

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) Nos.2231 & 2232 of 2014

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

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WPC(OAC) No.2231 of 2014

Sri Rabinarayan Bhoi **Petitioners**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioners : M/s.S.K.Ojha, S.K.Nayak,
M/s. S.K.Mishra, S.Rath,
T.K.Biswa, & S.K.Lenka.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

WPC(OAC) No.2232 of 2014

Khiranchi Narayan Das **Petitioners**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioners : M/s.S.K.Ojha, S.K.Nayak,
M/s. S.K.Mishra, S.Rath,
T.K.Biswa, & S.K.Lenka.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:05.05.2022 and Date of Order: 08.07.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Since issue involved in both the cases is identical and the challenge made in the writ petitions are also similar, both the matters are heard analogously and disposed of vide the present order.
3. Heard Mr. S.K.Ojha, learned counsel for the Petitioners and Mr. N.K.Praharaj, learned counsel for the State-Opposite Parties in both the cases.
3. Both the Writ Petitions have been filed challenging the order of punishment passed by the Opposite Party No.1 on 12.09.2014 vide Annexure-8 with a direction to stop two annual increments with cumulative effect.
4. It is submitted that the Petitioners while working as Senior Telephone Operators in the establishment of Opposite Party No.2, the proceeding was initiated against both the Petitioners on 27.02.2006 under Annexure-2-Series.
5. It is submitted that both the Petitioners though submitted their written statement of defence on 28.03.2006 under Annexure-3 and the Enquiry Officer was appointed vide order dated 11.07.2007, but the proceeding when was not concluded, the Petitioners approached the learned Tribunal in O.A. Nos.2819 and 2820 of 2013 respectively.
6. It is submitted that learned Tribunal in both the cases passed the orders with a direction on the Opposite Party

No.2 to conclude the proceeding within a period of eight months.

7. It is submitted that subsequent to the said order passed by the learned Tribunal, the Disciplinary Authority appointed an Enquiry Officer on 20.06.2013 and the said Enquiry Officer proceeded with submission of the enquiry report on 20.06.2014 under Annexure-4-Series.

8. Mr. Ojha, learned counsel for the Petitioners submitted that the Enquiry Officer in his report dated 20.06.2014 recommended for imposition of any of the minor penalty as specified in Clause-(i) to (v) of Rule-13 of the OCS (CCA) Rules, 1962. At this point of time, Mr. Ojha, learned counsel for the Petitioners submitted that in the proceeding initiated vide Annexure-2, charges were framed with submission of the Article of Charges. As revealed from the same, the following charges were framed against both the Petitioners:-

“ARTICLE OF CHARGES

Shri Rabinarayan Bhoi, Telephone Operator, State Guest House and Shri Khiranchinarayan Das, Telephone Operator, State Guest House are charged with negligence in duty leading to loss of Government property.

That while they were operating the EPABX system of State Guest House as Telephone Operator jointly on shift basis, three sophisticated cards (TGO, SPC & TIC) costing to Rs.45,100/- (Rupees forty five thousand and one hundred) approximately, were found stolen somewhere between the period from 18.10.1997 to 28.10.2003. Neither did they take any step to prevent this loss nor reported it to Manager, State Guest House. This pecuniary loss to Government is due to their gross negligence in duty for which they are jointly responsible. Hence they violated the provisions of Rule 3 of Orissa Government Servant's Conduct Rule”.

9. It is also submitted that the alleged charges relates to loss of an amount of Rs.45,100/- towards stolen of three

nos. of sophisticated cards i.e. TGO, SPC & TIC within the period from 18.10.1997 to 28.10.2003.

10. Mr. Ojha submitted that both the Petitioners were not in charge of the said EPABX system of the State Guest House as they assumed the charge subsequent to the period i.e. 18.10.1997 to 28.10.2003.

11. It is also submitted that out of those three cards two cards were taken by the service provider in charge of the said EPABX i.e. Bbenztab & Bizetis Inc on 18.09.1998. The said fact is also reflected in the document annexed by the Petitioners to the rejoinder affidavit filed by the Petitioners.

12. It is also submitted that the present Petitioners took over the charge beyond the period as indicated hereinabove. The Petitioners in W.P.(C) No.2231 of 2014 took over the charge of EPABX system on 30.04.2005 from one Bhagabata Prasad Mohanty and while taking such charge, the three cards in question were never taken charge of by the present Petitioners. The said fact is also reflected in the communication dated 30.04.2005 and charge hand over document dated 16.05.2005 annexed to the rejoinder affidavit. The stand that out of three cards two cards i.e. SP Card and TIC card were taken by the earlier operator is also reflected in the information provided by the Opposite Party No.2 as annexed to the rejoinder affidavit.

13. Taking everything into account and the stand of the Petitioners that out of the three cards two cards were not there when the Petitioners took charge of the EPABX system, the Enquiry Officer submitted the enquiry report on 20.06.2014 indicating the same.

14. Para-6 & 7 of the said report is quoted hereunder:-

“6. My findings on the charges is as follows:-

In the statement of Sri Khiranchi Narayan Das, Telephone Operator, the D.O. dated 23.04.2014 be stated that even after expiry of A.M.C period of EPABX system Bbenztab & bizetis Inc was maintaining the system for the period from 01.02.2003 to 30.09.2003 and had charged Rs./1,92,027/- which was not accepted for payment. In his written statement of defence he earlier stated that the cards in question were taken by the said firm. He also stated that the firm was not asked to return the cards taken by it by the State Guest House.

In the statement of Sri Rabi Narayan Bhoi, Telephone Operator the D.O. dt.07.05.2014 he also stated the same thing. He stated that the A.M.C of EPABX was executed with a new company i.e. Mycorsys Infotech w.e.f. 28.10.2003. He look over the charge of Telephone Operator with effect from 16.05.2005 and from the office Almirah he found a receipt dt. 18.09.1998 which revealed that out of the three cards in question the previous firm Bbenzfab and Bizetis Inc had received one S.P. Card and one TIC card for repairing.

The original receipt of Bbenzfab and Bizetis Inc was examined which proved the firm had taken on S.P. Card and one TIC card for repairing on 18.09.1998. Since the original receipt is available in the State Guest House it is apprehended that the firm has not returned the cards taken for repairing.

As regards the charges for not reporting to Manager, State Guest House about the loss of the cards both the D.Os in their statement of defence have stated that Sri Pradip Kumar Mohanty the then Sr. Telephone Operator was in overall charge of the EPABX system.

In the statement recorded by the Marshalling Officer Sri Pradip Kumar Mohanty, Ex-Telephone Operator (Rtd.) tol that he had not taken charge from anybody and all the keys of EPABX system were with the company.

7. In view of the aforesaid finds it is concluded that the firm Bbenzatab & bizetis Inc had taken this cards i.e. one S.P.C card and one TIC card for repairing where about of the other T.G.P card costing Rs.7000/- is not ascertained.

Since, the D.Os are working as Telephone Operator they were supposed to know about function of the EPABX system and missing of the cards.

It is therefore recommended for imposition of any of the minor penalties on the D.Os specified in clauses (i) to (iv) of Rule 13 of the OCS (CC&A) Rules, 1962”.

15. Mr. Ojha, further submitted that since the Petitioners in both the cases were no way involved with regard to missing of three cards, the Petitioners on being communicated with the enquiry report along with 1st show cause submitted their reply with a prayer to exonerate them from the charges and not to impose the minor penalty as proposed by the Enquiry Officer. But it is submitted that the Disciplinary Authority without proper appreciation of the stand taken by the Petitioners issued the second show cause notice on 19.08.2014 by proposing punishment of stoppage of two annual increments with cumulative effect.

16. Mr. Ojha, submitted that along with second show cause notice dated 19.08.2014 though the Disciplinary Authority encroached the disagreement note, but the said disagreement note cannot be treated as such as the same does not contain the reason of such disagreement and the finding of the Disciplinary Authority. In support of such submission, Mr. Ojha learned counsel for the Petitioners relied on the decisions of the Hon'ble Apex Court reported in **(2013) 2 SCC (L & S) 673**.

In Paragraph-8 of the said judgment it is held as follows:-

“8. Aggrieved, the respondent-Bank preferred LPA before the Division Bench which has been allowed taking a view that as the punishment had been imposed prior to the date of judgment in *ECIL v. B.Karunakar* i.e. 20.11.1990, and as there was no requirement of issuing a second show-cause notice before the punishment was imposed, the question of serving the copy of the reasons recorded for disagreement of the delinquent would not arise. Hence, this appeal”.

17. It is also submitted that while issuing the second show cause, the Disciplinary Authority since with pre-

occupation proposed the punishment of stoppage of two annual increments with cumulative effect the said action of the Disciplinary Authority is also contrary to the view of the Hon'ble Apex Court reported in **(2006) 12 SCC 33** and the decision of this Court reported in **2012(I) ILR-CUT-677**.

18. Mr. Ojha further submitted that since the Disciplinary Proceeding was kept pending for around eight years, the said punishment in disposing the proceeding is also contrary to the decision of the Hon'ble Apex Court in the case of ***Prem Nath Bali vs. Registrar, High Court of Delhi & Another*** reported in **(2015) 16 SCC 415**.

19. It is further submitted on receipt of the second show cause, the Petitioners once again submitted their replies indicating therein that they were not in charge of the system when the alleged missing of the three nos. of cards took place during the period 18.09.1998 to 30.09.2003. The said missing cards were also not taken over by the Petitioners when they took charge of the system in the year 2005. But it is submitted that the Disciplinary Authority without proper appreciation of the stand and the finding of the Enquiry Officer passed the impugned order of punishment vide order dated 12.09.2014 under Annexure-8 directing stoppage of two annual increments with cumulative effect.

20. Mr. Ojha accordingly prayed that the said order for punishment having been passed without proper appreciation of the materials available on record and the decisions as cited (supra), needs interference of this Court.

21. Mr. Praharaj, learned Standing Counsel for the State made his submission relying on the stand taken in the

counter. It is submitted that since the Petitioners were afforded reasonable opportunity to defend their cases by the Disciplinary Authority and the proceeding against the Petitioners having been completed strictly in accordance with the provisions contained under Rule-15 of the OCS (CC&A) Rules, 1962, no illegality can be found with the order passed by the Disciplinary Authority under Annexure-8.

22. It is also submitted that with regard to the scope of review on the question of punishment, the power of this Court is very limited. Accordingly, it is prayed that no interference is called for by this Court.

23. Heard learned counsel for the Parties at length.

24. Perused the materials available on record. From the pleadings made and the documents available, it is apparent that by the time the three cards were found missing in the system, the Petitioners were not in charge of the said system. The said fact is also reflected in the finding of the Enquiry Officer. Not only that in the documents annexed to the rejoinder affidavit, it is also evident that out of three cards two cards were taken by the previous company who was in charge of the maintenance of the system on 18.09.1998. But those facts were not taken into consideration by the Disciplinary Authority while issuing the second show cause and imposing the order of punishment finally vide order dated 12.09.2014 under Annexure-8. From the pleadings made, it is also evident that the disagreement note issued along with second show case cannot be held to a disagreement note as no reason has been assigned in the said note nor any finding has been given by the Disciplinary Authority for such

disagreement. Therefore, the said action comes within the purview of the decision of the Hon'ble Apex Court reported in **(2013) 2 SCC (L & S) 673**. In the reply filed to the rejoinder, the Opposite Parties also submitted that an amount of Rs.9,455/- has been recovered from the previous company for the said missing of two cards. With regard to the stand taken by the learned State Counsel regarding power of judicial review, this Court find that the Disciplinary Authority has not applied its mind while dealing with the matter and the punishment imposed vide the impugned order is not in consonance with the charges framed and the Court has got the power of review in view of the decision reported in **AIR 1984 SC 1182**, and **AIR 1967 SC 295** as well as **AIR 2003 SC 1843**.

25. Since this Court finds that the Petitioners have no role with the alleged missing of three cards, the order of punishment passed against them vide the impugned order dated 12.09.2014 under Annexure-8 cannot sustain legal scrutiny. Accordingly, while quashing the said order, this Court directs the Opposite Parties to sanction and release all the financial benefits as due and admissible in favour of the Petitioners within a period of three months from the date of receipt of this order.

27. With the aforesaid observations and directions, both the Writ Petitions are disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 8th of June, 2022/Subrat