

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.3199 OF 2016

Jiban Prakash Nayak

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

06.09.2022

Order No

4.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. M. Basu, learned counsel for the Petitioner and Mr. Y.S.P. Babu, learned A.G.A.

3. The present writ petition has been filed by the petitioner challenging the order of punishment issued vide order dated 26.3.2016 by the Disciplinary Authority under Annexure-9 and the confirmation of the same by the Appellate Authority vide order dated 30.8.2016 under Annexure-11.

4. The main contention of the petitioner in this writ petition is that the Departmental proceeding was initiated solely basing on the joint enquiry report of the ITDA, Th. Rampur, Kalahandi and D.W.O, Kalahandi submitted vide letter No.1151 dated 27.9.2012. The said fact is also evident from the memorandum of charges under Annexure-2. It is also submitted that the said joint enquiry report dated 27.9.2012 was to be proved by the D.W.O, Kalahandi. It is accordingly submitted that since the

proceeding was initiated basing on the said joint enquiry report dated 27.9.2012, the enquiry officer during conduct of the enquiry should have taken into consideration that report by examining the D.W.O, Kalahandi. Accordingly, it is submitted that since the enquiry office never take into consideration the report nor D.W.O, Kalahandi was examined, the conduct of the enquiry and the report submitted by him under Annexure-5 is vitiated. It is submitted that in absence of such action taken by the enquiry officer, the petitioner should not have been found guilty of the charges and the order of punishment should not have been imposed on him vide impugned order under Annexure-9. Mr. Basu, learned counsel for the petitioner in support of his aforesaid submission relied on a decision of this Court reported in **2021 (1) OLR 555**. In the said reported decision, this Court in para 9 held as follows:

“9. It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The original of this rule is traceable to the decision in Taylor v. Taylor, (1875) 1 Ch D 426, which was followed by Lrd Roche in Nazir Ahmad v. King Emperor, 63 Ind App 372 : AIR 1936 PC 253 stgated as under:-
“where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

The same view has also been taken by the apex Court in Babu Verghese and others v. Bar Council of Kerala & Others., AIR 1999 SC 1281 at page 1288.

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In view of detailed procedure envisaged under Rule-15 of the OCS (CCA) Rules, 1962, if the same has not been followed in letter and spirit as to the law discussed above, any action taken in violation of such rules cannot sustain in the eye of law.”

5. Mr. Basu, learned counsel for the petitioner accordingly submitted that since the very basis, basing on which the proceeding was initiated i.e. the joint enquiry report was never taken into consideration either by the enquiry officer or by the Disciplinary Authority and by appellate authority, the order of punishment passed against him in Annexure-9 and confirmation of the same by the appellate authority in Annexure-11 needs interference of this Court.

6. Even though notice of the writ petition was issued on 29.9.2016, but no counter affidavit has been filed by the State-Opp. Parties. But Mr. Y.S.P Babu, learned A.G.A made his submission basing on the materials available on record. It is submitted that the grounds raised by the petitioner during hearing of this case was never taken by the petitioner either before the Disciplinary authority while submitting his reply to the first show-cause as well as in the memo of appeal filed against the order of punishment under Annexure-10. Accordingly, Mr. Babu submitted that the said ground cannot be raised by the petitioner at this stage. Mr. Babu, learned A.G.A accordingly submitted that the order of punishment has been rightly passed and no interference is called for.

7. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that the proceeding was initiated against the petitioner solely basing on the joint enquiry report dated 27.9.2012 and the said document was to be proved with examination of the D.W.O, Kalahandi. This Court after going through the enquiry report, nowhere finds that the said joint enquiry report has been taken into consideration with examination of the D.W.O, Kalahandi. This Court therefore holds that there is material irregularity on the part of the enquiry officer in conducting the enquiry and submitting the report. The said fact was not considered either by the disciplinary authority or by the appellate authority while dealing with the matter. Therefore, this Court is of the opinion that the order of punishment has been passed in a mechanical manner and without considering the joint enquiry report by examining the witness. Hence, this Court is inclined to quash the order at Annexures-9 & 11. While quashing the same, this Court remits the matter to the Disciplinary Authority-Opp. Party No.2 with a direction to start the proceeding from the stage of enquiry. Since the proceeding has been initiated in the year 2012, this Court directs Opp. Party No.2 to conclude the proceeding by following the provisions of OCS (CCA) Rules, 1962 within a period of eight months from the date of receipt of this order.

8. The Writ Petition is disposed of with the aforesaid observation.

(Biraja Prasanna Satapathy)
Judge

sangita

