. CC No. 94 of 2013. Learned Special Judge framed the following points for consideration in the case.

- 1) Whether the prosecution proves that the Sanction Order in Ex.P.19 issued for the prosecution of accused is valid and legal one?*
- 2) Whether the prosecution proves beyond reasonable doubt that the accused being a Public servant while working as the Section Officer, National Council for Teachers Education, Southern Regional Committee, Nagarabhavi, Bangalore demanded illegal gratification of Rs.30,000/-from Sri.Shivashankar Naik representative of M/s.Sree Lakshmi Venkateshwara Educational Society,*

Tadapatri, Dist.: Ananthapura, (AP) and that in pursuance of such demand, on 03.10.2012 at about 18.30 hrs. he was caught red handed by the Trap Laying Officer while demanding and accepting the bribe of Rs.30,000/- inside the Office complex of NCTE, Nagarabhavi, Bangalore and thereby, committed the offence punishable u/sec.7 of the Prevention of Corruption Act, 1988?

3) Whether the prosecution has further proved beyond reasonable doubt that on the same day, place and time, accused being a Public servant committed criminal misconduct by abusing his official position and accepted illegal gratification of Rs.30,000/- from the complainant as part of the bribe of Rs.2 lakhs in order to show official favour and obtained pecuniary advantage and thereby, committed the offence punishable u/sec.13(2) r/w. Sec.13(1)(d) of the Prevention of Corruption Act, 1988?

4) What order?

The article of charges framed against the petitioner reads as follows:

“Article of Charges framed against Shri T. Ravi, Section Officer, Southern Regional Committee (NCTE), Bangalore.

That Shri T. Ravi, Section Officer (under suspension) while working as such in the office of the Southern Regional Committee (SRC, National Council for Teacher Education (NCTE), Jnana Bharati Campus Road, Opposite National Law School, Nagarbhavi, Bangalore- 560 072, during the period from 05.04.2010 to 18.08.2013, permitted one Shri Siva Sankar Naik, a representative of Sree Lakshmi Venkateswara Educational Society, Tadapatri, Anantapur, Distt. Andhra Pradesh to meet him directly in his office on 01.10.2012 and 03.10.2012 and demanded illegal monetary gratification for extending a favour i.e., the delivery of a Letter of Intent meant for the said society. On 03.10.2012, Shri T. Ravi was found by the officials of the Investigating Agency in physical possession of the monetary gratification demanded by him from the representative of the society.”

From a plain reading of the aforequoted points and article of charges, it is more than evident that both relate to the same incident and are identical in every respect.

8. In so far as the criminal case is concerned, the learned Sessions Judge while acquitting the petitioner of the alleged offences held as follows:

“52. On careful analysis of the evidence produced by the prosecution in the instant case, I am of the considered view that the prosecution has failed to prove unequivocally the demand of illegal gratification and thus, I am constrained to hold that it would be wholly unsafe to rely on the testimony of the prosecution witnesses, more particularly with reference to the evidence of the complainant and the shadow witness. I do not find any legally acceptable evidence in order to show that the mandatory requirements for conviction u/secs.7 & 13(2) r/w.Sec.13(1)(d) of the P.C.Act, namely, demand, acceptance and recovery was chronologically proved against the accused. Mere recovery of the bribe money by itself cannot prove the charge of the prosecution against the accused here. As such, I have no hesitation to hold both the points for consideration in the ‘Negative’.

9. From the above narration what emerges is, the criminal case and the disciplinary proceeding were instituted on identical set of charges and the petitioner was honourably acquitted in the former. It would be useful at this stage to refer to the position of law in this regard. Mr.

S. Senapati has relied upon the decision of the Apex Court in the case of **G.M. Tank vs. State of Gujarat and Others**, reported in (2006) 5 SCC 446, to buttress his contention that honourable acquittal in the criminal case should lead to automatic exoneration from the disciplinary proceeding. In the cited case, the Apex Court observed as follows:

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by

its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

In the said case, the apex court also relied upon its earlier decision rendered in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.** reported in [(1999) 3 SCC 679 : 1999 SCC (L&S) 810], wherein it was held as under:

“22. In Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In para 34, this Court held as under: (SCC p. 695)

“34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, ‘the raid conducted at the appellant’s residence and recovery of incriminating articles therefrom’. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the

appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

10. It is not disputed that the same witnesses and same documents as were utilized in the criminal case were also utilized in the enquiry proceeding though some further witnesses were examined and additional documents were filed. It is not the case of the authorities that only additional material or evidence was brought in the enquiry which independently proved the guilt of the petitioner. The disciplinary authority disagreed with the findings of the enquiring authority mainly on the ground that the petitioner had not disputed the documents listed along with the charge memo and some of the witnesses had proved the contents of the FIR, recovery of the tainted money from the petitioner etc. These grounds, in the

considered opinion of this Court, are not adequate to disagree with the findings of the enquiring authority keeping in view the settled position of law that unless the prior demand for gratification is proved, mere recovery of bribe/tainted money is of no consequence as held by the Apex Court in the case of **B. Jayaraj v. State of A.P.**, reported in (2014) 13 SCC 55.

11. Another important aspect that seems to have escaped the attention of the disciplinary authority is, the petitioner had no power to issue the LOI as it was the Regional Director, who was competent to do so. This Court therefore, finds that there were no compelling reasons for the disciplinary authority to disagree with the findings of the enquiring authority.

12. It goes without saying that the principles of natural justice are the very backbone of any proceeding be it criminal or disciplinary. As has already been discussed hereinbefore, the entire issue emanated from the complaint lodged by the complainant before the CBI. Be it noted here that no specific complaint was lodged by him against the

petitioner before the authorities of the NCTE. Be that as it may, in the circumstances, it becomes vitally important to consider the evidence of the complainant himself. It is seen from the record that the complainant appeared as a witness in the enquiry but did not present himself for cross-examination despite two opportunities being afforded. As such, the petitioner was prevented from cross-examining the complainant. There is no gainsaying that right of cross-examination not only is referable to Evidence Act itself but one of the principles of natural justice is that the evidence may not be read against a party if the same has not been subjected to cross-examination or at least an opportunity has not been given for cross-examination. In the case of **Kartar Singh v. State of Punjab**, reported in (1994) 3 SCC 569, the Apex Court observed that it is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief. So denying the valuable right of cross-examination strikes at the very principle of natural justice which renders the proceeding vitiated. Significantly, the enquiring authority has observed in his report as

follows:

“16.1. Shri Siva Shankar Naik (SW-1) was examined by the Presenting Officer on 30.10.2014. He did not appear for cross-examination despite two opportunities being given to him and the Disciplinary Authority decided to proceed with the inquiry without insisting on the presence of this unwilling witness. Shri Naik was the main person responsible for initiating this inquiry, though his complaint was made to CBI and not to Deptt. As the Charged Officer did not get the opportunity of cross-examining him, his deposition on 30.10.2014 has no value at all. This witness, after knowing the fate of his complaint to the CBI on which proceeding were initiated by the CBI very promptly, deliberately chose not to come forward and evaded cross examination. The third component of the Article of charge is that the Investigating Agency found Shri T. Ravi in physical possession of the monetary gratification demanded from the representative of the Society. While I have already observed that the demanding money has not been established, it was for the Investigating Agency to take their findings on the possession of money by Shri T. Ravi to their logical conclusion before the appropriate forum, i.e., the Hon'ble CBI Court and which they did. The matter rests there.” सत्यमेव जयते

13. This Court is therefore of the view that the statement of the complainant in the enquiry proceeding could not have been taken into account for the purpose of deciding the charges. This also raises another important aspect, i.e., interference in the enquiry proceeding by the disciplinary authority. The concept of natural justice inheres in it, two rules, namely, no person is to be condemned without hearing (***Audi Alteram Partem***) and

no person shall be a judge of his own cause (***Nemo Judex in Causa Sua***). It has been held time and again by the Apex Court that if the disciplinary proceedings have not been conducted fairly and in consonance with the aforequoted principles, presumption can be drawn that it has caused prejudice to the charged employee. There are a plethora of decisions in this regard. It may not be necessary to refer to all of them. It would suffice to refer to only one decision of the Apex Court, namely, ***Union of India v. Prakash Kumar Tandon***, reported in (2009) 2 SCC 541 in this regard. It is a salutary requirement of administrative jurisprudence that justice should not only be done but should manifestly and undoubtedly be seen to be done. This Court would of course hasten to add that no such bias has been alleged against the enquiring officer but what transpires from the above referred observations of the enquiring authority, the disciplinary authority appears to have shown undue interest in the conduct of the enquiry and ultimately prevailed upon the enquiring authority to conclude the proceedings without insisting upon the cross-examination of the complainant. The enquiring authority

though recorded the same in his enquiry report yet, acceded to such instructions and closed the enquiry, though exonerating the petitioner. That the very same disciplinary authority subsequently disagrees with the findings of the enquiring authority and that too on grounds that this Court finds to be not reasonable or justified, only smacks of bias in his conduct. In fact, the facts themselves are tell-tale. Therefore, the very foundation of the case against the petitioner is shaken.

14. Coming to the findings of the appellate authority it is seen that the contention of the petitioner in this regard was simply brushed aside by holding as follows:

“(iii) That Shri Naik was only examined by the prosecution, but he did not come for cross examination by the Appellant.

It is noted that Shri Siva Shankar Naik (SW-1) was examined by the Presenting Officer (PO) on 30/31.10.2014 before the Appellant being the CO. After the examination-in-chief was over on the said date by the PO, the SW-1 was available for cross-examination by the Appellant/ CO and opportunity of cross examination was afforded to the Appellant/CO to cross examine the SW-1. But, CO vide his letter dated 30.10.2014 stated that Shri Siva Shankar Naik (SW-1) was also a State Witness in the CBI case in the CBI Court, Bangalore and a part evidence of SW-1 was taken on 27.10.2014 in the Court. Therefore, the Appellant/CO requested that he would take up the cross examination of SW-1 after his evidence is completed in the Court. On

*this, the Appellant was directed by the IA to submit documentary proof about taking **SW-1's** evidence in the CBI Court on 27.10.2014, on the next date of hearing fixed on 14.11.2014. As per the records of the inquiry proceedings the Appellant did not submit any such evidence till the conclusion of the enquiry proceedings."*

The above observations are contrary to the specific observations made by the enquiring authority himself in the enquiry report quoted hereinbefore and therefore, not acceptable.

15. Fairness of procedure demands that all points raised by delinquent officer have to be duly considered by the concerned authority. In this case, in his written statement of defence submitted in response to the memorandum of charges, the petitioner has specifically raised a plea that a co-employee having similar name as him, namely, B. Ravi Kumar had conspired against the petitioner because he had submitted a complaint against the said B. Ravi Kumar in the past. This was not taken into consideration. On the other hand, learned Special Judge in his judgment took note of the call details between the complainant and said B. Ravi Kumar on 01.10.2012 and just prior to the occurrence to hold that there is no proper

explanation for the same, which creates suspicion. The disciplinary authority has not considered the plausible contention raised by the petitioner in this regard. The petitioner in his memorandum of appeal filed before the appellate authority also raised the specific plea in Paragraph-6 but the appellate authority did not consider the same.

16. From a conspectus of the analysis made hereinbefore it is more than evident that the disciplinary authority had no justified or compelling reason to disagree with the findings of the enquiring authority. Moreover, the findings being based upon the complaint lodged by the complainant, who did not come forward to be cross-examined, cannot be sustained in the eye of law. The disciplinary authority by interfering with the enquiry proceedings has exhibited inexplicable bias and prejudice against the petitioner. The appellate authority did not consider the contentions raised by the petitioner in the proper perspective, rather, mechanically accepted the findings of the disciplinary authority without due application of mind. All these factors are strong enough to

persuade this Court to interfere with the impugned orders, more so, as the petitioner was honourably acquitted by the criminal court on identical charges.

17. For the foregoing reasons therefore, the writ petition succeeds and is therefore, allowed. The impugned orders under Annexures- 8 and 11 are hereby quashed. The opposite party authorities are directed to reinstate the petitioner in service with full back wages and continuity of service forthwith.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 1st November, 2022/ A.K. Rana, P.A.