

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.770 of 2014

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

.....

Madan Mohan Das

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. M. Pati
S. Kar and P. Das

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

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 27.04.2022 and Date of Order:06.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. Manas Pati, learned counsel for the Petitioner and Mr. Praharaj, learned counsel appearing for the State-Opp. Parties.

3. The Petitioner is aggrieved by the order of punishment passed on 08.10.2013 under Annexure-11 and the order dtd.26.03.2014 passed by the appellate Authority under Annexure-13.

4. It is submitted that the Petitioner while continuing as a Plant Protection Officer in the office of District Agriculture Officer, Athamalik, the proceeding was initiated against him vide memorandum dtd.14.11.2011 of the Opp. Party No.1. The said proceeding was initiated against the Petitioner in terms of the provision contained under Rule 15 of the OCS(CCA)Rules, 1962.

5. It is further submitted that on receipt of the memorandum of charges under Annexure-1, the Petitioner submitted his written statement of defence on 20.12.2011 under Annexure-2 and vide order under Annexure-3 dtd.29.03.2012, the Inquiring Officer as well as Marshalling Officer were appointed to enquire into the charges framed against the Petitioner.

6. It is further submitted that during continuance of the said proceeding, the Petitioner retired from service on attaining age of superannuation on 30.04.2012. It is also submitted that on receipt of the enquiry report, the Petitioner was issued with the 1st show cause by the Opp. Party No.1 on 01.09.2012 under Annexure-5 with a direction on the Petitioner to submit his representation against the finding of the Inquiring Officer.

7. It is also submitted that in the inquiry report the Inquiring Officer came to a finding that the charges initiated against the Petitioner may not be established as there is no documentary evidence and any other papers regarding involvement of the Petitioner is found. But it is submitted that on receipt of the 1st show cause under Annexure-5,

the Petitioner submitted his representation under Annexure-6 on 28.09.2012.

8. It is submitted that on receipt of the reply under Annexure-6 and prior to issuance of the second show cause, O.P. No.2 without any authority, issued the letter dtd.05.02.2013 under Annexure-7 directing the Inquiring Officer to cause a fresh inquiry of the matter. It is submitted that since O.P. No.2 is not the disciplinary Authority, he had no occasion to issue such a letter by directing the inquiring Officer to submit fresh inquiry report and that too after issuance of the first show cause by the disciplinary Authority on 01.09.2012 under Annexure-5.

9. It is further submitted that on receipt of Annexure-7, which was never communicated to the Petitioner, the Enquiring Officer reiterated his own finding as given in his earlier inquiry report dtd.06.08.2012 enclosed to letter dtd.01.03.2013 under Annexure-8. But the disciplinary Authority without disagreeing with the finding of the Inquiring Officer once again issued another show cause in the guise of the 2nd show cause on 01.07.2013 under Annexure-9 by proposing punishment to the extent of withdrawal of 10% of the pension. It is submitted that since at no point of time the disciplinary Authority by disagreeing with the finding of the Inquiring Officer issued the first show cause on 01.09.2012 under Annexure-5, the proposed punishment indicated in Annexure-9 in the guise of 2nd show cause is illegal. But the Petitioner on receipt of the said 2nd show cause dtd.01.07.2013 under Annexure-9 submitted his reply under Annexure-10. But the disciplinary Authority without proper appreciation of the reply so submitted by the Petitioner vis-à-vis the finding of the enquiry Officer passed the order of punishment vide Office Order dtd.08.10.2013 under

Annexure-11. In the said order of punishment the proposed order of punishment indicated in Annexure-9 was confirmed.

10. It is submitted that against the order of punishment as passed under Annexure-11, the Petitioner preferred an appeal before the Hon'ble Governor under Annexure-12 and in the said appeal a specific stand was taken that the disciplinary Authority while issuing the first show cause under Annexure-5 since has not disagreed with the finding of the Inquiring Officer, no order of punishment can be inflicted on the Petitioner.

11. It is also submitted that the show cause dtd.01.07.2013 under Annexure-9 cannot be treated as the second show cause as after receipt of fresh inquiry report under Annexure-8, the Petitioner was never issued with a fresh show cause with a disagreeing note by the Disciplinary Authority.

12. It is submitted that the appellate Authority without proper appreciation of the stand taken in the memo of appeal under Annexure-12, rejected the appeal by taking advice of the OPSC as provided under Rule 29(1) of the OCS(CCA)Rules, 1962. The Appellate Authority solely relying on the advice and the concurrence of the Commission rejected the appeal vide the impugned order dtd.26.03.2014 under Annexure-13.

13. Mr. Pati accordingly submitted that both the order of punishment passed by the Disciplinary Authority under Annexure-11 and order by the Appellate Authority under Annexure-13 since have been passed in violation of the provision of Rule-15 of the OCS(CCA)Rules, 1962, the said orders are nullity in the eye of law and liable to be set aside by this Court.

14. Mr. Praharaj, learned counsel for the State-Opp. Parties made his submission relying on the stand taken by the Opp. Parties in their counter. It is submitted by Mr. Praharaj, learned counsel for the Opp. Parties that the Petitioner was provided with reasonable opportunities to defend his case in the disciplinary proceeding and the disciplinary Authority as well as appellate Authority have rightly passed the orders under Annexure-11 and 13 respectively.

15. It is also submitted that since the Petitioner has been provided with ample opportunity in the disciplinary proceeding, the orders of punishment passed under Annexure-11 and upheld under Annexure-13 needs no interference.

16. Heard learned counsel for the Parties at length. Perused the materials available on record. This Court after going through the same is of the view that on receipt of the inquiry report dtd.06.08.2012, the Petitioner was issued with the first show cause on 01.09.2012 under Annexure-5 and in the said show cause the disciplinary Authority never disagreed with the finding of the Inquiring Officer.

17. Not only that on receipt of the representation against the report of the Inquiring officer under Annexure-6, the Disciplinary Authority Opp. Party No.1 did not proceed with the matter till a fresh inquiry report was submitted by the Inquiring Officer on 01.03.2013 under Annexure-9. But the fact remains that O.P. No.2 had no occasion to direct the Inquiring officer to submit the fresh enquiry report vide his letter under Annexure-7.

18. It is not disputed that the Inquiring Officer reiterated his finding while submitting the fresh inquiry report on 01.03.2013 under Annexure-8. Therefore, the disciplinary Authority-O.P. No.1 prior to

proceeding further should have issued a show cause in the nature of 1st show cause by giving disagreeing note as provided under Rule 15 of the OCS(CCA)Rules, 1962. But without giving the disagreeing note the show cause dtd.01.07.2013 under Annexure-9 was issued by proposing punishment to the extent of withdrawal of 10% of pension for 5 years.

19. The Petitioner though submitted a detailed reply under Annexure-10, to the show-cause dtd.01.07.2013 but the disciplinary authority passed the order of punishment on 08.10.2013 under Annexure-11 by upholding his proposed punishment so issued under Annexure-9. The Petitioner though raised all the legal points and non-compliance of the provision of Rule 15 of the Rules, but the Appellate Authority solely relying on the advice of the commission upheld the order of punishment passed by the disciplinary authority vide his order dtd.26.03.2014 under Annexure-13.

20. Since this Court is of the view that the Disciplinary Authority at no point of time issued a show cause by disagreeing with the finding of the Inquiring Officer, the same not only amounts to violation of the provision of Rule 15 of the Rules, but also violates the principles of natural justice. Therefore, this Court has got no hesitation in quashing the order of punishment passed on 08.10.2013 under Annexure-11 and the order passed by the Appellate Authority under Annexure-13 and both the orders are accordingly quashed.

21. Since the Petitioner has retired on 30.04.2012, this Court directs the Opp. Parties to release all the benefits as due and admissible in favour of the Petitioner by releasing the withheld pension, within a period of 3(three) months from the date of receipt of this order.

22. The writ Petition is accordingly succeeds and disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 6th of May, 2022/Sneha

