

**ORISSA HIGH COURT : C U T T A C K**

**WPC(OA) NO.995 OF 2008**

***A F R***

*In the matter of a Petition under Articles 226 & 227 of the Constitution of India.*

***Abhimanyu Giri***

***: Petitioner***

***-Versus-***

***State of Orissa & anr.***

***: Opp.Parties***

For Petitioner : M/s.A.Rath, R.Rath, R.Mohanty,  
D.K.Mitra & A.K.Chhatoi

For Opp. Parties : Mr.S.Ghose, ASC

**CORAM :  
JUSTICE BISWANATH RATH**

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Date of hearing & Judgment : 03.03.2022

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1. This Writ Petition was originally filed on the Board of the Orissa Administrative Tribunal, Bhubaneswar Bench. On abolition of the Tribunal, the Petition is transferred to this Court for being decided under the provision of Articles 226 & 227 of the Constitution of India.

2. In filing this Petition, the Petitioner has challenged the procedure followed involving the penalty order by the Disciplinary Authority. The main thrust of argument involving the penalty order by the Disciplinary Authority remains, when the Enquiring Officer on completion of enquiry suggests exemption of the Delinquents including

the Petitioner from the charges if the Disciplinary Authority wants to differ from the view of the Enquiring Officer following the provision in the Orissa Civil Services (Classification, Control & Appeal) Amendment Rules, 2000, particularly keeping in view Sub-Rule (10) of the Rule-15 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 before passing order of penalty, it was incumbent upon the Disciplinary Authority to first send a show cause notice along with report of the Enquiring Officer asking the Delinquent to have his view. It is urged that even assuming that the Enquiring Officer had suggested in favour of the Delinquent and such contingency was not available and the Disciplinary Authority desired to differ from the view of the Enquiring Officer, the Disciplinary Authority was required to issue a show cause notice on punishment along with a statement of its finding taken together with brief reasons of disagreement, if any, with the findings of the Enquiring Officer stating penalty proposed to be imposed on him and calling the Delinquents to submit their response within a specified time.

3. Mr.Rath, learned counsel for the Petitioner thus challenged the impugned order for being contrary to the established principle. It is in the above background, taking this Court to Annexure-7, the enquiry report and Annexure-8, the show cause notice issued by the Disciplinary Authority, Mr.Rath, learned counsel for the Petitioner contended that

there is gross-violation of the Rules governing the field and in the circumstance, particularly for non-compliance of the provision at (i)(b), the punishment order vitiates. With the above ground of challenge, learned counsel for the Petitioner also brings to the notice of this Court of the judgment of the Odisha Administrative Tribunal, Bhubaneswar involving one of the Delinquents involved in the same enquiry referring to Paragraphs-8 to 10 in the judgment dated 5.5.2018 involving O.A. No.1179/2008 submitted that the Tribunal in disposal of similar proceeding for the reasons therein not only quashed the impugned order of the like nature but also directed the Respondents therein to draw and dispose of the retiral benefits in favour of the Applicant held up on account of the impugned order within a period of three months. It is stated that there is no challenge to such order any further. It is in the above legal background, learned counsel for the Petitioner prayed this Court for setting aside the impugned order at Annexure-8 & 14 also granting some similar benefit.

4. To the contrary, Mr.S.K.Ghose, learned Additional Standing Counsel referring to the pleadings as well as disclosures contended that keeping in view the Disciplinary Authority's disagreement with the order of the Enquiring Officer, there was calling for a report from the Engineer-in-Chief, Water Resources, and thus contended that the show cause notice

in Annexure-8 even though nowhere disclosed the observation of the Disciplinary Authority dependent on such exercise, however the show cause at Annexure-8 was based on such a report existing with the Disciplinary Authority and thus contended that there is no defect in the ultimate conclusion of the disciplinary proceeding, vide Annexure-14 requiring to be interfered with. Mr.Ghosh, however, did not dispute the statutory provision under the O.C.S.(C,C & A) Amendment Rules, 2000 prescribing the manner of disposal of the disciplinary proceeding in such contingency. In reference to the order of the Tribunal Passed in O.A. No.1179/2008, learned counsel for the Petitioner submitted that in the said case the show cause and order of penalty since discussed on the view of the Engineer-in-Chief, it stands on a different footing. Mr.Ghosh, learned Additional Standing Counsel in the circumstance, contended that the decision, if any, involving Mukunda Dev Upadhyaya vrs. State of Orissa & ors. has no relevancy to the case at hand.

5. Considering the rival contentions of the Parties and keeping in mind the grounds of challenge to the show cause notice at Annexure-8 as well as the enquiry report at Annexure-7, the Enquiring Officer finally reached the following conclusion :-

“I, therefore, conclude that as enquiry was conducted lately after Super Cyclone, the surface of the road was partly damaged in different places. The apprehension of damage due to submergence of road due to Super Cyclone’99 is

rather correct than the execution of substandard work. Hence officer alleged may be exempted from the charges framed against them.

This is submitted for the perusal of Govt. to decide the further action as deem fit.”

Reading the aforesaid, there should remain no doubt that the plea of the Delinquent therein that the suffering involved is an outcome of the Super Cyclone taking place in the entire area at the relevant point of time, the apprehension of damage as raised by the Delinquent was well understood in the enquiry and the Enquiring Officer thus rightly directed exemption of the Delinquent including the Petitioner from the charges framed against them. It is taking into consideration here the show cause notice at Annexure-8, this Court finds, Annexure-8 reads as follows :-

“Whereas disciplinary proceeding under Rule-15 of the O.C.S.(C.C.& A) Rules, 1962 has been initiated against the above officers for commissions and omissions made by them vide this Department Memorandum No.25467, dated 18.7.2002;

Whereas, the Executive Engineer, Salandi Canal Division, Bhadrak was appointed as Inquiring Officer to enquire into the charges leveled against the aforesaid officers vide Department of Water Resources order No.41315 dated 20.11.2002;

Whereas, the Inquiring Officer after completion of enquiry has furnished the record of enquiry to this Department vide his letter No.18, dated 27.9.2003;

Whereas, government after careful consideration of the enquiry report and gravity of the charges have proposed to recover an amount of Rs.12,57,800/- from each of the officers;

And now they are directed to submit their representations as they may wish to make against the proposed punishment of Government within a period of 15(fifteen) days from the date of receipt of this show cause notice, failing which the matter shall be decided in accordance with existing rules.”

Reading the whole show cause notice, this Court finds, even though an allegation is made that the Disciplinary Authority by issuing the show cause notice has relied on the report of the Engineer-in-Chief but there is absolutely no such disclosure issuing show cause notice, vide Annexure-8. It is at this stage of the matter, this Court examining Annexure-14 finds, Annexure-14, the penalty order of the Disciplinary Authority has however a disclosure of giving such punishment dependent keeping in mind the view of the Engineer-in-Chief and on the recommendation of the O.P.S.C. This Court thus finds, the so-called view of the Engineer-in-Chief did not come into existence at least till issuing the show cause notice, vide Annexure-8. In the above background, this Court takes into account here the provision at Rules (i)(a), (b) & (c) of the Orissa Civil Service (Classification, Control and Appeal) Amendment Rules, 2000, which read as follows :-

“(i)(a) If the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish to the delinquent Government servant a copy of the report of the inquiring officer and give him notice by registered post or otherwise calling upon him to submit within a period of fifteen days such representation as he may wish to make against finding of the Inquiring Authority;

(b) On receipt of the representation referred to in Sub-clause (a) the disciplinary authority having regard to the findings on the charges, is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed, he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons for disagreement, if any, with the findings of the inquiring officer and give him a notice by

Registered post or otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed penalty...

(c) On receipt of the advice from the Commission the disciplinary authority shall consider the representation, if any, made by the Government Servant and the advice given by the Commission and shall pass appropriate orders in the case.”

6. Before adverting to three stages requirement required to be undertaken by the Disciplinary Authority in the factual scenario of the matter, this Court here observes, for the clear recommendation for exemption by the Enquiring Officer, there might not be requirement of following the Clause-(i)(a) taken note herein above but in the event the Disciplinary Authority was to differ from the view of the Enquiring Officer and proposes to impose punishment in clear disagreement with the recommendation of the Enquiring Officer compliance of Clause-(i)(b) taken note herein is a must. As per the above provision, while issuing show cause notice, the Disciplinary Authority shall furnish to the Delinquent-Government Servant a statement of its finding along with the brief reasons of disagreement, if any, with the findings of the Enquiring Officer and give him a notice by Registered Post or otherwise stating the penalty proposed to impose on him and calling upon him to submit within a specified time such representation, as he may wish to make against the proposed penalty. There is no such observation in issuing the show cause notice, vide Annexure-8. As a consequence, looking to the challenge of

the Petitioner to the punishment order at Annexure-14, for this Court finds, in issuing notice under Annexure-8, there is no following of statutory provision, Clause-(i)(b) of the aforesaid Rule as quoted herein above, the view of the Engineer-in-Chief, the foundation even did not form part of the show cause notice and for punishment also appears to be based on extraneous material and without even involving the Petitioner through the second stage, this Court while declaring the show cause notice at Annexure-8 as bad, the foundation in issuing the punishment order at Annexure-14 also lost and the order of punishment automatically goes.

7. It is here taking into consideration the judgment of the Tribunal relied on by the learned counsel for the Petitioner and claiming a parity, looking to the benefit granted by the Tribunal in similarly situated case, this Court finds, in disposal of O.A. No.1179/2008, the Tribunal, vide Paragraphs-9 & 10 has come to observe as follows :-

“9. Normally in such circumstances, the matter would have been remitted to the Disciplinary Authority to take corrective measures from the appropriate stage. But in this case since the applicant has retired since long and the matter has been delayed, there may not be any need to further delve into the issue to avoid delay.

10. In view of the above discussion, the O.A. is allowed. The impugned order at Annexure-6 is liable to be quashed and is quashed. Accordingly, respondents are directed to draw and disburse all retiral benefits in favour of the applicant, held up on

account of the impugned order, within a period of three months from the date of receipt of copy of this order.

With these orders, the O.A. is disposed of.”

8. In brief, the Tribunal while interfering with the impugned order considering the fact that the Delinquent had already retired since long and there has been sufficient delay in the meanwhile, while interfering with the impugned order therein, setting aside the same directed the Competent Authority for drawing and disbursing of retiral benefits in favour of the application therein. For the case involved one of such Delinquents involving the same enquiry and the loss of time in the meantime, this Court finds it difficult to have a different view than that of the Tribunal. As a consequence, this Court while setting aside the order at Annexure-8 as well as the order at Annexure-14 following the direction already there by the Tribunal, directs the Disciplinary Authority to treat the Petitioner to be continuing in service in the post he was holding at the time of initiation of disciplinary proceeding, to calculate all consequential benefits including arrear dues and release the arrear held up on account of the impugned order by completing the entire exercise within a period of two months keeping in view the suffering of the Petitioner on account of laches of the Disciplinary Authority. Looking to the great loss of time in the meantime in illegally withholding the dues of the Petitioner, this Court while directing for release of the entire arrear dues also awards

interest @ 5% per annum, which is also required to be calculated within two months and release the same in favour of the Petitioner.

9. The Writ Petition thus succeeds. No costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.

The 3<sup>rd</sup> March, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

