

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC (OAC) No.1532 of 2016

Suresh Chandra Behera

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

21.9.2022

Order No

2. 1. This matter is taken up through Hybrid Mode.

2. Heard Mr. Dr. J.K. Lenka, learned counsel for the petitioner and Mr. B. Panigrahi, learned A.S.C

3. The present writ petition has been filed challenging the office order dated 18.8.2016 passed by Opp. Party No.1 under Annexure-13 wherein while not accepting the enquiry report submitted by the Enquiry Officer on 7.12.2015 under Annexure-9, the said Opp. party has directed the Commissioner for Departmental enquiry to cause fresh enquiry with regard to the charges framed against the petitioner in a proceeding initiated on 27.4.2015 under Annexure-6. Mr. Lenka, learned counsel for the petitioner submitted that after receipt of the charges in the proceeding initiated on 27.4.2015 under Annexure-6, the petitioner submitted his reply and he participated in the enquiry. It is submitted that after completion of the enquiry, the enquiry officer submitted the enquiry report vide Annexure-9 on 7.12.2015 with the following observation.

Above all, it is recommended that the charges leveled against Sri S.C. Behera could not be established and he may be exonerated in the case and also warned to stop financial transaction with the Chit Fund M/s. Astha Goat Farming India Pvt. Ltd. and with other Chit Fund in future. He may be re-instated in service.

4. It is further submitted that on receipt of the enquiry report, the petitioner was issued with the first show-cause notice under Annexure-10 on 16.12.2015 and the petitioner also submitted his reply to the said enquiry report on 18.12.2015 under Annexure-11. It is submitted that the disciplinary authority-opp. party No.1 instead of proceeding further in accordance with the provision contained under Rule 15 of the OCS (CCA) Rule, 1962 passed the impugned order with a direction to cause fresh enquiry by the Commissioner for Departmental Enquiries. Mr. Lenka, learned counsel for the petitioner submitted that the said action is not permissible and not provided under the OCS(CCA) Rules, 1962. It is also submitted that the said action of opp. party No.1 in directing for a fresh enquiry through another agency is contrary to the decision of the Hon'ble Apex Court reported in the case of **K.R. Deb Vs. Collector of Central Excise**. Hon'ble Apex Court in the said decision has held as follows:

"It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9. In our view the rules do not contemplate an action such as was taken by the Collector

on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant. In the result we hold that no proper inquiry has been conducted in the case and, therefore, there has been a breach of [art. 311\(2\)](#) of the Constitution. The appeal is accordingly allowed and the order dated June 4, 1962 quashed. and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office. The appellant will have his costs here and in the Court of the Judicial Commissioner. Fees shall be payable by the appellant to his advocate and be allowed on taxation."

5. Mr. Lenka, learned counsel for the petitioner submitted that the direction to cause fresh enquiry through a new agency vide office order under Annexure-13 is not permissible and it needs interference of this Court.

6. On the other hand, Mr. Panigrahi learned A.S.C made his submission that basing on the stand taken in the counter affidavit filed by Opp. party Nos.1 & 3. It is submitted that after receipt of the enquiry report on 7.12.2015, the Departmental Authority sought for the views of the Economic Offence Wing, Bhubaneswar and the E.O.W submitted its report on 20.2.2015 and 1.7.2015. It is also submitted after perusal of such report the Disciplinary Authority found that the enquiry against the petitioner needs to be conducted afresh as the enquiry officer has not conducted the same properly. It is

accordingly submitted that no illegality is there in issuing Annexure-13.

7. Heard learned counsel for the parties and perused the materials available on record.

8. This Court after going through the same finds that after submission of the enquiry report on 7.12.2015, the petitioner was issued with the first show cause as provided under Rule 15 of the OCA (CCA) Rules, 1962 and the petitioner also submitted his reply vide Annexure-11. Therefore, this Court is of the opinion that instead of taking further action as provided under the said Rule 15 of the OCS (CCA) Rule, 1962, the impugned order has been passed under Annexur-13 directing the Commissioner for Departmental Enquiry to conduct a fresh enquiry against the petitioner.

9. This Court is of the opinion that after consideration of the reply, the Disciplinary authority while issuing the said show cause under Rule 15(10) (i)(b), can give its finding along with brief reasons of disagreement if any, with the findings of the enquiry officer and give him a notice by Registered Post or otherwise stating therein the penalty to be imposed on him and calling him to submit within the specified time any representation as he wish to make against the proposed penalty. Therefore, instead of acting in accordance with the aforesaid provision, the opp. party no.3 has directed to fresh enquiry which according to this Court is not permissible in the eye of law. Therefore, while interfering with the impugned order and quashing the same, this Court gives liberty to the Disciplinary Authority to take further action as provided under Rule 15 of the

OCS(CCA) Rules, 1962 against the petitioner in the proceeding initiated on 27.4.2015.

10. The Writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sangita

