

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OA) NO.2283 OF 2018

(An application under Section 19 of the Administrative Tribunal's Act)

Saroj Kumar Mallick ... Petitioner

-versus-

**Director General & Inspector General
of Police, Odisha & others**

... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. U.K.Pattnaik, Advocate

-versus-

**For Opposite Parties : Mr. N.K.Praharaj,
Addl. Govt. Advocate**

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
28.07.2022.**

Sashikanta Mishra,J. The Petitioner, while working as Sub-Inspector of Police in
Lathikata Police Station of Sundargarh District was involved in a

criminal case (Vigilance) registered against him by the O.I.C., Vigilance P.S, Sambalpur on 28th March, 2009 on the allegation that he had demanded and accepted bribe of Rs.6000/- from the owner of a Dumper for releasing it as also the driver of the said Dumper. A Disciplinary Proceeding bearing No.2 dated 4th June, 2009 was initiated against him on the self-same charges by the S.P., Rourkela. According to the Petitioner the relevant documents were not supplied to him for his defence, but an Inquiry Officer was appointed to conduct the inquiry. In the mean time the Vigilance Case ended with submission of Final Report on 10th September, 2009 because of insufficient evidence which was also accepted by the concerned Court. Despite submission of the Final Report in the Vigilance case, the inquiry was conducted. After closure of evidence, the inquiry report was submitted on 31st December, 2017 by the Inquiry Officer holding the Petitioner not guilty of the charges. The disciplinary authority i.e., the S.P., Rourkela (Opposite Party No.3) issued second show cause notice dated 22nd October, 2014 without serving the first show cause notice on the Petitioner differing from the findings of the Inquiry Officer and proposing punishment of one 'Black Mark'. Further, without waiting for submission of the reply to the second show

cause notice by the Petitioner, the Opposite Party No.3 imposed punishment of one Black Mark and treated the period of suspension of the Petitioner as such.

The Petitioner preferred appeal before the Deputy Inspector General of Police (Western Range) (Opposite Party No.2) which came to be rejected on 12th November, 2015. Thereafter, the Petitioner filed revision before the Director General and Inspector General of Police, Odisha (Opposite Party No.1) on 23rd March, 2016. The Opposite Party No.1 held that the Petitioner was deprived of reasonable opportunity to defend himself and, therefore, set aside the order passed by the Opposite Party Nos.2 and 3 and restored the proceeding to the stage of first show cause notice directing the disciplinary authority to conduct and conclude the proceeding from that stage within two months following due procedure and observing the principles of natural justice. The disciplinary authority (Opposite Party No.3) issued first show cause notice stating that he did not agree with the findings of the E.O. The Petitioner submitted his reply, but the Opposite Party No.3 taking into consideration the preliminary inquiry report issued in the second show cause notice dated 5th March, 2017 observed that he did not agree with the findings of the Inquiry Officer and

proposed to award punishment of two Black Marks. The Petitioner submitted his reply but the same was not accepted by the disciplinary authority and the proceeding was concluded by awarding punishment of two Black Marks and by treating the period of suspension with effect from 27th May, 2009 to 22nd October, 2009 as such. The Petitioner preferred appeal before Opposite Party No.2, but the same was rejected by order dated 16th August, 2017. The Petitioner further filed a Revision before the Opposite Party No.1, which was also rejected by order dated 31st July, 2018. Being aggrieved by such action of the disciplinary authority and revisional authority, the Petitioner approached the erstwhile Orissa Administrative Tribunal, Principal Bench, Bhubaneswar In O.A. No.2283/2018, which has since been transferred to this Court and registered as the instant Writ Petition. The relief claimed by the Petitioner is as follows:

“To quash the punishment order dated 24.4.2017 as at Annexure-13, the appeal rejection order dtd.16.8.2017 as at Annexure-14 and to quash the decision of the revisional authority dtd.31.7.2018 as at Annexure-16 declaring the same to be illegal, arbitrary and unconstitutional.

To treat the period of suspension as duty as the vigilance proceeding in connection with which the

application was placed under suspension has been closed after sub mission of final report therein.

To grant all other financial and consequent service benefits to the applicant.

To grant any relief/reliefs as deemed fit and proper.”

2. A counter affidavit has been filed by Opposite Party No.2 justifying the action taken against the Petitioner. It is stated that the allegation of demand and acceptance of bribe by the Petitioner was clearly proved in the enquiry and, therefore, the disciplinary authority rightly disagreed with the findings of the Inquiry Officer in his report. Further, taking the entire episode including the preliminary enquiry into account, the disciplinary authority did not agree with the findings of the Inquiry Officer and imposed punishment of two Black Marks for his gross misconduct and failure to maintain absolute integrity, decorum of conduct and devotion to duty. It is further stated that there is no legal bar for continuance of disciplinary inquiry even after disposal of the Vigilance case on the same charges.

3. Heard Mr. U.K.Pattnaik, learned counsel for the Petitioner, and Mr.N.K.Praharaj, learned Addl. Government Advocate, for the State.

4. Mr. Pattnaik has raised the following contentions to challenge the impugned orders passed by the disciplinary, appellate and the revisional authorities:-

(i) The disciplinary proceeding is not legally sustainable because the memorandum enclosing articles of specific charges, statement of imputation and memo of evidence containing all the documents relied upon by the parties were not served on the Petitioner. Moreover, the cited documents were not supplied to the Petitioner along with the draft charge.

(ii) Proper procedure was not followed in the disciplinary proceeding since despite several representations, the cited documents were not supplied to him.

(iii) The disciplinary authority has not passed a speaking order giving reasons for his disagreement with the findings of the inquiry officer.

(iv) The disciplinary authority having relied upon the preliminary inquiry report is completely contrary to law.

(v) Since the Petitioner was placed under suspension because of his involvement in the Vigilance case which, ended in submission of final report, the same should not have been treated as such.

5. Per contra, Mr. N.K.Praharaj has contended that submission of final report for insufficient evidence in the criminal case (Vigilance) is not a bar for the disciplinary proceeding to continue. It is further submitted that the principles of natural justice was fully observed and for such reason, the matter was remanded to disciplinary authority, who conducted and concluded the proceeding for the stage of first show cause notice. Since the Petitioner himself relies upon the findings of the inquiry report, it is not open to him to contend that due procedure had not been adopted during inquiry. The disciplinary authority has cited adequate reasons for disagreeing with the findings of the enquiry officer which is based on materials on record.

6. The facts of the case reveal that a Vigilance case was registered against the Petitioner on the allegation of demanding and accepting bribe of Rs.6000/- from the owner of a Dumper for releasing the driver and the said Dumper, which had been detained in the Police Station by him. Admittedly, the said case ended in submission of final report. It is stated in the final report dated 10th September, 2009 relating to Sambalpur Vigilance P.S. Case No.18 dated 28th March, 2009 that *“in absence of recovery of tainted G.C. notes, it is difficult to prove the case in the Court of Law on the basis of*

circumstantial evidences. Hence, I submitted Final Report True in sufficient evidence vide FRT No.29 dt.10.9.2002, against the accused persons, Sri Subash Chandra Rayaguru, IIC, Sri Saroj Kumar Mallick, S.I.(Petitioner) and Sri Hariprasad Singh, Home Guard Driver.” There is no dispute that the disciplinary proceeding was initiated against the Petitioner on the self-same charges, i.e. of demanding and accepting bribe from the owner of the Dumper as gratification to release the driver and dumper. Whether on submission of final report on insufficient evidence in the criminal case can be a ground to absolve the Petitioner from the charges levelled in the disciplinary proceeding has been examined by the Supreme Court of India in the case of ***G.M.Tank v. State of Gujarat and others***; reported in (2006) 5 SCC 446. Referring to several previous decisions of the apex Court on the issue, the Supreme Court reaffirmed the ratio laid down in the case of ***Captain M. Paul Anthony v. Bharat Gold Mines Ltd. and another***; reported in (1999) ILLJ 1094 SC, wherein the appellant was acquitted by a judicial pronouncement with the finding that since 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. In the case of ***R.P.Kapur v. Union of India and another***; reported in (1966) IILLJ 164 SC, a constitution Bench of Supreme Court has observed that if the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal, proceedings may follow, where the acquittal is other than honourable. Same view was also taken in the case of ***Corporation of the City of Nagpur, Civil Lines, Nagpur and another v. Ramachandra G. Modak and others***; reported in (1981) IILLJ 6 SC.

Thus, from a conspectus of the ratio of aforementioned cases, it is evident that if a person is honourably acquitted from the charges in the criminal case, continuance of the disciplinary proceeding on the self-same charges would not be proper. In the instant case, however, final report true was submitted for insufficient evidence specifically on the ground that the tainted G.C. notes had not been recovered. Obviously, this cannot be treated as being akin to an honorable acquittal in a criminal case where the concerned court exonerates the accused from all charges basing on the evidence on record. This Court, therefore, finds no merit in the contentions advanced by the Petitioner challenging the

initiation and continuance of the disciplinary proceeding despite submission of final report in the Vigilance case.

7. As regards the contention that proper procedure was not followed in the enquiry, this Court is of the view that it is too late in the day for the Petitioner to raise such ground more so, when he is himself relying upon the findings of the very same enquiry. Obviously, he cannot blow hot and cold at the same time. If according to him the procedure was not followed he should have challenged the entire proceeding including the findings on such score but what is being attempted to be done by him in the present case is that he has relied upon that part of the enquiry report which is favourable to him and at the same time, he questions the procedure adopted during the enquiry. Obviously this is not permissible in the eye of law.

8. It has been next argued that the disciplinary authority having disagreed with the findings of the Inquiry Officer should have assigned detailed reasons. In the instant case, while issuing the first show cause notice on 18th January, 2017, the disciplinary authority simply stated, “I am not agreeing with the findings of the E.O.” Obviously, this does not meet the requirement of law.

In the case of ***Punjab National Bank and others v. Kunj Behari Misra***; reported in (1998) 7 SCC 84, the Apex Court held that even if the rules are silent, the delinquent would have to be given an opportunity of being heard before the disciplinary authority proceeds from the proposal to his decision and this opportunity is to be given by communicating to the delinquent, the tentative reasons for the proposed disagreement to enable him to make a representation. Again the in the case of ***Ranjit Singh v. Union of India***; reported in (2006) 4 SCC 153, it was held that the principles of natural justice are required to be complied with by the disciplinary authority if he intends to differ with the findings of the Inquiry Officer. Therefore, the above being entirely contrary to law cannot be sustained.

9. It is urged that the second show cause notice, issued on 5th March, 2017 by the disciplinary authority contained reasons for his disagreement with the findings of the Inquiry Officer, but the same cannot be taken into consideration for the reason that they were based upon the findings of the preliminary enquiry. Firstly, a copy of the preliminary inquiry report was never submitted to the Petitioner and secondly, after the initiation and conclusion of a full-fledged disciplinary inquiry, the finding in the preliminary inquiry

loses its significance. In the second show cause notice dated 5th March, 2017, the disciplinary authority has relied upon the inquiry report of Sri P.K.Mohanty (OPS), D.S.P., Rourkela (preliminary inquiry report) along with further evidence adduced during the inquiry. In so far as the evidence recorded in the inquiry is concerned, the Inquiry Officer found the same to be insufficient to prove the charge. Though the disciplinary authority has referred to the said evidence, it is not clearly stated as to how according to him the same was sufficient to prove the charge. It must be kept in mind that the main charge was demand and acceptance of illegal gratification by the Petitioner to Rs.6000/-, which has not been proved. As it appears, the fact of handing over of the bribe money to the Petitioner has not been proved and in fact the complainant-Rajesh Gope clearly admitted in his cross-examination that he had not paid the said amount to the Petitioner. Such being the case, it is not understood as to what prompted the disciplinary authority to take a different view. Secondly, the preliminary inquiry is conducted for the purpose of taking a prima facie view as to whether there is any substance in the allegations levelled against an employee warranting a regular enquiry. Its findings cannot obviously be utilized to mete out any punishment to be inflicted on

the employee for which a regular enquiry is required. In the case of ***Janardan Mohanty v. Union of India and others***; reported in 2019 (I) ILR-CUT-745, this Court relying upon several decisions of the Apex Court held that the employer has every right to conduct a preliminary enquiry and on such basis to initiate a disciplinary proceeding, but it cannot utilize the materials available in the preliminary inquiry against the delinquent in the disciplinary proceeding without affording opportunity of hearing.

Thus, this Court finds that the second show cause notice dated 5th March, 2017 issued by the disciplinary authority proposing higher punishment is entirely bad in law and cannot be sustained for such reason.

There is yet another reason to find fault with the action of the disciplinary authority. Originally it was proposed to impose the punishment of one Black Mark and such punishment was also awarded, but the same was set aside by the revisional authority. After remand, the disciplinary authority enhanced the punishment to two Black Marks. Thus, this Court finds that the very same authority while disagreeing with the findings of the inquiry Officer had proposed the punishment of one Black Mark which being set

aside and remanded for fresh disposal, was enhanced without any justified reason to two Black Marks. In the absence of any valid or justified reason for such enhancement of punishment, the said action is rendered arbitrary, unjust and irrational.

10. As regards the punishment of treating the period of suspension as such, in view of the fact that this Court has found that the action of the disciplinary authority as confirmed by the appellate and revisional authorities in disagreeing with the findings of the Inquiry Officer as also in proposing punishment and subsequently enhancing it to be completely arbitrary and unconscionable in law, this aspect is also not required to be gone into. Nevertheless, the Petitioner's suspension at the relevant time was on account of his involvement in the Vigilance case. Since the said case ended with submission of Final Report for insignificant evidence, the order of punishment imposed for treating the period of suspension as such cannot obviously be justified and sustained in law.

11. For the foregoing reasons therefore, this Court finds that the impugned orders passed by the disciplinary authority in imposing the punishment of two Black Marks and of treating the period of

suspension as such cannot be sustained in the eye of law and is hence quashed. For the same reason, the impugned orders passed by the appellate authority and revisional authority under Annexures-14 and 16 also cannot be sustained in the eye of law and are, therefore, quashed. Further, the period of suspension be treated as on duty and all consequential service and financial benefits be granted to the Petitioner.

12. The Writ Petition is disposed of accordingly.

Ashok Kumar Behera

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Sashikanta Mishra,
Judge



