

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2463 of 2014

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

.....

Suvendu Kumar Routray

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Mr. J.K.Mishra (2).

For Opp. Parties : M/s. N.K.Praharaj, Standing Counsel.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:02.05.2022 and Date of Order:09.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K.Mishra(2), learned counsel for the Petitioner and Mr.N.K.Praharaj, learned counsel for the State-Opposite Parties.
3. The Petitioner is aggrieved by the orders of punishment passed by the Disciplinary Authority on 21.10.2013 under Annexure-7 and the order passed by the Appellate Authority on 25.06.2014 under Annexure-10.
4. Mr. Mishra, learned counsel for the Petitioner

submitted that while the Petitioner was continuing as a Senior Clerk in the Office of District Treasury Office, Puri, a proceeding was initiated against him under Rule-15 of OCS(CCA) Rules, 1062 vide Memorandum No.11670 dated 13.07.2009 under Annexure-1.

5. It is further submitted that even though the Petitioner on receipt of the Memorandum under Annexure-1 submitted his written statement of defence, but the Enquiry Officer vide his report dated 13.03.2012 held the Petitioner guilty of one out of the four charges framed against him i.e. in respect of dereliction of duty only.

6. It is further submitted that on receipt of the enquiry report, the Disciplinary Authority when issued the show cause on 20.10.2012 directing the Petitioner to make a representation against the finding of the Enquiry Officer, the Petitioner submitted a detailed representation under Annexure-4 and with a prayer to exonerate him from the charges.

7. It is submitted that on receipt of the representation under Annexure-4, the Disciplinary Authority when issued the second show cause on 28.05.2013 under Annexure-5 by proposing to impose punishment of withholding of one increment without cumulative effect, the Petitioner again submitted his explanation to the said show cause under Annexure-6.

8. Mr. Mishra, further submitted that without considering the representation and explanation submitted by the Petitioner under Annexures-4 & 6 vis-à-vis the finding of the Enquiry Officer, the Disciplinary Authority

when imposed the order of punishment vide order dated 21.10.2013 under Annexure-7, the Petitioner filed an appeal as provided under Rule-22 of the OCS(CCA) Rules, 1962.

9. It is submitted that in the said memo of appeal, the Petitioner though made a prayer to give him a personal hearing, but the Appellate Authority without considering the grounds taken in the memo of appeal under Annexure-8 and without affording a personal hearing to the Petitioner upheld the order passed by the Disciplinary Authority vide order dated 25.06.2014 under Annexure-10.

10. It is accordingly submitted that since the Appellate Authority without giving a personal hearing to the Petitioner passed the order under Annexure-10 by upholding the order passed by the Disciplinary Authority under Annexure-7, that amounts to non-compliance of the principle of natural justice.

11. It is also submitted that out of the four charges framed against the Petitioner, the Petitioner was only held guilty of the charges with regard to one of the charges i.e. dereliction of duty. Therefore, the punishment imposed by the Disciplinary Authority under Annexure-7 and confirmed by the Appellate Authority under Annexure-10 is not proportionate to the alleged mis-conduct.

12. Accordingly, Mr. Mishra prayed for interference of this Court with the orders passed under Annexures-7 and 10.

13. Mr. Praharaj, learned counsel for the State-Opposite

Parties on the other hand made his submission basing on the counter filed by the Opposite Party Nos.1 and 2.

14. It is submitted by the learned counsel for the Opposite Parties that the Petitioner was given reasonable opportunity of hearing throughout the proceeding and no illegality was committed by the Disciplinary Authority by passing the order of punishment under Annexure-7.

15. It is also submitted that the Appellate Authority also after going through the materials available on record upheld the said order of punishment.

16. It is accordingly submitted that no interference is called for by this Court either with the order passed under Annexure-7 or the order passed under Annexure-10.

17. Heard learned counsel for the Parties.

18. Perused the materials available on the record. This Court after going through the pleadings made and the documents annexed thereto find that the Petitioner preferred the appeal against the order of punishment passed under Annexure-7 vide his appeal memo dated 24.1.2014 under Annexure-8. In the said memo of appeal, the Petitioner while challenging the order of punishment passed under Annexure-7 on different grounds, prayed for allowing him a personal hearing and thereby enabling him to explain the matter in more detail. The said appeal though was filed on 24.01.2014, but the Appellate Authority as revealed from the record never issued any notice to the Petitioner by affording him a personal hearing in order to have his say in support of his case. The

Appellate Authority after going through the materials, upheld the order of punishment vide his order dated 25.06.2014 under Annexure-10. Since the Appellate Authority has not afforded reasonable opportunity of hearing to the Petitioner, which amounts to non-compliance of the principle of natural justice, this Court deems it fit and proper to set aside the order dated 25.06.2014 passed by the Appellate Authority under Annexure-10. This Court while setting aside the said order directs the Appellate Authority to re-decide the matter afresh by giving a personal hearing to the Petitioner.

19. Since during subsistence of the interim order, steps were taken to recover the amount from the Petitioner, this Court vide order dated 04.04.2022 passed an order by staying the operation of the communication dated 04.10.2021 issued by the Treasury Officer, Special Treasure No.1, Bhubaneswar.

20. Since this court is remanding the matter to the Appellate Authority for fresh disposal, the operation of the communication dated 04.10.2021 issued by the said authority shall remain stayed till the matter is decided afresh by the Appellate Authority.

21. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 9th of May, 2022/Subrat