

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C(OAC) No.2657 of 2013

B. Maheswar Pattnaik

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

21.9.2022

Order No

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

2. Heard Mr. N.Biswal, learned counsel for the Petitioner and Mr. R.N.Mishra, learned Addl. Government Advocate for the State.

3. The present Writ Petition has been filed by the Petitioner challenging the impugned 2nd show cause notice issued on 31.07.2013 under Annexure-4.

4. It is the main contention of the Petitioner that the said 2nd show cause notice was issued to him without furnishing him copy of the enquiry report along with 1st show cause.

5. It is submitted that the disciplinary authority without providing a copy of the enquiry report and asking the petitioner to submit his views against the finding of the enquiry officer, straight away issued the 2nd show cuase, which is in violation to the provision contained under Rule-15(10)(i)(a) of the OCS(CC&A) Rules, 1962.

6. Learned counsel for the Petitioner submitted that in view of the provision contained under Rule-15(10)(i)(a) of

the OCS(CC&A) Rules, 1962, it is mandatory on the part of the disciplinary authority to furnish the delinquent Government Servant a copy of the report of the enquiry officer and give him a notice by Registered Post or otherwise calling upon him to submit within a period of fifteen days, such representation as he may wish to make against the finding of the enquiry authority.

7. It is submitted that since the said statutory provision has not been followed in the instant case, the impugned 2nd show cause notice issued by the disciplinary authority under Annexure-4 needs interference of this Court.

8. Mr. Mishra, learned Addl. Government Advocate on the other hand made his submission basing on the counter filed by the Opposite Party No.4 who is none else than the disciplinary authority in the present case.

9. It is submitted that since the Petitioner in the disciplinary proceeding was given due opportunity to substantiate his case and thereafter only he was issued with the 2nd show cause notice with the proposed punishment, no illegality can be found in issuing such 2nd show cause notice.

10. It is also submitted that the reply of the delinquent employee to such show-cause can be considered by the disciplinary authority depending on the merit of the case. Though in the counter affidavit a stand has been taken that the Petitioner was forwarded with the enquiry report vide Annexure-C/3, but while submitting the reply to the rejoinder filed by the petitioner, the self-same Opposite Party No.4 in Para-1 submitted as follows:-

“Unless the applicant proves that he has been prejudiced due to infraction Rule-15(10)(i)(a) of the OCS (CC&A) Rules, 1962, the whole proceeding is not liable to be quashed. At best the proceeding can be set into motion to go ahead again from the stage where the infraction of rule did occur and accordingly the proceeding should be allowed to be completed by comply the procedure laid down in the Rule-15(10)(i)(a) of OCS (CC&A) Rules, 1962”.

11. Making such submissions, Mr. Mishra, learned Addl. Government Advocate submitted that since the writ petition has been filed against the 2nd show cause it is not permissible in the eye of law and no interference is called for by this Court. Pursuant to the said submission of the learned Addl. Government Advocate, Mr. Biswal learned counsel for the Petitioner submitted that the Petitioner faced the departmental proceeding as well as the criminal proceeding in G.R. Case No.11 / 2011 basing on self-same allegation and in the criminal proceeding since the petitioner was honorably acquitted vide judgment dated 11.06.2018 of the learned S.D.J.M., Gunupur, no order of punishment can be passed against the Petitioner on self-same allegation.

12. Mr. Biswal in support of the aforesaid submission relied on the decision of the Hon'ble Apex Court reported in **AIR 2006 SC -2129**.

Paragraph-15 & 16 is quoted hereunder:-

“15. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one

and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (*supra*) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed”.

13. Mr. Biswal further submitted that since prior to issuance of the 2nd show cause, the enquiry report was never provided to the Petitioner, the said 2nd show cause notice is a nullity in the eye of law and in support of that Mr. Biswal relied on the decision of the Hon'ble Apex Court reported in **AIR 1991 SC 471**.

Paragraph-14 & 17 of the said judgment are quoted hereunder:-

“14. Deletion of the second opportunity from the scheme of Art. 311(2) has nothing to do with providing of

a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd Amendment. Supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position”.

17. *We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter”.*

14. It is also submitted that in the disciplinary proceeding though the prosecution examined witnesses more particularly P.W.2 basing on whose statement, the enquiry officer found the Petitioner guilty of the charges while submitting his enquiry report, but the petitioner in spite of making necessary prayer was not allowed to cross-examine the said P.W.2.

15. It is submitted that the disciplinary authority in a disciplinary proceeding has to follow the principle of natural justice and the same has not been followed in the case of the petitioner. Accordingly, the conduct of the proceeding is also vitiated. In support of the same, learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court reported in **(2009) 12 SCC-785**.

Paragraph-29 is quoted hereunder:-

“29. In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct”.

16. Learned counsel for the Petitioner also relied on the decision of the Hon'ble Apex Court reported in **AIR 2009 SC-1375**.

Paragraphs-17, 19 & 20 of the said judgment are quoted hereunder:-

“17. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.

19. *If the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby.*

20. *In S.L. Kapoor v. Jagmohan & Ors. (1980) 4 SCC 379, this Court has held that non-compliance of the principles of natural justice itself causes prejudice. We are not oblivious of the fact that the said principle has since been watered down but in a situation of this nature, we are of the opinion that the concurrent findings of the Tribunal, as also the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference”.*

17. It is also submitted that this Court while issuing notice of the matter vide order dated 30.08.2013 passed an interim order restraining the disciplinary authority from passing the final order pursuant to the impugned notice dated 31.07.2013 without leave of the Court.

18. It is also submitted that since the Petitioner has been honourably acquitted in the criminal proceeding vide judgment dated 11.06.2018, no punishment can be imposed as the charges in both the disciplinary proceeding and the criminal proceeding are same.

19. Mr. Biswal also relied on the decision reported in **(2015) 2 SCC -365.**

Paragraphs-19, 20 & 21 is quoted hereunder:-

“19. It is an undisputed fact that the charges in the criminal case and the Disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and SC/ST (POA) Act. Our attention was drawn to the said judgment which is produced at Exh. P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the Disciplinary proceeding are similar. From perusal of the charge sheet issued in the disciplinary proceedings and the enquiry report submitted by the Enquiry Officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In

the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under 3 (1) (x) of SC/ST (POA) Act and under Sections 307 and 302 read with Section 34 of the IPC. The law declared by this Court with regard to honourable acquittal of an accused for criminal offences means that they are acquitted for want of evidence to prove the charges. The meaning of the expression honourable acquittal was discussed by this Court in detail in the case of **Deputy Inspector General of Police & Anr. v. S. Samuthiram**, MANU / SC/1029/2012 : (2013) 1 SCC 598, the relevant para from the said case reads as under :-

24. The meaning of the expression honourable acquittal came up for consideration before this Court in *RBI v. Bhopal Singh Panchal*. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions honourable acquittal, acquitted of blame, fully exonerated are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression honourably acquitted. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

(Emphasis laid by this Court)

After examining the principles laid down in the above said case, the same was reiterated by this Court in a recent decision in the case of **Joginder Singh v. Union Territory of Chandigarh & Ors.** in Civil Appeal No. 2325 Of 2009 (decided on November 11, 2014).

Further, in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.** (supra) this Court has held as under:-

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, the raid conducted at the appellants residence and recovery of incriminating articles there from. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

(Emphasis laid by this Court).

Further, in the case of ***G.M. Tank v. State of Gujarat and Ors.***(supra) this Court held as under:-

20. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical

and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law.It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellants residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an

honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

(Emphasis laid by this Court)

20. The High Court has not considered and examined this legal aspect of the matter while setting aside the impugned judgment and order of the Tribunal. The Tribunal has also not considered the same. We have examined this important factual and legal aspect of the case which was brought to our notice in these proceedings and we hold that both the High Court and Tribunal have erred in not considering this important undisputed fact regarding honourable acquittal of the appellants on the charges in the criminal case which are similar in the disciplinary proceedings.

21. We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the Disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case”.

20. Making all such submissions, Mr. Biswal learned counsel for the Petitioner submitted that in view of the honorable acquittal of the petitioner in the criminal proceeding, the impugned show cause notice issued on 31.08.2013 under Annexure-5 is liable to be quashed by this Court.

21. Heard learned counsel for the Parties.

22. Perused the materials available on record. This Court after going through the same find that prior to issuance of the impugned 2nd show cause notice on 31.07.2013 under

Annexure-4, the Petitioner was never provided with the copy of the enquiry report as provided under Rule-15(10)(i)(a) of the OCS(CC&A) Rules, 1962. Since the enquiry report was never provided to the Petitioner prior to issuance of the impugned 2nd show cause notice, such show cause notice is a nullity in the eye of law, in view of the decision relied on by the learned counsel for the Petitioner in AIR 1991 SC 471. This Court further finds that while conducting the enquiry, the enquiry officer in spite of approach made by the Petitioner, did not allow him to examine the witnesses more particularly P.W.2, basing on whose statement the petitioner was found guilty by the Enquiry Officer. Since that has not been followed, in view of the decision relied on by the learned counsel for the Petitioner, the same amount to non-compliance of the principle of natural justice. Not only that this Court further finds that since both departmental and criminal proceeding were initiated on self-same charges and the petitioner has been honorably acquitted in the criminal proceeding, the Petitioner is liable to be exonerated from the charges in the disciplinary proceeding, in view of the decision relied on the learned counsel for the Petitioner in **AIR 2015(2) SCC-365**.

23. Having perused the materials available on record and the decision cited by the learned counsel for the Petitioner and the admission regarding non-supply of the enquiry report prior to issuance of the 2nd show cause, this Court has got no hesitation in quashing the impugned 2nd show cause notice issued on 31.07.2013 under Annexure-4. While quashing the same, this Court also quashes the proceeding initiated against the Petitioner vide Rayagada District Proceeding No.3/2011 under Annexure-1.

24. This Court further directs the Opposite Parties to release all service and financial benefits as due and admissible in favour of the Petitioner. The entire exercise shall be completed within a period of four months from the date of receipt of this order.

25. With the aforesaid observations and directions, the Writ Petition is disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Sangita

