

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1546 of 2012

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

.....

Madan Mohan Behera **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s. Sadasiva Patra-1.

For Opp. Parties : Addl. Government Advocate
Mr. Y.S.P.Babu.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 23.09.2022 and Date of Order:30.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. S.Patra-1, learned counsel for the Petitioner and Mr.Y.S.P.Babu, learned Addl. Government Advocate for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner challenging the order of punishment passed on 08.08.2008 under Annexure-9 and confirmation of the same by the appellate authority vide his order dated 23.05.2011 under Annexure-11.

4. Mr. S. Patra-1, learned counsel for the Petitioner submitted that the Petitioner entered into service as a Village Agriculture Worker during October, 1995.

5. It is submitted that while so continuing and vide order dated 12.06.2006, the Petitioner was placed under suspension pending drawl of the disciplinary proceeding.

6. It is submitted that subsequently vide Memorandum dated 10.01.2007 under Annexure-1, the proceeding was initiated against him with different charges.

7. Learned counsel for the Petitioner submitted that on receipt of the charges, the Petitioner submitted his explanation/ written statement of defence on 5.3.2007 under Annexure-2.

8. It is submitted that when the Opposite Party No.4 was appointed as the Enquiry Officer to conduct the enquiry as against the Petitioner vide order dated 14.03.2007, the Petitioner made an application before the Opposite Party No.2 on 26.03.2007 with a request to change the said Enquiry Officer and to appoint another one as the Petitioner apprehends prejudice to be caused by the Opposite Party No.4.

9. It is submitted that the said request of the Petitioner was rejected with due intimation vide letter dated 29.05.2007 and the Petitioner was directed to attend the enquiry to be held on 12.06.2007.

10. Learned counsel for the Petitioner submitted that in the meantime another proceeding was initiated against the Petitioner on 28.07.2007 under Annexure-4 and the

Petitioner on receipt of the charge memo submitted his written statement of defence on 21.08.2007 under Annexure-5.

11. It is submitted that once again vide order dated 21.08.2007, Opposite Party No.4 was appointed as the Enquiry Officer and the Head Clerk of the Office of Deputy Director of Agriculture was appointed as Presenting Officer.

12. It is submitted that subsequent to such appointment of the Enquiry Officer and the Presenting Officer, the Petitioner was never noticed to take part in the enquiry and the Enquiry Officer conducted the enquiry on different dates the last being conducted on dtd.26.02.2008.

13. It is submitted that the Petitioner was never noticed to take part in the Enquiry, and the Enquiry Officer proceeded with the Enquiry in absence of the Marshalling Officer and various documents were exhibited being placed by the Presenting Officer.

14. It is also submitted that since the Petitioner at no point of time was noticed to appear, the Enquiry Officer also examined witnesses on behalf of the prosecution and after completing the same submitted the enquiry report on 26.06.2008 under Annexure-6 by holding the Petitioner guilty of the charges.

15. Learned counsel for the Petitioner submitted that on receipt of the enquiry report under Annexure-6, Opposite Party No.3 never issued the 1st show cause along with the enquiry report as provided under Rule-15 of the OCS

(CC&A) Rules, 1962 by allowing him to submit his representation against the finding of the enquiry officer.

16. It is submitted that without providing a copy of the enquiry report, the disciplinary authority, the Opposite Party No.3 issued the 2nd show cause by proposing the punishment of dismissal from the Government service, which will also be a bar for his future employment on 02.07.2008 under Annexure-7.

17. It is submitted that on receipt of the 2nd show cause, though the Petitioner submitted his reply under Annexure-8, but without considering the same in its proper perspective, the disciplinary authority-Opposite Party No.3 passed the order of punishment vide order dated 6.8.2008 under Annexure-9.

19. It is further submitted that as against the said order of punishment though the Petitioner preferred an appeal under Annexure-10, but the appellate authority also without proper appreciation of the ground taken in the memo of appeal dismissed the same by confirming the order of punishment vide his order under Annexure-11.

20. In assailing both the orders under Annexures-9 & 11, Mr.S. Patra-1, learned counsel for the Petitioner submitted that since in the entire proceeding, the Petitioner was never given opportunity of hearing to prove his innocence and the disciplinary authority finalized the proceeding without following the provision contained under Rule-15 of the OCA (CC&A) Rules, 1962, the order of punishment passed against him under Annexure-9 and confirmed by the appellate authority under Annexure-11 are liable to be interfered with by this Court.

21. In support of such submission Mr. Patra-1 relied on the decision of this Court in the case of **Tapan Kumar Kar vs. Union of India and Others** reported in **2015(Supp.-1) OLR-1010**. This Court relying on the decisions of the Hon'ble Apex Court as well as of this Court in **S.L. Kappor v. Jagmohan**, AIR 1981 SC 136, **Union of India v. Md. Ramzan Khan**, AIR 1991 SC 471, **Board of Trustees of the Port of Bombay v. Dillip Kumar Raghavendranath Nadkarni and others**, AIR 1983 SC 104, **A.K.Ray v. Union of India**, A.I.R. 1982 SC 710, **Bhagat Ram v. State of Himanchal Pradesh**, A.I.R. 1983 SC 454, **Inspector-General of Police and another v. Sukanta Kumar Nayak**, 1993 LAB.I.C.521, **Hardwari Lal v. State of U.P. and others**, AIR 2000 SC 277, **Narendra Mohan Arya v. United India Insurance Co. Ltd. and others**, A.I.R. 2006 SC 45, **Janardan MOhanty v. Union of India**, 2000(II) OLR 126 and **Tapan Kumar Dalai v. Union of India and others**, 2002(Suppl.) OLR-463. In Para-12 of the said judgment held as follows:-

“12. On the analysis of facts and law made above, this Court holds that the order of punishment imposed by the disciplinary authority vide order dated 20.9.2000 (Annexure-14) and confirmation thereof by the appellate authority vide order dated 04.01.2002 (Annexure-18) having been passed in gross violation of the principles of natural justice are vitiated. Accordingly, the same are quashed. The opposite parties are directed to reinstate the petitioner in service forthwith with all consequential financial and service benefits to him as due and admissible in accordance with law”.

22. Mr. S. Patra-1, also relied another decision of this Court in the case of **Jayanta Kumar Goswami vs. Governing Body of Akhamandalamani College (+2) & Others** reported in **2015 (I) ILR-CUT-1150**. This Court in

the aforesaid reported decision in Paragraph-15 to 20 has held as follows:-

“15. In *Kumaon Mandal Vikash Nigam Ltd. (supra)*, the apex court held as follows:

“ The word ‘Bias’ in popular English parlance stands included within the attributes and broader purview of the word ‘malice’, which in common acceptation mean and imply ‘spite’ or ‘ill-will’ (Stroud’s Judicial Dictionary (5th Ed.) Volume 3) and it is not well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.”

16. The authority who has issued such draft charges had no authority to do so because of lack of resolution passed by the Governing Body. That itself indicates that the authority is biased against the Petitioner and proceeded without any authority of law. Therefore, the order of termination has been passed contrary to the provisions of law governing the field.

17. The allegation of misappropriation of funds has been based on the audit report. The same has not been done in conformity with the provisions of law. On perusal of the audit report, it appears that nowhere it has been indicated that the petitioner had misappropriated the money. The audit having been done for the period from 21.7.1987 till 31.7.1998, which is inclusive of unaided and aided period and out of which during the period from 11.4.1997 to 31.7.1998 the college was aided and the petitioner as Principle-in-charge operated the account. But for the period from 21.7.1987 to 10.4.1997, which was unaided period, the account was not operated by the petitioner, rather one Bansidhar Khatua being the Secretary of the Governing Body operated the same and signed the resolution by maintaining the accounts as per law, thereby the entire process of proceeding was continuing with mala fide and biased manner and without application of any mind. As it appears, while causing such enquiry, the provisions of law has neither been taken into consideration nor principle of natural justice has been complied with, rather, the authorities have proceeded in a biased manner with mala fide intention, which is not permissible in the eye of law, consequence thereof, without any application of mind, the Director has approved the termination order under Annexure-25, which is nothing but an arbitrary and unreasonable exercise of power by the Director. The

learned Education Tribunal in Appeal did not incline to interfere with the approval of the termination order. That itself also cannot sustain though the order itself indicates that the termination order was passed on 30.5.2005, but in effect, the same was passed on 30.5.2001 without prior approval of opposite party No.3, since the termination order has been approved by the Director contrary to the provisions contained in Section 10-A of the Orissa Education Act. Section 10-A(1)(a) of the Act reads as follows:-

“10-A. Service of teachers of aided institutions not to be terminated without approval-(1) The services of a teacher and other members of the staff of an aided Educational Institution shall not be terminated without obtaining the prior approval in writing of the

(a) Director in case of a teacher and other members of the staff of a college;

(b) xx xx xx”

18. On perusal of the above mentioned provisions, it appears that the services of a teacher of aided educational institution shall not be terminated without obtaining prior approval in writing of the Director in case of a teacher of a college. In the present case, the termination order having been passed on 30.5.2001 and decision was taken by the Governing Body regarding termination of his services pursuant to the resolution dated 28.5.2001, which has been approved by the Director vide letter dated 7.5.2005 under Annexure-25, it cannot be construed that there is prior approval with regard to the termination of the services of the petitioner and such order of termination has been passed due to non-compliance of the principle of natural justice.

19. The learned Education Tribunal committed gross error apparent on the face of the record by declining to interfere with the approval of the order of termination by the Director under Annexure-25. The learned Tribunal has committed gross error stating that final charges with imputations were served on the petitioner on 21.2.1999 along with relevant documents, basing upon which charges were framed and such statement has been made on the basis of the contentions raised by opposite party no.5. The opposite party no.5 has never filed any affidavit before the learned Tribunal to that extent. The contention raised that the petitioner was supplied with the final charges with imputations with relevant documents on 21.2.1999 are backed by documents or materials available on record. But fact remains, on the basis of the draft charge under Annexure-4, prepared on 24.2.1999 since the documents

were not supplied to him as per Rule 22(3) of 1974 Rules, the petitioner called for all the documents pursuant to Annexure-25, but no such documents were supplied to him and on the basis of such draft charges, the proceeding continued. Therefore, without appreciating the facts in proper perspective, the learned Tribunal has passed the impugned order.

20. In view of the foregoing analysis, this Court is of the opinion that the impugned resolution of the Governing Body terminating the services of the petitioner under Annexure-19, the subsequent approval made by the Director, Higher Education under Annexure-25 and the order passed by the learned Education Tribunal under Annexure-26 are contrary to the provisions of law and as the same have been passed without compliance of the principles of natural justice, the same are hereby set aside”.

23. Mr. S. Patra-1, also relied another decision of the Hon’ble Apex Court in the case of **State of Uttaranchal & Others vs. Kharak Singh** reported in **2008 AIR SCW 7507**. Hon’ble Apex Court in Paragraph-11 of the said judgment has held as follows:-

“11. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the

disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any”.

24. Making all such submissions Mr. S. Patra-1 prayed for interference of this Court in the order of punishment passed under Annexure-9 and confirmed by the appellate authority under Annexure-11.

25. Mr. Y.S.P.Babu, learned Addl. Government Advocate for the State on the other hand made his submission basing on the stand taken in the counter affidavit.

26. It is submitted that since the Petitioner did not take part in the proceeding in spite of being noticed, the Enquiry Officer proceeded with the enquiry and submitted his enquiry report under Annexure-7 by holding the petitioner guilty of the charges.

27. It is further submitted that on receipt of the enquiry report, the Petitioner was issued with the 2nd show cause under Annexure-8 proposing the punishment of the dismissal and the Petitioner on receipt of the same also submitted his reply.

28. Mr. Babu further submitted that after considering the stand taken by the Petitioner in his reply under Annexure-8, the disciplinary authority –Opposite Party No.3 passed the order of punishment rightly against the Petitioner.

29. Mr. Babu also submitted that the appellate authority after taking into account the grounds taken in the appeal also rightly rejected the appeal by confirming the order of punishment.

30. Mr. Babu accordingly submitted that the Petitioner has been rightly dismissed from service and no interference is called for by this Court.

31. Heard learned counsel for the Parties.

32. Perused the materials available on record. This Court after going through the same finds that after receipt of the enquiry report, the Petitioner was never provided a copy of the same and given an opportunity to submit his reply against the said finding of the enquiry Officer with issuance of the 1st show cause as provided under Rule-15 of the OCS (CC&A) Rules, 1962. This Court also finds that even though the Enquiry Officer in his report indicated that the enquiry was held on different dates lastly on 26.02.2008, but no document has been filed by the State Counsel showing issuance of any notice to the Petitioner to take part in the enquiry. When the matter was finally heard by this Court on 23.09.2022, Mr. Babu filed notice issued by the Enquiry Officer vide letter dated 12.02.2008 through a Memo. This Court after going through the same finds that vide the said letter, the Petitioner was directed to appear before the Enquiry Officer on 20.02.2008. But in the Enquiry Report no enquiry was conducted on 20.02.2008 and instead it was held on 26.02.2008. This Court further finds that in absence of the Marshalling Officer, the Enquiry Officer proceeded with the enquiry in presence of the Presenting Officer only. The said fact is also admitted in Para-6.12 of the counter affidavit. In the said para, it has been submitted that only once Sri Sahu, the Marshalling Officer attended the enquiry i.e. on the first day of enquiry on dtd. 23rd May, 07. All along the nominated

Presenting Officer was presenting the case as the Marshalling Officer was transferred to other Range.

33. Therefore, this Court after going through the materials available on record finds that at no point of time the Petitioner was issued with a notice to take part in the enquiry and the Enquiry Officer proceeded with the enquiry in absence of the Marshalling Officer also. This Court also finds that the Petitioner was never provided with a copy of the enquiry report along with the 1st show-cause as provided under Rule-15 of the OCS(CC&A) Rules, 1962. Therefore, placing reliance on the decision cited by Mr. S. Patra-1 and after going through the materials available on record, this Court finds that the enquiry against the Petitioner has been conducted without giving opportunity of hearing to the Petitioner. Therefore, only on the ground of non-compliance of the principle of nature justice, this Court is inclined to quash the order of punishment passed under Annexure-9 and confirmed by the appellate authority in his order under Annexure-11. While quashing the same, this Court directs the Opposite Parties to reinstate the Petitioner in his service.

34. This Court is also of the view that since the Petitioner w.e.f. 08.08.2008 was kept out of employment due to the illegal order of dismissal passed under Annexure-9, the Petitioner in view of the decision of the Hon'ble Apex Court in the case of **Allahabad Bank & Others vs. Avtar Bhushan Bhartiya** in Special Leave Petition (Civil) No.32554 of 2018 decided on 22.04.2022 is entitled to get back-wages for the period he remained out of employment. Hon'ble Apex Court in the said decision confirmed the order passed by the High Court, wherein Hon'ble High Court had

directed for payment of 50% back-wages for the period the Petitioner therein remained out of employment. Hon'ble Apex Court in the said decision in Paragraph-36 held as follows:-

“36. Therefore, even applying the ratio laid down in various decision, we do not think that the employee could be granted anything more than what the High Court has awarded”.

35. Therefore, this Court held that the Petitioner is entitled to get 50% back-wages for the period from 08.08.2008 till his reinstatement in his service. While directing the Opposite Party No.3 to reinstate the Petitioner in his service within a period of one month from the date of receipt of this order, his entitlement to the extent of 50% back-wages be also released in his favour within a further period of two months.

36. 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 30th of September, 2022/Subrat