

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1609 of 2010

Nilanchal Biswal

....

Petitioner

Ms. B.K. Pattnaik, Advocate

-Versus -

Opposite Parties

....

Collector, Jharsuguda

Mr. H.K. Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

15.02.2022

Order No.
02.

1. This matter is taken up through hybrid mode.
2. The petitioner has filed this writ application seeking the following relief:

“(i) To quash the show cause notice dated 19.05.2010 vide ANNEXURE-3.

ii) To direct the Respondents to take action in accordance with show cause notice dtd.4.09.2009 vide ANNEXURE-2.

iii) And pass such order/orders as may be deemed fit and proper for the interest of justice.”

3. The facts of the case are that the petitioner was appointed as a Junior Clerk in the District Election Office, Jharsuguda w.e.f. 29.12.1980. He was placed under suspension pending drawal of departmental proceeding against him, in which he was charged with gross misconduct for accepting illegal gratification on 19.08.2000. After receiving the notice to show cause against the charge memo served upon him, the petitioner

claims to have submitted a representation before the opposite party to supply him the relevant documents. The Sub-Collector, Jharsuguda was appointed as the enquiry officer to enquire into the charge and the Tahasildar, Lakhanpur was nominated as Marshalling Officer. After completion of the enquiry, the enquiring officer submitted his report on 30.06.2008. A copy of the enquiry report, wherein it was proposed to impose the penalty of withholding of two increments with cumulative effect, was served upon the petitioner and he was asked to show cause against the findings of the enquiry officer vide letter dated 04.09.2009, which is enclosed along with the enquiry report as Annexure-2 series. While the matter stood thus, the petitioner was served upon the notice dated 19.05.2010 enclosed as Annexure-3, wherein it is stated that as he was found guilty and sentenced to undergo imprisonment in the criminal case initiated against him for gross misconduct, the Government, on the advice of the G.A. (Vigilance) Department, had decided to dismiss him from Government Service and accordingly he was asked to show cause. It is stated that since the disciplinary authority had differed from the findings of the enquiring officer, notice ought to have been issued to the petitioner to putforth his say in the matter. It is further stated that the impugned notice is not tenable in the eye of law since the rules do not permit issuance of a third show cause notice.

4. A counter affidavit has been filed stating that the petitioner was caught red handed by the vigilance while accepting illegal gratification on 26.05.1999. It led to initiation of criminal case bearing T.R. Case No. 51/1999 against him in the Court of Special Judge (Vigilance), Sambalpur. Simultaneously, a departmental proceeding was also drawn up against the petitioner asking him to submit written statement of defence within 30 days, but the petitioner did not submit any such written statement. While the enquiry report was received vide letter dated 30.06.2008, the petitioner was also found guilty in the criminal case vide judgment passed by the Special Judge (Vigilance), Sambalpur on 18.12.2009 imposing the punishment of Rigorous Imprisonment (RI) for six months and to pay fine of Rs.1,000/-, in default, to undergo further RI for one month under Section 7 of PC Act. He was also sentenced to undergo RI for one year and to pay fine of Rs.2,000/-, in default, to undergo RI for further two months for the offence under Section 13(2) read with Section 13(1)(d) of the PC Act. It is further stated in the counter affidavit that after passing of the judgment in the criminal case, the Government in General Administration (Vigilance) Department advised to dismiss the petitioner from service and accordingly, he was asked to show cause vide the notice under Annexure-3, thereby, adhering to the principle of natural justice.

5. Heard Ms. B.K. Pattnaik, learned counsel appearing for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

6. It is argued by Ms. Pattnaik that once the disciplinary authority had issued the second show cause notice to the petitioner asking him to show cause against the findings of the enquiring office and the punishment proposed to be imposed there was no scope of issuing a third show cause notice. If the disciplinary authority had reasons to differ from the findings or the penalty proposed by the enquiry officer, it should have assigned adequate reasons and also called upon the petitioner to have his say in the matter. Since the disciplinary authority has proposed to impose the extreme penalty of dismissal on the petitioner disregarding the penalty proposed by the enquiring officer, the same according to Ms. Pattnaik, is not tenable in the eye of law. It is further contended that the OCS(CCA) Rules, 1962 contains no provision for issuing a 3rd show cause notice to a delinquent.

7. Mr. H.K. Panigrahi, learned Addl. Standing Counsel on the other hand has sought to dispel the arguments advanced on behalf of the petitioner by submitting that even though the impugned notice does not say so yet the same was issued pursuant to Rule 18(i) of the OCS (CCA) Rules, 1962, which confers upon the disciplinary authority a special power to dismiss an employee from government service on the ground of misconduct which has led to

conviction on criminal charge. It is further submitted by Mr. Panigrahi that the disciplinary proceeding and the criminal case were proceeding simultaneously and since the disciplinary proceeding ended earlier, the disciplinary authority issued show cause to the petitioner on the basis of the findings of the enquiry report. While the matter stood thus, the criminal case against the petitioner also ended in his conviction. Therefore, having regard to the advice of the GA(Vigilance) Department which, in turn is based upon the law laid down by the apex Court in the case of **K. C. Sareen vs. C.B.I., Chandigarh**, reported in (2001) 6 SCC 584, the disciplinary authority decided to dismiss the petitioner from Government Service and in the process, the finding of the enquiry officer and the show cause issued thereupon automatically receded to the background. To fortify his contention, Mr. Panigrahi has also relied upon a decision of a Division Bench of this Court in the case of **Suresh Chandra Mishra vs. State of Odisha & Anr.**, reported in 2020 (II) ILR - CUT- 383.

8. The facts of the case are not disputed, inasmuch as, the petitioner was caught red handed while accepting illegal gratification on 26.05.1999 by the vigilance which led to initiation of a disciplinary proceeding as well as a criminal case against him. It is also not disputed that the departmental proceeding was initiated on the same charge as the criminal case. Coming to the contention advanced by Ms. Pattnaik that law does not permit issuance of a third

show cause notice, this court finds the same entirely fallacious and untenable for the reason that the impugned notice under Annexure-3 cannot be treated as a third show cause notice or an offshoot of the disciplinary proceeding. The said notice was issued as the petitioner was held guilty in the criminal case in question. On the other hand, the second show cause notice, enclosed under Annexure-2 series, was issued in terms of Rule-15 (10)(i)(a) of OCS(CCA) Rules, 1962. Both notices stand entirely on different footing.

9. Having regard to the facts narrated above, this Court is persuaded to accept the arguments of Mr. Panigrahi that despite non-mentioning of the relevant provision in the impugned notice under which it was issued, fact remains that the same was issued by exercising the power under Rule -18 of the OCS(CCA) Rules 1962. Differently stated, issuance of such a notice is permitted under Rule-18 of the OCS(CCA) Rules. So, to reiterate, the second show cause notice was issued under Rule-15 while the impugned notice was issued under Rule-18 and therefore, cannot be treated as having arisen out of the same proceeding.

10. As regards the justifiability of the issuance of notice it would be proper to refer to Rule-18 of the OCS(CCA) Rules, the relevant portion of which is quoted hereinbelow.

18. Special Procedure in Certain cases-
Notwithstanding anything contained in Rules 15, 16 and 17 –

(i) where a penalty is imposed on a Government servant on the ground of

$$xx \qquad \qquad \qquad xx \qquad \qquad \qquad xx$$

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary."

11. In the case of **Suresh Chandra Mishra** (supra), a Division Bench of this Court by relying upon several judgments of the Apex Court have also taken the same view. Therefore, there is no illegality whatsoever on the part of the disciplinary authority in issuing the impugned notice proposing penalty of dismissal from service.

“when a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person.”

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red handed while accepting illegal gratification and was found guilty for the same in the criminal case initiated against him. It is true that an appeal has been prepared by the petitioner against the judgment of conviction but as fairly submitted by Ms. Pattnaik, the conviction as such has not been stayed but only the sentence has been stayed. Be that as it may, considering the nature of misconduct and the finding of guilt by the competent Court of law, this Court finds no illegality whatsoever in issuance of the impugned notice under Annexure 3.

12. For the foregoing reasons therefore, this Court finds no reason to interfere in the matter. The writ application, is therefore, dismissed.

(Sashikanta Mishra)
Judge

A.K. Rana

