

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3046 of 2014

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

.....

Jadav Chandra Dehury

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Soubhagya Das,
R.Sahoo, K.C. Mohapatra,
J.K.Swain.

For Opp. Parties : Addl. Standing Counsel
Mr.M.K. Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 12.04.2022 and Date of Order: 20.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. S.Das, learned counsel for the Petitioner and Mr. Balabantaray, learned Standing Counsel for the State-Opposite Parties.
3. This Writ Petition has been filed by the Petitioner

challenging the order of punishment passed by the Disciplinary Authority / Collector, Angul vide order dated 16.12.2004 under Annexure-5 and the order passed by the appellate authority vide order dated 7.9.2013 under Annexure-7.

4. It is submitted by Mr. Das, learned counsel for the Petitioner that the Petitioner while continuing as a Head Clerk, the proceeding was initiated against him vide Proceeding No.2048 dated 4.9.2000 under Annexure-2.

5. It is submitted that on receipt of the Memorandum of Charges, though the Petitioner submitted a detailed reply under Annexure-3, but the Disciplinary Authority proceeded with the same by appointing the Enquiry Officer and Marshaling Officer.

6. It is submitted by Mr. Das, learned counsel for the Petitioner that in the said proceeding the Enquiry Officer submitted the enquiry report on 24.11.2004 by holding that the Petitioner is to be awarded with the minor punishment.

7. Mr. Das, learned counsel further submitted without providing the Petitioner a copy of the enquiry report with issuance of the first show cause and without issuing any opportunity to the Petitioner, the Disciplinary Authority i.e. Collector, Angul straight away passed the order of punishment vide order under Annexure-5. In the said order, Collector, Angul passed the following orders:-

(i) Two increments without cumulative effect be stopped.

(ii) He should be censured.

8. It is submitted that since the proceeding was initiated under Rule-15 of the OCS (CCA) Rules, 1962, it was incumbent on the part of the Collector to issue a show cause by enclosing the enquiry report to the Petitioner prior to passing the order of punishment under Annexure-5.

9. It is also submitted that challenging the order of punishment passed under Annexure-5, the Petitioner preferred an appeal before the Appellate Authority i.e. R.D.C, Northern Division, Sambalpur. The Appellate Authority in his order dated 7.9.2013 though came to a conclusion that the copy of the enquiry report was never furnished to the Petitioner as provided under Rule-15 (10) of OCS (CCA) Rules, 1962, but ultimately held that since the Petitioner was imposed with minor punishment, the Disciplinary Authority held the supply of enquiry report as not required. Accordingly, the Appellate Authority while dismissing the appeal upheld the order passed by the Disciplinary Authority under Annexure-5 vide order dated 7.9.2013 under Annexure-7.

10. It is contended that since the Appellate Authority came to a conclusion that the Petitioner was never supplied with the copy of the enquiry report with issuance of show cause by the Disciplinary Authority, the Appellate Authority should not have confirmed the order passed by the Disciplinary Authority under Annexure-5.

11. It is also contended that since the Enquiry Officer in his report under Annexure-4 proposed for imposition of minor punishment, the disciplinary authority should not

have passed the order of punishment prior to issuing a show-cause by enclosing the enquiry report.

12. Mr. Balabantaray, learned Standing Counsel for the State-Opposite Parties basing on the counter affidavit submitted that since the Petitioner was imposed with a minor punishment i.e. stoppage of two increments without cumulative effect, no illegality has been committed by the Disciplinary Authority by not providing him with the copy of the enquiry report and the 1st show cause.

13. Accordingly, Mr. Balabantaray submitted that the Disciplinary Authority not only passed the order under Annexure-5 rightly, but the same has been rightly upheld by the Appellate Authority in his order under Annexure-7.

14. Heard learned counsel for the Parties at length. It is not disputed that the Petitioner was proceeded with the proceeding under Rule-15 of the OCS (CCA) Rules, 1962. As provided under Sub-Rule-10 of Rule-15 of the said Rules, the Disciplinary Authority on receipt of the enquiry report is to issue a show cause by enclosing a copy of the enquiry report and afford reasonable opportunity to the Petitioner to give his explanation to the finding of the Enquiry Officer. But in the present case, the Disciplinary Authority after receipt of the enquiry report straight away passed the order under Annexure-5 by imposing punishment. The Appellate Authority while dealing with the matter though came to a conclusion that the Disciplinary Authority as provided under Rule-15(10) of the OCS (CCA) Rules, 1962 never provided the copy of the enquiry report to the Petitioner, but ultimately upheld the order of punishment on the

ground that the Disciplinary Authority since imposed minor punishment, he did not feel it proper to provide the Petitioner with the enquiry report and the first show cause. Therefore, in view of such admitted non-compliance of the provision contained under Sub-Rule-10 of Rule-15 of the OCS (CCA) Rules, 1962, this Court has no hesitation to hold that the Disciplinary Authority passed the order of punishment under Annexure-5 without following the provision of Rule-15 of the OCS (CCA) Rules, 1962.

15. Accordingly, this Court deems it fit and proper to quash the impugned order at Annexure-5 as well as the order passed by the Appellate Authority under Annexure-7. But while quashing both the orders, this Court deems it proper to remand the matter to the Disciplinary Authority to restart the proceeding from the stage of submission of the enquiry report. It is directed that the Disciplinary Authority shall provide a copy of the enquiry report to the Petitioner with issuance of first show cause and after following the provision contained under Rule-15 of the OCS (CCA) Rules, 1962, the Disciplinary Authority shall decide the matter afresh. It is further directed that since this Court is remanding the matter to the Disciplinary Authority for fresh adjudication and the Petitioner being a retired employee having been superannuated since long, the Opposite Parties are directed to sanction and disburse the retirement benefits of the Petitioner as due and admissible within a period of three months from today.

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

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 20th of April, 2022/Subrat

