

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OA) No.1491 of 2014

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Manoranjan Dash *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Sameer Kumar Das, Adv.*
Mr. P.K. Behera, Adv.
Mr. N. Jena

-versus-

For Opp. Parties : *Mr. Ramanath Acharya, SC*
(for S & ME Deptt.)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-22.06.2022

DATE OF JUDGMENT:-26.09.2022

Dr. S.K. Panigrahi, J.

1. The Petitioner in the present Writ Petition seeks quashing of the disciplinary proceeding dated 31.01.2012 under Annexure-9 as well as notice of show cause dated 03.07.2014 under Annexure-12 as to why the Petitioner shall not be dismissed from service though the proceedings in the criminal case and the proceedings in the disciplinary matter are on the same set of facts and same set of charges. After

acquittal in the criminal case vide judgment dated 28.07.2010 passed by the learned S.D.J.M., Puri in G.R. Case No.1057/2000/T.R. No.1934 of 2003, the initiation of the departmental proceeding after lapse of 2 years, is unreasonable, non-application of mind, arbitrary, mala fide and liable to be quashed.

2. Initiation of the disciplinary proceeding prima facie not under Rule 15 of the OCS (CHA) Rules, 1962. Hence the proceeding under initiated as set out in Annexure- 9 is liable to be quashed. It is also alleged that the proceedings have been conducted by the Inquiry Officer as per the spirit of Rule 15. No witness was examined and no document was exhibited to substantiate the charges. But in the notice of show cause dated 3.7.2014 was issued even though there is no evidence. It is premeditated plan to dismiss the Petitioner from Govt. service. Hence, the Disciplinary Proceedings under Anx.9 and the notice of Show Cause under Annexure- 19 are liable to be quashed. An OA was filed before the Odisha Administrative Tribunal (hereinafter referred to as the "OAT" for brevity) which has been transferred to this Court after the abolition of the OAT.

I. FACTS OF THE CASE

3. The Petitioner is a Government servant and holder of a civil post now continuing under suspension under the Opposite Parties.

The Petitioner was appointed as a Script Writer vide letter No.1614 dated 28.10.1986 of the State Council of Education, Research and Training (SCERT) and joined vide order No.1987 dt.9.12.86 in the said Council. While the Petitioner was continuing as script writer under the SCERT, Bhubaneswar, he was deputed to State Institute of Educational Technology (SIET), Odisha, Bhubaneswar.

4. While continuing as Script writer in the State Institute of Educational Technology (SIET), Bhubaneswar, he was placed under suspension vide office order No.2902 dated 18.9.2000 issued by the Director SIET, Odisha, Bhubaneswar. However, pending drawal of charges and proceedings, the Petitioner was paid subsistence allowance during suspension period. While continuing in suspension under the SIET, Odisha, Bhubaneswar which was an autonomous organisation under the Government of Odisha, the State Government had taken a policy decision for abolition of the State Institute of Educational Technology (SIET) and decided that the employees of SIET shall be absorbed in different departments/Directorates as per the vacancies vide Resolution No.8327/SME dated 29.3.2012.
5. Accordingly, the Petitioner was absorbed in the Directorate of Elementary Education as per letter No.12150/SME dated 9th May, 2012 issued by the School & Mass Education Department. He was absorbed in the said post of Statistical Asst. in the

Directorate of Elementary Education, Odisha. In the meantime, he made representation for allowing him 75% subsistence allowance with effect from 01.06.2002 but the Administrative Officer, SIET, Odisha sought for an opinion of the Public Prosecutor, Puri in respect of status of the Criminal case instituted against the Petitioner. He was later allowed to draw subsistence allowance @ 75% of his pay with effect from 01.06.2002 by the Director, SIET, Odisha vide 0.0.No.1304 dated 29.6.2002.

6. The aforesaid suspension was due to the fact that a Police case at Sea Beach Police Station was instituted against the Petitioner under the Immoral Traffic Prevention Act (IPT Act) on 3.9.2000 and a G.R. Case No.1057/2000 was registered which was subsequently registered as T.R.NO.1934/2003. In connection with the said case, the Petitioner was arrested on 4.9.2000 and he was released on bail on 18.9.2000. After the completion of trial of the criminal case, the Petitioner was acquitted vide judgement dated 28.7.2010 passed by the learned SDJM, Puri.
7. The Petitioner has been continuing under suspension since 1.9.2000 for about 14 years even after his acquittal in the criminal case. He made representation for his reinstatement before the authority on 10.8.2010 and 18.02.2013 but the Opposite parties have not considered the case of the Petitioner.

Resultantly, the Petitioner is still continuing under suspension with effect from 01.09.2000.

8. In fact, after the lapse of two years of acquittal in the criminal case, a disciplinary proceeding vide No.70 dated 31.01.2012 was initiated by the Director, SIET, Odisha, Bhubaneswar on the same set of facts and charges as in the criminal case. The Petitioner has submitted his explanation/reply on 14.02.2012 denying the charges. An enquiry Officer was appointed vide letter dated 31.03.2012 Memo No.348 of the Director, SIET, Bhubaneswar. The said disciplinary proceedings has not been concluded till date. When the Petitioner is not found guilty of the offences and he was acquitted in the criminal case, subsequent disciplinary proceedings based on the same set of facts and charges, not tenable in the eye of law.
9. After the Inquiry officer was appointed on 31.03.2012, the Petitioner was informed by the Marshalling Officer that Inquiry shall be conducted on 30.06.2012 and accordingly the Petitioner joined the inquiry on 30.6.2012. The Inquiry Officer only conducted the inquiry on 30.06.2012 in one day and completed the inquiry without following the procedure laid down in Rule 15 of the OCS (CCA) Rules, 1962. The Marshalling Officer has not produced any witnesses to substantiate the charges against the Petitioner. No document was produced before the Inquiry Officer and no document has been exhibited before the I.O. on

30.06.2012 where the Petitioner was present. Hence the proceeding is based on no evidence. Surprisingly, some of the documents which are referred in the inquiry report had not been filed on 30.06.2012 before the Inquiry Officer. Hence, the proceeding is liable to be quashed. The Inquiry Officer has given his findings based on the fact of the complaint in the criminal case.

10. In the meantime, the Petitioner, all of a sudden, received a notice vide letter No.14237 dated 03.07.2014 from the Opposite party No.1 calling upon the him to show cause within 20 days as to why the proposed punishment of Dismissal from Government service shall not be imposed. The disciplinary authority has not supplied a copy of the Inquiry report before the notice of show cause was issued and after the Inquiry was concluded. Hence, the he is deprived of making any representation against the findings of the inquiry report of the Inquiry Officer. Non-supply of copy of the inquiry report before issue of show cause and after completion of inquiry, is violative of the principle of natural justice and hit by Art.14 of the Constitution and on that ground only the penalty proposed under Anx.12 is liable be struck down/quashed.
11. On perusal of the disciplinary proceeding dated 31.01.2012 under Anexuer-9, no document and no memo of evidence was supplied. There is no list of witnesses produced to be examined

to substantiate the charges against the Petitioner. In other words, the proceeding/charges dt.31.1.2012 under Annexure-9 was not as per Rule 15 of the OCS (CCA) Rules, 1962. Hence, the charges under Annexure-9 and any subsequent action i.e. notice of show cause under Annexure-12 are liable to be quashed

12. As per Rule 15 (10) (1), it is mandatory on the part of the Govt/Disciplinary authority to supply copy of the Inquiry report against which Petitioner could make an effective representation persuading the disciplinary authority not to pass any orders which will affect adversely to the Petitioner and also for dropping of the proceeding against the Petitioner. But the Petitioner was not given reasonable opportunity for making representation against the findings of the inquiry report which violates the principles of natural justice as well as statutory rules.
13. The charge has been issued by the Director, SIET under whom the Petitioner was working and subsequently absorbed in the Directorate of Elementary Education on May 2012 the Under Secretary to Govt. School and Mass Education Department has issued notice of show cause calling upon the Petitioner why the order of dismissal shall not be imposed against the Petitioner. The Under Secretary or the Govt Respondent No.1 is not the competent authority to issue notice of show cause to the Petitioner. It is the Director Elementary Education who is at

present the disciplinary & Appointing authority and is competent to issue notice of show cause to the Petitioner. The Commissioner-cum Secy. to Govt., School & Mass Education or the Under Secy. to Govt., S & ME Deptt. is not empowered by the Governor to be the Disciplinary authority in this case. The Commissioner-cum-Secretary, S&ME Dept. is not the disciplinary authority as specified in Schedule-A of the OCS(CCA) Rules, 1962. In view of Rule 15 of the OCS (CCA) Rules, 1962, the Under Secy. or the Commissioner-cum-Secy, SSME Dept. has not been empowered to pass any order in a disciplinary proceeding against the Petitioner. Rule 12 (2) provides that the disciplinary authority shall frame definite charges etc. etc. Though the disciplinary authority i.e. Director, SIET has framed charges, but the notice of show cause has been issued by the Under Secretary/Commissioner-cum. Secy., S & ME Deptt. who is not competent to issue notice of show cause for imposition of penalty against the Petitioner. Hence, the issue of notice of show cause itself is bad in law and against the statutory rules for which the show cause notice under Annexure-12 is liable to be quashed.

II. SUBMISSIONS BY THE OPOSITE PARTY NO.1

14. Since the Petitioner was alleged to have been booked under a criminal case by the by the Sea Beach Police, Puri on

03.09.2000 under the Immoral Traffic Prevention Act (IPT ACT) and a G.R. Case No.1057/2000 (which was subsequently registered as T.R. No.1934/2003). He was arrested on 04.09.2000 and was released on bail on 18.09.2000. The State Govt. in the erstwhile P & S Department Memo No.30 dated. 25.02.1963 has clarified that

"xx acquittal of delinquent officer in a criminal case does not ipso facto put up a stop to any proceeding that may contemplate taking against him xx"

15. The Petitioner/Delinquent employee was suspended pending drawal of charges and proceedings with effect from 01.09.2000 vide office order No.2902 dated 18.09.2000. SIET bring an autonomous organization with 100% central assistance was functioning mainly through deputed staff. Govt. of India vide their letter dated 24.11.2004 intimated the State Govt. to recall the deputed staff from the SIET failing which the salary of such persons will not be funded by MHRD (Ministry of Human Resources Deptt.) and finally stopped funding after 31.03.2005. But the State Govt. in S & ME Department have decided to absorb the deputed staff of SIET in Government on reversion vide Resolution No.8327 dtd.29.03.2012. The Petitioner being a deputed staff he was absorbed in the office of the Director, Elementary Education

vide the aforementioned resolution dtd.29.03.2012 as Senior Literate Assistant. Had those deputed employees not been absorbed they would have lost their job as their parent posts were abolished from the TE & SCERT establishment. Despite the facts stated above, Govt. took a lenient view to absorb those deputed employees and placed them in different Departments/Directorates of the State Govt. Accordingly, the Petitioner was placed under Director, Elementary Education, Odisha, Bhubaneswar.

16. The charges of the disciplinary proceeding against the Petitioner was that he was absent from duty with effect from 01.09.2000 as he was involved with some immoral activities and arrested on 02./03.09.2000. He was involved with some illicit affairs with a lady and he was caught raid handed by the police. Mrs. Supriya Mallick, Deputy Director, Elementary Education, Odisha had been appointed as Inquiring Officer and Sri. Deepak Das Lecturer Production and in-charge of Administrative Officer, SIET as Marshalling Officer vide Memo No.348 dated 31.03.2012. The Inquiring Officer submitted her Inquiry Report on 06.07.2012. wherein it is found that Sri Manoranjan Das was caught raid handed along with one girl Supriya Panda of Bhubaneswar in Hotel Derby near Sunar Gouranga, Chakratirtha Road, Puri. The I.O. has recommended to take immediate follow up action for

termination of the Delinquent Officer (Sri Manoranjan Das) from service.

17. The Petitioner had committed a serious crime violating the ethics and conduct of Government servant. He was found with a lady in a Hotel who has been mentioned as an actress by the delinquent during inquiry. Though the Learned SDJM has acquitted him due to failure of prosecution, his involvement in immoral activity is proved beyond doubt. The records available and reported by the Inquiry Officer are sufficient evidence in reflecting the character of the delinquent employee. School and Mass Education Department does not intend to retain the service of the Petitioner because this Department is dealing with children's education.
18. The Inquiry Report was examined by the State Govt. in School and Mass Education Department and it is a major penalty proceeding. The Delinquent Officer was requested to submit his written statement of defense, if any, within 20 (Twenty) days of receipt of the letter vide this Department Letter No.14237 dated 03.07.2014. and in reply the Delinquent Officer completely refused the charges leveled against him due to the reason that he was acquitted from the same charges vide judgment dated 28.07.2010 in TR

No.1934/2003 on the other hand, he has filed a case bearing O.A. No.1492/2004.

19. He further brought to the attention of this Court that the Ld Tribunal in an order dated. 16.07.2014 has passed an order by restraining the Opposite Party to pass final order without leave of the Tribunal. The extracts of the said order is given hereunder.

"Counter be filed by the State respondents within four weeks and rejoinder, if any, be filed by the Petitioner within two weeks thereafter. XX XX

As an interim measure, it is directed that no final order in the disciplinary proceeding be passed without leave of the Tribunal".

In fact, the disciplinary proceeding drawn up against the Delinquent Officer could never be completed unless the interim order passed by the Tribunal was vacated. At this stage challenging the disciplinary proceeding is premature.

20. It would be premature to withhold disciplinary proceeding in the present context relying upon direction of the Apex Court in 66 (1988) C.L.T. 155 (F.B); AIR 1989 Orissa 109 (F.B) Sec. also (1960) 3 S.C.R. 227; AIR 1984 S.C. 626; 1986 (1) S.L.J. 256 (Madras) and ATR 1987 (1) C.A.T. 661 (All). Since the final order has not been passed by the State Respondent on proposed punishment of Petitioner no way prejudiced, it is

only apprehension of Petitioner without giving reply to Annexure-12.

IV. Analysis and Court's Reasoning:

21. The Petitioner has been acquitted in the Criminal case but the Petitioner had committed a serious crime violating the ethics and conduct of a Government servant. The records available and reported by the Inquiry Officer are good evidence in expressing the character of the delinquent employee. School and Mass Education Department does not intend to retain the service of the Petitioner because this Department is dealing with children's education. There may be case of involving moral turpitude/serious offence in which employee has been acquitted due to technical reasons or giving benefit of doubt. The employer is given complete 'discretion' to terminate or otherwise to condone the omission.
22. The acquittal of the Petitioner has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and have different objectives which has been amply echoed in cases of *Samar Bahadur Singh Vs. State of U.P. & Ors.*¹ and *Union of India & Ors. Vs. Sitaram Mishra &*

¹ (2011) 9 SCC 94

*Anr.*². The acquittal in the criminal case would not come to the rescue of the Petitioner. On the other hand, in the departmental proceedings misconduct is yet to be over due to interim order passed by the learned Tribunal.

23. Having gone through the findings recorded by the enquiry officer in the departmental Inquiry and the judgment of acquittal passed by the criminal court, it emerges that as per the cardinal principle of law, an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings. It is a fact that when the punishment is yet to be given by the department, it can't be said that it is shockingly disproportionate or proportionate. The Departmental Proceedings is directed to be complete within a period of three from today. If the Petitioner has retired in the meantime, the authority shall proceed in accordance with law as meted out to a retired employee.
24. In view of the above and for the reasons stated above, the present Writ petition is dismissed. No order as to cost.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 26th September, 2022/B. Jhankar*

² (2019) 20 SCC 588