

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No. 588 of 2018

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

AFR **Niranjan Das** -----
..... **Petitioner**

-Versus-

State of Odisha & others **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. P.K. Mohapatra,
N. Patra, & A.N. Hota, Advocates

For Opp. Parties : Mr. N.K. Praharaj,
Govt. Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

11th August, 2022

SASHIKANTA MISHRA, J.

The petitioner joined Government service on 26.04.1985 being appointed as Junior Clerk in the district Ministerial Cadre of undivided district of Puri. Subsequently he was allotted to Khurda district. He was promoted to the rank of Senior Clerk in the year 2007.

While working as such in the office of Sub-Collector, Bhubaneswar, he was placed under suspension in contemplation of disciplinary proceeding by order dated 04.09.2014 of the Collector, Khurda (opposite party no.2). Disciplinary Proceeding No. 5 of 2014 was initiated by order 16.09.2014 with communication of the memorandum along with article of charges and memo of evidence to the petitioner. It is alleged that the documents, on the basis of which charge was framed, were not supplied as required under Rule 15(3) of the OCS (CCA) Rules, 1962. Nevertheless, the petitioner submitted his written statement of defence within the stipulated period denying all the allegations. The opposite party no.2 did not accept such explanation of the petitioner and appointed an enquiring officer to enquire into the allegation. The petitioner was thereafter reinstated in Government service on 18.05.2015 in his former post and while working as such, he was allowed to retire from Government service on 31.07.2017 on attaining the age of superannuation. By letter dated 31.10.2017 of the opposite party no.2, the petitioner was called upon to

submit his representation against the proposed penalty suggested by the I.O., in response to which, he submitted his representation. However, the opposite party no.2 passed order on 22.02.2018 imposing the punishment of (i) stoppage of one increment without cumulative effect (ii) suspension period, i.e., from 04.09.2014 to 18.05.2015 being treated as such. It is contended that the Collector, Khurda is not competent to dispose of the proceeding as per the Pension Rules in view of the provision under Rule 7(1) of the said Rules. Further, the enquiry was conducted without adhering to the principles of natural justice and the enquiry officer utilized certain documents without giving copies thereof to the petitioner. The first show cause notice as required under Rule-15(10)(i)(a) of the OCS (CCA) Rules was also not served upon him. That apart, the punishment of stoppage of increment could not have been imposed as the petitioner is a retired Government servant. The order of punishment is also bad for non-consultation with the OPSC before passing the same. The petitioner was not sanctioned final pension and other retirement benefits

and only provisional pension was sanctioned w.e.f. 01.08.2017. Being aggrieved thus, the petitioner approached the erstwhile Odisha Administrative Tribunal Principal Bench, Bhubaneswar by filing O.A. No.588 of 2018 claiming the following relief:

“In view of the facts mentioned in paragraph 6 herein above the applicant prays for the following relief(s);

(i) The Hon’ble Tribunal may please to quash the order at Annexure-8.

(ii) The Hon’ble Tribunal may please to treat the period of suspension from 04.09.2014 to 18.05.2015 as duty.

(iii) The Hon’ble Tribunal may please to direct the respondents to sanction and pay the applicant his final pension, gratuity and unutilized leave salary along with interest.

(iv) Any other relief(s) as deem fit and proper.”

The said O.A. has since been transferred to this Court and registered as the instant writ petition.

2. A counter affidavit has been filed by the opposite parties justifying the action taken against the petitioner. It is stated that the report of the findings of the disciplinary authority was duly sent to the Government in Revenue and Disaster Management Department vide letter No.3439 dated 27.02.2018. It is further stated that the principles of natural justice were duly followed and the findings of guilt are based on the evidence adduced before

the enquiry officer.

3. The petitioner filed a rejoinder to the counter inter alia, stating that the proviso to Rule 7(2)(a) of the Pension Rules provides that when the departmental proceeding is instituted by an authority subordinate to Government that authority shall submit a report regarding its finding to the Government. In the instant case, the Collector is a subordinate authority and therefore he should have submitted his findings to the Government after conclusion of the enquiry. However, the report was submitted by the Collector to the Government on 27.02.2018, which is after imposition of the punishment and therefore, the action taken against the petitioner by him is invalid. It is further stated that the marshalling officer remained absent on most of the dates and the I.O. himself collected reports of the ADM, Bhubaneswar and joint report of record keeper and dealing assistant from Sub-Collector, Bhubaneswar and on the basis of those documents, the I.O. submitted his findings but without granting any opportunity of hearing to the petitioner in such regard.

4. Heard Mr. P.K Mohapatra, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Addl. Government Advocate for the State.

5. It is argued by Mr. Mohapatra that the entire proceeding as well as the impugned order imposing punishment on the petitioner is invalid. Elaborating his argument, Mr. Mohapatra contends that the Collector, Khurda, being an authority subordinate to the Government, is not competent to dispose of the disciplinary proceeding after retirement of the delinquent in view of the proviso to Rule 7(2)(a) of the Odisha Pension Rules. It is further argued that no document basing on which the proceeding was initiated, was ever supplied to the petitioner. Moreover, the principles of natural justice were not at all followed, which is evident from the enquiry report itself. The enquiry officer utilized several documents and reports without giving copies thereof to the petitioner. That apart, not a single witness was examined during the enquiry.

6. Per contra, Mr. Praharaj submits that the petitioner was granted full opportunity of hearing and that

he has never raised any objection in this regard before the enquiry officer during the enquiry for which he cannot be permitted to raise the same at this belated stage. It is further contended that the collector submitted the report to the Government in Revenue and Disaster Management Department and therefore, the statutory requirement has been complied with. It is further argued by Mr. Praharaj that the guilt of the petitioner was clearly established from the documentary evidence on record, and therefore, there is no reason for this Court to interfere with the findings of the enquiry officer.

7. In order to appreciate the rival contentions, it would be apposite to refer to the relevant statutory provision at the outset. Rule 7(2) of the OCS Pension Rules, 1992 provides as under

“7. Right of Government to Withhold or Withdraw Pension-

Provided that when the departmental proceedings are instituted by an authority, subordinate to Government that authority shall submit a report recording its findings to the Government.
xx xx xx”

From of a bare reading of the aforesaid provision it is clear that the Government has the power to withhold pension and gratuity provided the authority by whom the proceeding in question was commenced, if he is subordinate to Government, shall submit a report recording its finding to the Government. In the instant case, the proceeding was initiated by the Collector, Khurda. It goes without saying that the collector is subordinate to the Government. Therefore, the finding of the enquiry officer along with his own findings regarding the punishment ought to have been submitted to the Government as provided under the proviso to Sub-Rule(2) of Rules referred above, In the instant case, the collector submitted his report to the Government vide letter No. 3439, dated 27.02.2018. However, by such time, the Collector had himself finalized the disciplinary proceeding and had also imposed the order of punishment under Annexure-8. This is a clear violation of the statutory

provision referred above and, therefore, has to be treated as invalid in the eye of law.

Another important aspect highlighted by Mr. Mohapatra is that the order of punishment under Annexure-8 is invalid for non-consultation of the OPSC before issuance of the same.

On such score alone, the impugned order imposing punishment on the petitioner warrants interference.

8. Nevertheless, this court deems it proper to examine the other contentions raised by Mr. Mohapatra. It is urged that the documents, basing on which the proceeding was initiated, were not supplied to the petitioner, as a result of which he was unable to effectively submit his written statement of defence. Mr. Mohapatra has referred to Rule 15(3) of the OCS (CCA) Rules in this regard. Undoubtedly, Rule-15(3) mandates that the Government servant shall, for the purpose of preparing his defence, be supplied with all the records on which the

allegations are based. However it is noticed that the petitioner has not specified as to which of the documents he required to prepare his defence. In any case, he did not raise any objection apparently at that stage rather he fully participated in the enquiry. Therefore, having willfully submitted to the enquiry proceeding, he cannot be permitted to raise such a ground at this belated stage.

9. It is next argued by Mr. Mohapatra that the provision under Section 15(10)(i)(a) of the OCS (CCA) Rules was not followed, inasmuch as the disciplinary authority, not being the enquiring officer himself did not furnish the copy of the enquiry report granting him opportunity to submit his representation against the findings of the enquiry officer. In the counter affidavit filed by opposite parties it is stated that such show cause notice was issued to the petitioner vide letter No.16155 dated 31.10.2017. A perusal of the said letter, which is enclosed as Annexure-6 to the writ petition, reveals that the said order was issued under Rule 15(10)(i)(b) of the O.C.S. (CCA) Rules, whereby, he was asked to submit

representation against the proposed penalty. It is thus, evident that the stage of issuing first show cause notice against the findings of the enquiry officer was by-passed. Since Rule-15 is a provision prescribing the procedure for imposing penalties, the same is to be treated as mandatory in nature and cannot be overlooked. By straightaway issuing the notice under sub-clause (b) of clause(i) of Sub-Rule (10) of Rule-15, a major requirement of the statute as contemplated under the previous sub-clause, i.e. sub-clause(a) was ignored. The lapse in this regard cannot be condoned.

10. It is next urged by Mr. Mohapatra that the enquiry was not conducted in accordance with the provisions contained under Rule 15(6) of the Rules. It is contended that the enquiry officer acted as the prosecuting officer and collected documentary evidence on his own effort and also utilized the same without affording any opportunity of defence to the delinquent in this regard. The marshalling officer remained absent on most of the dates. No witness was examined. According to Mr.

Mohapatra therefore, the entire proceeding must be deemed to be vitiated. Rule 15 (6) of the OCS (CCA) Rules, 1962 reads as follows:

“15. Procedure for imposing penalties-

xx xx xx
(6) The inquiring authority shall, in course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the inquiring authority declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reason in writing.”

11. The order sheet of the enquiry proceeding, enclosed as Annexure-10 to the rejoinder reveals that the marshalling officer was absent on 08.01.2016, 10.03.2016, 26.04.2016, 16.05.2016, 08.09.2016, 24.11.2016, 12.01.2017, 24.03.2017, 12.05.2017, 10.06.2017 and 12.07.2017. It further appears that the marshalling officer failed to supply the documents (evidence) to the delinquent officer despite being granted opportunity by the enquiry officer multiple times. Ultimately, the enquiry officer held on 10.04.2017 that the

marshalling officer could not produce the supporting records. Such being the position, it was incumbent upon the enquiry officer to close the proceedings at that stage. But the enquiry officer surprisingly took it upon himself to produce the documents and obtained the same on his 'personal effort' from the office of ADM, Bhubaneswar and Sub-Collector, Bhubaneswar as mentioned by her in the order dtd.12.07.2017. It was as if the enquiry officer had become the marshalling officer herself and was prosecuting the delinquent officer on behalf of the Government. Sub-rule (5) of Rule 15 provides that the disciplinary authority may nominate any person to present the case in support of the charges before the inquiring authority. The enquiry officer obviously cannot become the prosecuting officer on behalf of the Government. As has already been stated herein before, the enquiry officer was both the prosecutor and the judge. A fundamental principle of natural justice which is required to be adhered to even for quasi judicial process is ***Nemo judex in causa sua***, i.e., no man shall be a judge of his own cause.

In the case of ***State of UP vs. Saroj Kumar Sinha***, reported in (2010) 2 SCC 772, the Apex Court held that the enquiry officer is in the position of an independent adjudicator and not a representative of the Government or the authority concerned.

The action of the enquiry officer in the instant case has destroyed the very sanctity of the proceeding and therefore, the same cannot be approved. In fact, this is a defect which goes to the very root of the matter as impartiality of the enquiry officer is of paramount importance since the disciplinary proceeding entails punishment on the delinquent, if found guilty. This Court is constrained to observe as above more so as the documents obtained by the enquiry officer were made part of the case record but were never supplied to the delinquent officer.

12. In view of what has been stated herein before, it is clear that the enquiry not having been conducted with due adherence to the principles of natural justice and fair play cannot be sustained in the eye of law.

13. In the result, the writ petition succeeds and is therefore, allowed. The impugned order under Annexure-8 is hereby quashed. The petitioner shall be treated as on-duty for the period from 04.09.2014 to 18.05.2015 and his salary for the said period be paid to him after adjustment of the amount, if any, paid towards subsistence allowance during such period. Further, the final pension, gratuity and unutilized leave salary shall be sanctioned and paid to the petitioner as early as possible and in any event, not later than three months from the date of communication of this order or on production of certified copy thereof by the petitioner.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 11th August, 2022/ A.K. Rana, P.A.