

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1526 of 2014

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

.....

Kamala Kumari Swain

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.D.K.Panda, G.Sinha, A.
Mishra & P.P.Behera.

For Opp. Parties : Addl. Government Advocate
Mr. R.N. Mishra.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

संस्थानिक न्यायो

Date of Hearing:29.07.2022 and Date of Order: 11.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D.K. Panda, learned counsel for the Petitioner and Mr. R.N.Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following relief:-

“In the above facts and circumstances of the case, it is most humbly prayed that, This Hon’ble Tribunal may be graciously pleased to quash the departmental

proceeding initiated vide letter dated 23.07.2001 (Annexure-1).

And to quash the 2nd show cause letters dated 04.06.2008 (Annexure-3).

And further be pleased to quash the order of punishment dated 04.04.2014 (Annexure-10) as well as the order dated 03.06.2014 (Annexure-11).

And further be pleased to direct the respondents to pay all the retrial benefits.

And / or any order (s) as deemed fit and proper may be passed in the facts and circumstances of the case”.

4. Mr. Panda, learned counsel for the Petitioner submitted that the Petitioner while continuing as an Inspector of Police in the Vigilance Department, a proceeding under Rule-15 of OCS (CCA) Rules, 1962 was initiated against her vide Memorandum dated 23.07.2001. The charge against the petitioner in the said proceeding is quoted hereunder:-

“CHARGE

Smt. Kamala Swain, Ex-Inspector of Police, C.I.D., Crime Branch, Orissa, Cuttack (At present, Inspector of Police Vigilance, Cuttack) is charged with gross dereliction of duty and willful misconduct in that:-

While posted as Inspector of Police, State C.I.D., Crime Branch, Orissa, Cuttack from 1.9.1984 A.M. to 30.06.1995 and while entrusted with the investigation of Salipur P.S. Case No.119, dated 16.04.93 U/s.420/468/471 IPC vide Office Order No.332/CID, dated 24.11.93 consequent upon transfer of the initial I.O., Smt. Shanti Devi on 27.12.93, she had the said criminal case under her investigation till at 8.2.1995, and on her transfer to the Khurda district, when she was ordered to make over the charge of Investigation of the aforesaid case to Shri Mohan Sahoo, she willfully omitted to make over forty three seized documents as per Seizure list dated 16.04.93 despite the directions from the Superintendent of Police, C.I.D., C.B., Orissa, Cuttack and several approaches by the successor I.Os., and only after the lapse of seven months, she handed over eight of them out of the forty three seized documents, at her residence on 30.01.1996 to the then I.O. of the aforesaid case, Shri Prafulla Kumar Jena, in presence of Inspector, Shri U.N.Sahoo, even though she had earlier maintained that none of the said forty three seized documents

had ever been made over to her either by the initial I.O., Smt. Shanti Devi, or by Inspector, Shri U.N. Sahoo who had made the seizure thereof, and thereby thwarting forever the investigation of the said important criminal case, to the advantage of the accused and to the detriment of public interest”.

5. It is submitted that on receipt of charges under Annexure-1, the Petitioner submitted her written statement of defence on 01.09.2001.

6. It is further submitted that the enquiry officer after conducting the enquiry submitted a report on 08.04.2003 under Annexure-4. It is submitted that the Enquiry Officer in the said report made the following recommendation:-

“From the above narration and detail examination of the evidence on record of the proceeding, proper analysis of the statements of the PWs, written defence submitted by the charged officer, I am of the opinion that the charge leveled against the charged officer has not been proved. Hence, I held the charged officer (Smt. Kamala Swain, Ex-Woman Inspector of Police, CID, Crime Branch, Orissa, Cuttack now Inspector of Police, Special Branch) not guilty of the charge and submitted my findings”.

7. It is submitted that even though the Enquiry Officer in his report held that the charges against the Petitioner is not proved and accordingly recommended not to held the petitioner guilty of the charges, but the disciplinary authority without accepting the same directed for conducting fresh enquiry with examination of certain witnesses.

8. It is submitted that after conducting such fresh enquiry, the Enquiry Officer submitted the second report on 31.12.2003 with the following recommendations:-

“2. The prosecution witnesses examined in this prog. Have not supported the charge except P.W.No.3

Sri U.N. Sahu, Insp. CID, CB. From the statement of the PWs it is established that 43 seized documents have not been handed over by the seizure Insp. U.N.Sahu nor Smt. Shanti Devi, Ex-DSP has ever been received the seized 43 documents. Instead she kept the seizure report only in a trunk which was subsequently handed over to the charged officer. In the above circumstances, when none have established the fact about handing over and taking over of the 43 documents by the charged officer, I am inclined not to proceed further to re-examine the PWs again in the proceeding to arrive at a conclusion. Besides, the prima witness i.e. Smt. Shanti Devi, Ex-DSP, CID, CB who has handed over the charge to the charged officer has since been expired, the continuance of the prog. And to call for the witnesses again to arrive at the same conclusion will have no meaning. The Govt. may kindly peruse the above submissions and may take a decision in the matter.

The prog. Fill drawn up against Smt. Kamala Swain, Ex-Women Insp. of Police, Crime Branch at present Insp. of Police containing 223 pages in correspondence side and 8 pages in Note sheet side are sent herewith for favour of necessary action.

Receipt of the above proceeding file may please be acknowledged”.

9. Mr. Panda, learned counsel for the Petitioner submitted that in spite of such concurrent finding of the Enquiry Officer and after receipt of the report dated 31.12.2003, no further action was taken in the matter.

10. It is submitted that the Opposite Party No.1 instead of providing a copy of the enquiry report so submitted by the Enquiry Officer on 08.04.2003 and 31.12.2003, issued the 1st show cause by proposing punishment of stoppage of one increment with cumulative effect.

11. It is submitted that on receipt of the said show cause, the Petitioner while submitting her reply on 13.02.2007

prayed before the Opposite Party No.1 to provide her the copy of the enquiry report and to conclude the proceeding.

12. It is submitted that without providing the copy of the enquiry report, the Opposite Party No.1 issued the 2nd show cause on 04.06.2008 i.e. after retirement of the petitioner by proposing to impose punishment of reduction of 5% of the pension permanently. On receipt of the said 2nd show cause notice under Annexure-3, the Petitioner on 03.07.2008 moved the said opposite party with a request to supply the enquiry report. It is submitted that the Petitioner was subsequently provided with the said enquiry report on 11.07.2008.

13. It is submitted that thereafter when no further action was taken to conclude the proceeding, the Petitioner approached the learned Tribunal in O.A. No.1801(C) of 2008. Learned Tribunal vide order dated 08.03.2011 disposed of the said original application with a direction on the Opposite Party No.1 to conclude the proceeding within a period of two months from the date of receipt of this order.

14. It is submitted that when the said order was not complied with, the petitioner filed C.P. No.152 (C) of 2012.

15. It is submitted that on receipt of the notice in the said contempt proceeding when Government-Opposite Party No.1 vide his letter dated 21.08.2013 requested the Opposite Party No.2 to pray for some time for implementation of the order dated 8.3.2011, the said opposite party filed M.P No.1294(C) of 2013 with a prayer to allow thirty days time to implement the order dated 8.3.2011. But it is submitted that in the meantime the Petitioner was again issued the 2nd show cause on

29.08.2013 proposing the aforesaid punishment once again i.e. withholding of 5% of pension permanently.

16. Mr. Panda, learned counsel for the Petitioner submitted that on receipt of the 2nd show cause, the petitioner submitted her reply on 02.09.2013.

17. Mr. Panda, submitted that without considering her reply to the 2nd show cause, the Opposite Party No.2 passed the order of punishment on 3.6.2014 under Annexure-11 by directing reduction of 5% of the pension permanently.

18. Mr. Panda further submitted that challenging the such order of punishment, the Petitioner though preferred an appeal, but the appellate authority without applying mind to the petitioner's stand confirmed the said order vide order dated 3.6.2014 under Annexure-11.

19. Mr. Panda accordingly submitted that since the Enquiry Officer in both the enquiry report found the petitioner not guilty of the charges and recommended for exonerating the petitioner from the charges, the disciplinary authority while issuing the 2nd show cause by proposing the punishment to withhold 5% of pension permanently, never gave his disagreement note with regard to not agreeing with the said finding of the enquiry officer.

20. Mr. Panda submitted that since the Opposite Party No.2 while issuing 2nd show cause notice never gave his reason for disagreeing with the finding of the Enquiry Officer, the same cannot sustain legal scrutiny and accordingly the consequential order of punishment passed under Annexure-10 and confirmed by the appellate authority under Annexure-11 are liable to be interfered with by this Court.

21. Mr. Panda in support of the aforesaid submissions relied on the decision of the Hon'ble Apex Court in the case of **Punjab National Bank & Others-vrs- Kunj Behari Misra** reported in (1998) 7 SCC 84 and in the case of **Yoginath D. Baghde-vrs.State of Maharastra & Others** reported in (1999) 7 SCC-739.

22. In **Punjab National Bank & Others-vrs- Kunj Behari Misra** reported in (1998) 7 SCC 84, Hon'ble Apex Court in Paragraph-17 held as follows:-

“These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.”

23. In **Yoginath D. Baghde-vrs.State of Maharastra & Others** reported in (1999) 7 SCC-739, Hon'ble Apex Court in Paragraph-28 held as follows:-

“In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring

Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded".

24. Mr. Panda, learned counsel for the Petitioner in support of his aforesaid submission also relied on a decision of the Hon'ble Apex Court passed on 02.01.2017 in Civil appeal No. 7600 of 2014 and the decision of this Court reported in 2006 Suppl. I OLR 644 and 2006 (II) OLR 172.

25. In Civil Appeal No.7600 of 2014, Hon'ble Apex Court in Para 7 & 8 held as follows:-

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in

appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may

be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”

26. In 2006 (supp. I) OLR 644, Hon’ble Court in Para 17 to 24 held as follows:-

“17. We have perused the inquiry report and found that there is no whisper therein regarding recording of any evidence. It appears that the Inquiring Officer/C.D.I. has only considered the contents of charge sheet and its reply. The explanation submitted by the Petitioner supported by some documents was accepted by him and he submitted his report accordingly. Therefore, the punishing authority has no other option than either to accept the Inquiry report or to reject the same and pass an order of de novo inquiry. It could not

have formed its opinion beyond the record of inquiry proceeding. Therefore, in our opinion, in the instant case the first vital question involved is whether it was proper on the part of the punishing authority to disagree with the findings of the Inquiring Officer without giving any reason and whether the Petitioner could be held guilty in the absence of any material evidence in the inquiry proceeding. We have already quoted the relevant part of the orders passed by the punishing authority and the recommendation made by the Public Service Commission.

18. No doubt, a Commission of Inquiry was set up by the State Government, but the punishment was not based solely and directly on the basis of the report of the Commission of Inquiry. It was based on the departmental proceeding conducted by the Inquiring Officer/C.D.I. When the State Government received the inquiry report in the Disciplinary Proceeding, they had decided to accept the same. But when the P.S.C. sent a different recommendation, the Government changed its view, and decided to impose major penalty, i.e. reduction in rank and treatment of period of suspension as such. However, no reason was given by the State government for doing so. Merely taking a decision to accept the advice of the Commission regarding imposition of major punishment upon the Petitioner could not have relieved the State Government from its responsibility of giving reasons for doing the above, there is specific provision in Rule 15(10)(i)(a)(b) of OCS (CCA) Rules 1962. According to the said Rule, it is mandatory on the part of the Punishing Authority to give reason in case of disagreement with the inquiry report. The said provision is quoted hereinafter.

“15(10)(i)(a)(b) if the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish to the Inquiring Officer and given him notice by registered post or otherwise calling upon him to submit within period of fifteen days such representation as he may wish to make against findings of the Inquiring Authority.

(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 inquiring officer and give him a notice by Registered post r otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representations 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 Orissa 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.”

19. In the instant case, although the Inquiring Officer/C.D.I. did not find the petitioner guilty and specifically held that the charges framed against the petitioner were not proved, but the punishing authority has taken a view contrary to the findings of the Inquiring Officer that the charges leveled against the Petitioner were proved. Therefore, it cannot be said that the punishing authority did not disagree with the inquiry report. It was the own suggestion of the Inquiring Officer, which was beyond the findings that the petitioner did not take extra care and on the basis, recommended the punishment of censure, which could not have been drawn that the conclusion of the Inquiring Officer was that the charges were proved against delinquent officer and as such the same was not in fact a disagreement with the finding of the Inquiring Officer by the punishing authority in imposing major punishment by the impugned order.

20. In the case of Joginath D. Badge v. State of Maharashtra and another reported in (1999) 7 Supreme Court Cases 739 the Apex Court held that:-

“It was open to the Disciplinary Authority either to agree with the findings recorded by the enquiring Authority or disagree with those findings. If it does not agree with the findings of the enquiring Authority, it may record its own findings. Where the Enquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Enquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. So also if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established, there would arise no difficult. Difficulties have arises in all those cases in which the enquiry authority has recorded a positive findings that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.”

21. *In the case of State of Rajasthan . M.C. Saxena reported in A.I.R. 1998 S.C. 1150, the Apex Court has laid down that if the Disciplinary Authority gives reasons for disagreeing with the findings of the Inquiring Officer then the Court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said finding.*

22. *If in the above-mentioned circumstances, the punishing authority has not given any reason for his disagreement with the finding recorded by the Inquiring Officer, it cannot be said that the Petitioner has been afforded an adequate opportunity of hearing, as he was not in a position to explain his case in his representation. Therefore, it can be said without any hesitation the adequate opportunity of hearing was not afforded to the petitioner to defend his case and the impugned punishment order has been passed in violation of principles of natural justice.*

23. *In view of the above mentioned facts and circumstances, we are of the firm view that the impugned order of punishment reducing the petitioner in rank from the post of Excise superintendent to those post of the Deputy Superintendent of Excise is not sustainable in the eye of law and the Tribunal has committed manifest error of law in dismissing the O.A.*

24. *Therefore, the writ Petition is allowed in part and the impugned order of punishment as well as the impugned order passed by the Tribunal in O.A. No.973(C) of 2005 confirming the punishment of reduction in rank are quashed. However, it will be open for the punishing authority to reconsider the matter in the light of the observation made in the body of this Judgment, in accordance with law."*

27. In 2006 (II) OLR 172, Hon'ble Court in Para 4 to 6 held as follows:-

4. We have gone through the impugned judgment of the Tribunal, judgment passed in the earlier O.A., inquiry report and the rules governing the field. Sub-rule 10(ii) of Rule-15, non-compliance of which is alleged by the petitioner, reads as under:

“The orders passed by the disciplinary authority shall be communicated to the Government servant, who shall also be supplied with a copy of the report of inquiring authority and where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority as well as a copy of the advice of the Commission, where the Commission had been consulted, and brief statement of reasons for non-acceptance of the advice of the Commission, if the disciplinary authority has not accepted such advice.”

On perusal of the aforesaid provision, it would be manifest that the Disciplinary Authority shall communicate the delinquent officer a copy of the report of the inquiring authority, the statement of findings together with the reasons for disagreement, if any, with the findings of the inquiring authority. But in the instant case, after the Tribunal's judgment in the earlier O.A., the petitioner submitted his interim comments on 28.07.1997. He was asked to furnish his final comments, if any, vide letter dated 01.11.1997 and he submitted his final comments on 24.12.1997. Thereafter, the punishment order was passed on 19.01.1999 withholding three consecutive increments with cumulative effect. It is worthwhile to mention that in the letter dated 01.11.1997, by which the petitioner was asked to submit his final comments, no reason was ascribed with regard to disagreement from the findings of the Inquiry Officer. Only he was asked to furnish his final comments.

5. The apex Court in Bagde's case (supra) in para 33 of its judgment has held as under:

“In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry

proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the 'right to be heard' would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

6. Admittedly, in the case at hand, the Disciplinary Authority disagreed with the findings of the inquiry authority. But at no point of time, the petitioner was made to know about the reasons for such disagreement. He was also never asked to submit his reply to the proposed disagreement by the disciplinary authority. In other words, the disciplinary authority has taken a final decision that the charges leveled against the petitioner have been proved. The petitioner was only asked to show cause against the punishment, not against the proposed disagreement. The Tribunal has lost sight of the aforesaid fact. Since the disciplinary authority did not give any opportunity of hearing to the petitioner before taking final decision in the matter relating to the disagreement, there has been violation of principle of natural justice. In our considered opinion, the ratio decided in Bagde (supra) is squarely applicable to the present case."

28. Mr. Panda also relied on the decision of this Court rendered on 5.5.2022 in WPC(OAC) No.1884 of 2014, wherein similar issue was dealt with.

29. Making all such submissions, Mr. Panda, prayed for interference of this Court in the matter. Even though notice of the writ petition was issued on 31.07.2014, but no counter has been filed denying the stand of the petitioner as taken in the writ petition. This Court taking into account the non-filing of the counter passed an order on 11.05.2022 with an observation that if no counter is filed by 29.06.2022 then the matter will be decided on its own merit. In spite of that no counter was filed by the State- Opposite Party denying the stand taken by the Petitioner. But Mr. Mishra, learned counsel for the Opposite Parties submitted that since the Petitioner has been provided with

due opportunity in the proceeding with issuance of show cause, no illegality has been committed in inflicting the punishment vide order under Annexure-10 and confirmation of the same vide order under Annexure-11.

30. Heard learned counsel for the Parties.

31. Perused the materials available on record. This Court after going through the same finds that in the proceeding initiated against the Petitioner on 23.07.2001 though the enquiry officer submitted his report initially on 8.4.2003 by holding the petitioner not guilty of the charges, but the disciplinary authority without accepting the said report directed the enquiry officer to conduct a fresh enquiry by examining some witnesses. In terms of that direction, the enquiry officer though conducted a fresh enquiry, but in his report dated 5.5.2004, the Enquiry Officer once again held the Petitioner not guilty of the charges. It is submitted that on receipt of the said report though the Petitioner was initially issued with a show cause by proposing the punishment of stoppage of one increment with cumulative effect, but the enquiry report was never provided to the petitioner. The petitioner though submitted her reply to the said show cause, but without considering that when the 2nd show cause issued on 31.01.2008, the Petitioner had already retired from the service. But even while issuing the 2nd show cause, the petitioner was never provided with the copy of the enquiry report and the same was only supplied to the petitioner on 11.07.2008. This Court further finds that after issuing the 2nd show cause and providing the petitioner to the enquiry report on 11.07.2008 when no action was taken, the Petitioner approached the learned Tribunal in O.A. No.1801(C) of 2008. Learned Tribunal vide

order dated 8.3.2011 though directed the Opposite Party No.2 to conclude the proceeding within a period of two months, but the same was never acted upon and accordingly a contempt proceeding was also filed. In the said contempt proceeding when the Government-Opposite Party No.1 requested the Opposite Party No.2 to pray for 30 days time to comply with the order, MP No.1294(C) of 2019 was filed seeking 30 days time to comply with the order. But in the meantime the Opposite Party No.2 once again issued the 2nd show cause on 29.08.2013 by proposing punishment of withholding 5% of pension permanently. This Court from the said show cause issued on 29.8.2013 under Annexure-8 find that the Opposite Party No.2 while issuing the same has not given any reason for disagreeing with the finding of the enquiry officer. The disciplinary authority only indicated that since he was disagreeing with the finding as the charge officer was not careful in the matter, he is guilty of the charges and accordingly she is to be inflicted with the proposed punishment.

32. From the said show cause, this Court finds that since the Opposite Party No.2 has not given any reason for disagreeing with the finding of the enquiry officer, the said 2nd show cause is a nullity in the eye of law.

33. In view of the decision relied on by Mr. Panda and since no counter affidavit has also been filed by the State-Opposite Parties in spite of several opportunities, this Court has got no other option than to quash the proceeding initiated against the petitioner under Annexure-1 and the order of punishment passed under Annexure-10 and confirmed under Annexure-11. While quashing the said orders, this Court directs the Opposite Parties to sanction

and disburse all service and financial benefits as due and admissible in favour of the Petitioner within a period of four months from the date of receipt of this order.

34. With the aforesaid observations and directions, the WPC(OA) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 11th of August, 2022/Subrat

