

ORISSA HIGH COURT: CUTTACK

WPC (OAC) No. 2088 of 2015

(An application under Article 226 and 227 of the Constitution of India)

AFR Sailendu Kumar Panda Petitioner

-Versus-

State of Odisha & others Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner : M/s. B. Mohanty,
B.S. Rayaguru, S. Patnaik,
A. Patnaik and S Mohapatra,
Advocates

For Opp. Parties : Mr. H.K. Panigrahi,
Addl. Standing Counsel.

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JUSTICE SASHIKANTA MISHRA

JUDGMENT

15th March, 2022

SASHIKANTA MISHRA, J. The petitioner has filed the I.A. seeking the following relief:

"I) The order vide office Order No. 2F (Con)-38/2010 5368/F & E dt.26.03.2015 passed by

the Respondent No.1 under Annexure-12 shall be quashed.

II) The action of the respondents shall be declared as illegal.”

2. The brief facts of the case are that the petitioner entered into service as Forest Ranger on 06.02.1986 in Karanjia Division. He was posted as Range Officer at Hadagarh Range of Keonjhar Wildlife Division w.e.f. 08.06.2005. While working as such, a departmental Proceeding was drawn against him by the office of the Principal, CCF Wildlife, Keonjhar on the allegation that he had given false deposition in C.S. No.16/2007 in the Court of Civil Judge (Junior Division), Anandpur. A Memorandum was issued on 13.01.2011 proposing to hold an enquiry against the petitioner under Rule 15 of OCS (CCA) Rules, 1962 containing the substance of imputation of misconduct and article of charges and he was asked to submit his written statement of defence within 30 days. The petitioner, vide letters dated 05.02.2011, 15.02.2011 and 01.03.2011, addressed to the opposite party no.1 and letters dated 04.03.2011, 18.04.2011 and 15.07.2011 addressed to opposite party

no.3, requested for supply of documents. The petitioner also met the Additional Secretary to Government, Forest and Environment Department, Odisha Bhubaneswar in the Grievance Cell on 21.01.2012 objecting to holding of enquiry without supplying the relevant documents. However ignoring the objection of the petitioner, the Divisional Forest Officer, Cuttack Forest Division was appointed as Enquiring Officer, who submitted his enquiry report on 07.12.2013 holding the petitioner guilty of the charges and proposed the punishment of stoppage of two annual increments with cumulative effect and censure. It is stated that the petitioner had been submitting several representations to the Enquiring Officer for supply of documents and objected to recording of his statement from the very first date of the enquiry. The Enquiring Officer, vide letter dated 21.02.2012 also asked the Marshalling Officer to supply the documents. On 01.02.2013, the DFO, Anandapur intimated the Enquiring Officer that the available information had already been supplied to the applicant, but the same

according to the petitioner was not correct, as informed by him to the Enquiring Officer on 06.02.2013. The petitioner subsequently submitted that in the absence of the relevant documents he was unable to submit his written statement of defence but ignoring such request the Enquiring Officer proceeded with the enquiry and concluded it. On 30.07.2014, the opposite party no.1 issued a second show cause notice to the petitioner directing him to submit his representation on the penalty proposed by the disciplinary authority. The disciplinary authority having disagreed with the punishment proposed by the Enquiring Officer proposed to inflict major punishment of withholding of three increments with cumulative effect and withholding promotion for next three years.

It is further stated by the petitioner that the relevant documents include the correct and not final digitized map prepared by Geo Infotech, Bhubaneswar but the same was not supplied to the petitioner, for which he was unable to submit his written statement of

defence, which is serious violation of the principles of natural justice. It is also stated that the disciplinary authority, though disagreed with the punishment proposed to be inflicted by the Enquiring Officer, has not cited reasons for the same as required by law. On such facts, the petitioner has prayed for quashing of the order dated 26.03.2015 imposing the penalty on him.

3. A counter has been filed by the opposite party no.1 admitting the matters of record but disputing the averments relating to non-supply of documents to the petitioner. It is stated that all the documents have been supplied to the petitioner but he did not submit his written statement. The imposition of major punishment is sought to be justified on the ground that mistakes committed by the petitioner are grievous in nature and due to his fallible misconduct and as the punishment proposed to be inflicted by the Enquiring Officer was too lenient. It is stated that the petitioner gave a different statement than the written statement filed in the Civil Suit, for which the judgment in the case was passed

against the Government by holding that mining operation is not within the area of Hadagarh Sanctuary. Further, petitioner submitted some maps prepared by him, which are not approved maps, nor obtained prior permission of the authority before submitting the same in the Civil Court.

4. The petitioner has filed a rejoinder to the counter mainly stating that though certain documents had been supplied to him, yet the same were not complete and particularly, the digitized map of Hadagarh Sanctuary prepared by Geo Infotech, Bhubaneswar conforming to the notification of the sanctuary, which was the subject matter of the civil suit, was not supplied and instead a copy of the Sanctuary Outline Map on Topo sheet showing the same boundary of sanctuary as per proclamation made by DFO was supplied, wherein the de-reservation of forest area was not depicted. It is further stated that the information upon which the article of charges is proved, are not grave but the petitioner has been slapped with a major penalty. It is finally submitted

that neither the Enquiring Officer nor the disciplinary authority have taken into consideration the fact that the petitioner was unable to defend himself properly in the enquiry for want of relevant documents.

5. Heard Mr. T.K. Patnaik, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel.

6. It is forcefully argued by Mr. Patnaik that the enquiry in question was held is complete violation of the principles of natural justice as the relevant documents, basing on which the charges were framed, were never supplied to the petitioner. Since the crux of the dispute relates to alleged giving of false deposition by the petitioner before the Civil Court as also submission of the wrong map of the Hadagarh sanctuary it was incumbent upon the Enquiring Officer to ensure that the concerned maps and other documents defining the area of the sanctuary ought to have been supplied to the petitioner. In the absence of such documents, the petitioner was not able to defend himself. It is contended by Mr. Patnaik

that even the Enquiring Officer himself wrote to the Marshaling Officer to submit the documents, but even though the documents specifically sought for by the petitioner were not supplied to him, the enquiry was held and the petitioner was found guilty. Since the principles of natural justice as enshrined under Rule-15 of the OCS (CCA) Rules, 1962 have been given a complete go bye, the entire proceeding, according to Mr. Patnaik, is rendered a nullity in the eye of law. In this context, Mr. Patnaik has relied upon a decision of this Court in the case of **Narottam Pati vs. North Eastern Supply Company**, reported in 2017 (Supp.I) OLR-479. Mr. Patnaik also argued that even otherwise the impugned order inflicting major penalty on the petitioner is bad in law as no reason has been ascribed by the disciplinary authority despite disagreeing with the punishment proposed by the Enquiring Officer.

7. Per contra, Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State has contended that all the relevant documents have been supplied to the petitioner,

which would be evident from a bare reading of the enquiry report itself. The petitioner, according to Mr. Panigrahi, could have submitted his written statement on the basis of the documents so supplied, but instead of doing so, he chose to submit repeated representations, evidently to scuttle the enquiry proceeding. Mr. Panigrahi further argues that the enquiry was held with due deference to the principles of natural justice giving full opportunity to the petitioner to defend himself. As regards the impugned order, it is submitted by Mr. Panigrahi that the disciplinary authority has clearly mentioned in the impugned order the reasons why he chose to differ from the penalty proposed by the Enquiring Officer and therefore, the ground raised by the petitioner is not tenable.

8. Before delving into the merits of the rival contentions as noted above, it would be relevant to refer to Rule-15 of the OCS(CCA) Rules, sub-Rule(3) of which reads as under:

“15. Procedure for imposing penalties –

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(3) The Government servant shall for the purpose

of preparing his defence, be supplied with all the records on which the allegations are based. He shall also be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against interest of the public to allow him access thereto.”

From a bare reading of the above provision, it is clear that all records on which the allegations are based, which are required by the Government servant for the purpose of preparing his defence shall be supplied to him. Further, if the records sought for are considered not relevant for the purpose or it is against interest of the public to allow him to access thereto, permission may be refused for reasons to be recorded in writing.

9. Coming to the facts of the case, it is seen that the petitioner, after issuance of the memorandum containing the imputation of misconduct and article of charges, repeatedly requested the concerned authorities to submit the relevant documents, the list of which has been enclosed to one of his representations dated 05.02.2011 (Annexure-2). It further transpires that some documents as listed in his representation were supplied

to the petitioner but vide letter dated 21.01.2012 enclosed as Annexure-3, the petitioner stated that certain wrong documents had been sent, which he returned with request to supply him the correct documents as per serial nos.6, 33, 41, 43 and 45 of his representation dated 05.02.2011. The petitioner further claims that the map vide serial no. 33 of the said representation was not given but was clubbed with serial no. 41. In so far as the map is concerned, which appears to be vital to the case of the petitioner, is a not final map said to have been prepared by M/s. Geo Infotech, Bhubaneswar apparently at the instance of the Government, but the same was not supplied. The Enquiring Officer vide letter under Annexure-8 also requested the D.F.O., Keonjhar (Wild Life) Division to supply the required documents to the petitioner to enable him to submit the written statement.

10. From the above narration it appears that the petitioner wanted several documents for preparation of his written statement, out of which some were supplied leaving out the rest. Such contention of the petitioner has

not been controverted in any manner by the opposite parties. If according to the concerned authorities, the documents sought for by the petitioner were not relevant or against interest of the public to allow him access thereto, such fact ought to have been duly communicated to him and even stated so in the counter affidavit filed by the opposite party no.1. The assertions made in the writ petition relating to non-supply of documents have simply been denied and even the letter written by the Enquiring Officer to the Marshalling Officer has been denied in a manner to suggest that no such letter was ever written. That apart, it is simply stated that all the documents were supplied even though the petitioner had specifically listed as many as 56 documents in his representation enclosed as Annexure-2 to the writ petition. The counter affidavit does not contain any positive assertion that all the 56 documents had been supplied to the petitioner. It is stated at the cost of repetition that if some out of the 56 documents were supplied and others were not, then the reasons for non-supply of the same has also not been

stated. As regards the map at serial no. 33, nothing is forthcoming from the side of the opposite parties as to if the same was supplied or if not, the reason for its non-supply. This Court therefore, finds that the petitioner, being deprived of the relevant documents was unable to submit his written statement of defence, which is a violation of the principle of natural justice underlying the specific provision under sub-rule(3) of Rule-15 of the OCS (CCA) Rules for which the enquiry proceeding is liable to be held as vitiated.

11. As has already been discussed hereinbefore, the Enquiring Officer, after rendering a finding of guilt against the petitioner proposed imposition of the punishment of stoppage of two annual increments with cumulative effect and censure. The disciplinary authority however, did not accept the recommendation of the Enquiring Officer and imposed higher penalties, namely withholding of three increments with cumulative effect and withholding promotion for next three years. In this context, Rule-15(10)(i)(b) are relevant and is quoted

hereinbelow.

“(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 Enquiring 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 :

Provided that in every case in which it is necessary to consult the Commission under the provision of the Constitution of India and the Odisha Public Service Commission (Limitation of Functions) Regulation, 1989 the record of Inquiry together with a copy of the notice given under Sub-clause (a) and the representation if any, received within the specified time in response to such notice shall be forwarded by the disciplinary authority to the Commission for its advice.”

(Emphasis supplied)

Admittedly, the penalty of withholding of three increments with cumulative effect is a major penalty. It was therefore, incumbent upon the disciplinary authority to cite specific reasons for disagreeing with the recommendations of the Enquiring Officer with regard to the punishment to be inflicted. In the instant case, it is simply stated by the disciplinary authority that considering the serious matter of misconduct, the

competent authority disagreed with the penalty suggested by the I.O. as it is too lenient.

12. It goes without saying that the penalty imposed on a Government servant must be commensurate to the charges proved against him and therefore, it is the bounden duty of the disciplinary authority to examine such aspect and indicate specifically as to why it is deemed proper to differ from penalty proposed by the Enquiring Officer. Simply by stating that the misconduct is serious or that the penalty suggested is too lenient cannot satisfy the requirement of the Rule quoted hereinbefore. Even otherwise, it is the settled principle of law that recording of reasons by the concerned authority would enable the Court to examine as to what had weighed upon its mind while passing the order in question and so decide whether the same is correct or not.

The obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with judicial power. The

above view was taken by the apex Court in the case of **Travancore Rayons Ltd. vs. The Union of India**, reported in AIR 1974 SC 862.

Further, in **S.N. Mukherjee vs. Union of India** reported in (1990)4 SCC 549, the apex Court held that the requirement to record reasons can be regarded as one of the principles of natural justice, which governs exercise of power by administrative authorities.

Both the cases as above have also been relied upon by this Court in the case of **Narottam Pati (supra)** relied upon by the petitioner involving somewhat similar facts as the present case.

13. For the forgoing reasons therefore, this Court is persuaded to hold that the disciplinary proceeding initiated against the petitioner, culminating in a finding of guilt having been conducted in gross violation of the principles of natural justice, as enshrined under Rule 15(3) of the OCS(CCA) Rules, 1962 stands vitiated. Further, the impugned order imposing penalty by the

disciplinary authority being devoid of reasons is also rendered unsustainable in the eye of law. Consequently, the impugned order under Annexure-12 is hereby quashed.

14. The writ petition is thus, allowed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 15th March, 2021/ A.K. Rana