

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.155 of 2015

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

.....

Keshab Charan Parida

....

Petitioner

-versus-

Finance Deptt & Ors.

....

Opposite Parties

For Petitioner : M/s. R.K. Bisoi and
K.C. Nayak

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

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 05.05.2022 and Date of Order: 18.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.

2. Heard Mr. R.K. Bisoi, learned counsel for the Petitioner and Mr. N.K. Praharaj, learned standing counsel appearing for the State-Opp. Parties.

3. The present writ Petition has been filed by the Petitioner with a prayer to quash the order of punishment passed on 01.05.2013 under Annexure-6 and the confirmation of the same vide Order dtd.10.12.2014 under Annexure-9.

4. Mr. Bisoi, learned counsel for the Petitioner submitted that the Petitioner while working as Asst. Commissioner of Commercial Taxes in Jamsolahhat Check gate, he was placed under suspension vide order dtd.31.06.2009 under Annexure-1. Subsequently vide memorandum dtd.30.10.2009 the Petitioner was proceeded with a disciplinary proceeding initiated under Rule 15 of the Odisha Civil Services (CCA) Rules, 1962.

5. In the said memorandum, the Petitioner was served with the following charges:-

- (i) Serious negligence of duty causing of heavy loss of Govt. revenue.*
- (ii) Submission of false and fabricated information to higher authority.*
- (iii) Irresponsible conduct unbecoming of the position held.*

6. It is submitted that on receipt of the memorandum of charges the Petitioner filed his written statement of defense on 18.12.2009 under Annexure-2 by denying the charges and with a prayer to drop the proceeding. But it is submitted that instead of considering the said reply, the disciplinary authority proceeded with the inquiry by appointing the Inquiry Officer and Marshalling Officer vide Order dtd.26.02.2010 and the said inquiry was conducted with due participation of the Petitioner.

7. It is also submitted that during continuance of the proceeding the Petitioner was reinstated vide Office Order dtd.27.05.2010 under Annexure-4 pending finalization of the proceeding. It is also

submitted that on completion of the inquiry when the Inquiry Officer submitted the report, the Petitioner was issued with the show cause vide letter dtd.08.11.2012 with a request to make his representation against the finding of the Inquiry Officer by the O.P. No.1.

8. Mr. Bisoi submitted that in the inquiry report while the charge framed against the Petitioner vide charge No.1 was found to be not proved, but the charge Nos.2 & 3 was not only proved, but also the Inquiry Officer suggested to treat the period of suspension as leave due and to withhold two increments without cumulative effect.

9. It is submitted that pursuant to the show cause issued under Annexure-5 on 08.11.2012, the Petitioner submitted his representation on 16.11.2012 with a request to drop the charges leveled against him. It is submitted that without issuing the second show cause and without differing with the suggestion/proposal made by the Inquiry Officer, the disciplinary Authority i.e. O.P. No.1 straight away passed the order of punishment vide Order dtd.01.05.2013 under Annexure-6. The disciplinary Authority passed the following punishments as against the Petitioner vide the said order:-

i) Withholding of two annual increments without cumulative effect.

ii) The period of suspension from 31.07.2009 to 03.06.2010 may be treated as leave admissible as per rule-91(5) of the Odisha Service Code.

10. Mr. Bisoi, learned counsel for the Petitioner submitted that since the disciplinary Authority-O.P. No.1 without following the provision contained under Rule 15 of the OCS (CCA) Rules, 1962 and without issuing the second show cause by proposing the

order of punishment passed the order of punishment against him under Annexure-6, it is to be treated as illegal. But in view of the provision contained under Rule 26 of the Rules, the Petitioner preferred an appeal before the Appellate Authority and in the said appeal Petition vide Annexure-8/A, the Petitioner raised a specific plea with regard to non-issuance of the second show cause and the illegality committed by the disciplinary Authority in treating the period of suspension as leave due and admissible. But it is submitted that the Appellate Authority as like the Disciplinary Authority, rejected the said appeal by confirming the order of punishment vide Office Order dtd.10.12.2014 under Annexure-9.

12. It is submitted that since the Disciplinary Authority never followed the provision contained under Rule 15 of the OCS (CCA) Rules, 1962 by issuing the second show cause and by proposing the proposed punishment, the order of punishment passed under Annexure-6 and upheld by the Appellate Authority in his order under Annexure-9 are illegal and needs interference of this Court.

13. It is also submitted that since the disciplinary Authority at no point of time disagreed with the finding of the Inquiry Officer, the direction to treat the period of suspension as leave due and admissible is not permissible in the eye of law.

14. Mr. Bisoi in support of his aforesaid submission relied on a decision of this Court rendered in W.P.C. No. 7635 of 2019. In the said decision, this Court relying on the decision of the Hon'ble Apex Court in the case of **Vijay Singh V. State of U.P. & Ors.** (AIR 2012 SC 2840) and a decision of this Court in **Samir Kumar Mitra Vs. State of Odisha & Ors.** (W.P.C. No.20827 of 2006) disposed of on 25.08.2016 held that in absence of any provision in

OCS(CCA) Rules, 1962, the decision of the Authority to treat the period of suspension as leave due is not permissible.

15. It is also held by this Court that after concluding the departmental proceeding by imposing minor penalty with stoppage of increments without cumulative effect, the authority should not have treated the period of suspension in any manner other than the duty affecting the service condition of the Petitioner.

16. Per contra Mr. Praharaj, learned standing counsel for the State-Opp. Parties made his submission relying on the grounds taken in the counter affidavit. It is submitted by Mr. Praharaj that since minor penalty was imposed by the disciplinary Authority i.e. stoppage of two annual increments without cumulative effect, there is no necessity to issue the second show cause by proposing the order of punishment.

17. It is also submitted by the learned State counsel that after concurrence of the Odisha Public Service Commission, disciplinary authority awarded punishment against the Petitioner vide order under Annexure-6 and the said punishment has been upheld by the Appellate Authority. It is also submitted that with regard to the order passed by the disciplinary Authority to treat the period of suspension as leave due is also just and legal.

18. It is submitted that as per Rule 91(5) of the Odisha Service Code read with Rule 12(6) of the OCS (CCA) rules, 1962, the disciplinary Authority has to pass a definite order on the suspension issue after finalization of the departmental proceeding. It is accordingly submitted that no illegality has been committed either by the disciplinary Authority or by the Appellate Authority

in issuing the order under Annexure-6 and 9 and no interference is called for by this Court.

19. Heard learned counsel for the Parties at length. Perused the materials available on record. It is not disputed that the proceeding in the Petitioner was initiated under rule 15 of the OCS (CCA) Rules, 1962. Therefore, in view of such stipulation contained in the memorandum dtd.30.10.2009 under Annexure-1, the Authority has to follow the provision contained under Rule 15 of the said Rules. But in the instant case after receipt of the inquiry report though the disciplinary Authority issued the 1st show cause by requesting the Petitioner to submit his representation against the finding of the Inquiry Officer vide letter dtd.08.11.2012 under Annexure-5 and the Petitioner also submitted his representation against the said finding, but the disciplinary Authority without issuing the second show cause straight away passed the order of punishment vide order dtd.01.05.2013 under Annexure-6. Therefore, in view of such non-compliance of the provision contained under Rule 15 of the said Rules, the same amounts to non-compliance of the Principle of natural justice.

20. Even though such non-compliance of the provision of Rule 15 as well as the illegality in treating period of suspension as leave due was raised before the Appellate Authority, but the Appellate Authority also without applying judicial mind rejected the appeal by confirming the order of punishment vide his order under Annexure-9.

21. Even though stand was taken that since minor punishment was passed against the Petitioner, no second show cause is required and the disciplinary Authority is competent to treat the

period of suspension as leave due, but the said stand of the Opp. Parties is not acceptable in view of the decision of this Court reported in the above mentioned case in W.P.C. No.7635 of 2019.

22. Therefore, taking everything into account, this Court is of the considered view that the disciplinary Authority prior to issuance of the order of punishment under Annexure-6 never followed the provision contained under Rule 15 of the OCS (CCA) Rules, 1962 and in view of such non-compliance, which amount to violation of the principle of natural justice, this Court quashes the order of punishment issued under Annexure-6 and the confirmation of the same by the appellate Authority under Annexure-9.

23. While quashing both the orders under Annexure-6 & 9, this Court directs the Opp. Parties to extend all services and financial benefits as due and admissible to the petitioner. Since it is submitted that the Petitioner has retired in the meantime on 31.01.2019, the Opp. Parties are directed to complete the entire exercise with regard to extension of the financial benefits within a period of 3 months from the date of receipt of this Order.

24. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 18th of May, 2022/Sneha