

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1884 of 2014

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

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Mahindra Kumar Patel **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

For Petitioner : M/s.Dinesh Kumar Panda,
D.K.Panda, G.Sahoo &
A.Mishra.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.
Mr. S.B.Jena, Adv. for
Opposite Party No.2(OPSC).

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 25.04.2022 and Date of Order: 05.05.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D.K.Panda, learned counsel for the Petitioner and Mr. Praharaj, learned counsel for the State- Opposite Parties and Mr. S.B.Jena, learned counsel for OPSC.
3. The Petitioner has filed the Present Writ

Petition challenging the order of punishment passed by the Opposite Party No.1 vide order dated 07.02.2014 under Annexure-9.

4. It is submitted by the learned counsel for the Petitioner that the Petitioner while continuing as an Asst. Engineer, a proceeding was initiated against the Petitioner vide Memorandum dated 09.01.2009 under Annexure-2 purportedly under Rule-17 of the OCS (CCA) Rules, 1962 followed by Rule-15 of the said Rules. It is also proposed to impose penalty on conclusion of the proceeding as provided under Rule-13 of the said Rules.

5. It is submitted by Mr. Panda, learned counsel for the Petitioner that on being provided with the Memorandum dated 09.01.2009 under Annexure-2, the Petitioner submitted his written statement of defence on 13.03.2009 under Annexure-3.

6. It is further submitted that subsequent to the appointment of Enquiry Officer and Marshalling Officer vide order dated 11.12.2009 under Annexure-4, the Enquiry as against the Petitioner proceeded with submission of the enquiry report on 04.12.2010. In the said enquiry report, the Enquiry Officer came to the following findings:-

“CONCLUSION

That in view of the facts enumerated above I do not find sufficient evidence and reasons to hold the D.Os responsible for the omission and commission brought against them in the above departmental proceeding. The article of the charges leveled against them are not based on any material evidences. The prosecution have no substantial evidence to prove the charges against the D.Os. in view of procedural measurement stipulated. Under the circumstances this inquiry do not substantiate the charges leveled against the D.Os”.

7. It is humbly submitted even though the Enquiry Officer in his report dated 04.12.2010 did not find any material as against the Petitioner and held the charges not proved, but the Opposite Party No.1 while issuing the first show cause vide letter dated 6.6.2013 proposed punishment of withholding of one annual increment with cumulative effect.

8. It is submitted that since the Enquiry Officer in his report held the charges as not proved, the Opposite Party No.1 while issuing the first show cause with the proposed punishment should have submitted a disagreeing note for not concurring with the opinion of the Enquiry Officer.

9. It is accordingly submitted that without having any disagreeing note, the first show cause issued on 06.06.2013 is not in consonance with the provision of Rule-15 of the OCS (CCA) Rules, 1962.

10. It is also submitted that the Petitioner in spite of such material irregularity and on receipt of Annexure-7 submitted his representation on 11.07.2013 under Annexure-8. But it is submitted that without issuing the second show cause in terms of the provision of Rule-15, the Opposite Party No.1 passed the impugned order of punishment vide order dated 07.02.2014 under Annexure-9. As reflected in the said order, the Petitioner was imposed with punishment of withholding of one annual increment with cumulative effect.

11. It is submitted that not only the Disciplinary Authority-Opposite Party No.1 issued the first show cause

illegally, but also passed the impugned order of punishment without issuing the second show cause, which is provided under Rule-15 of the OCS (CCA) Rules, 1962. By not issuing the second show cause and by not reflecting his disagreeing note in the first show cause, the Petitioner was not only prejudiced but also that amounts to non-compliance of the principle of natural justice.

12. Mr. Panda, learned counsel for the Petitioner in support of the aforesaid submission relied on the decision of the Hon'ble Apex Court reported in **AIR 1998 SC 2713** and **AIR 1999 SC 3734**. The Hon'ble Apex Court in the aforesaid decision in the case of **Punjab National Bank** (AIR 1998 SC 2713) held as follows in Para-17:-

"These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (AIR 1963 SC 1612) (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (1994 AIR SCW 1050) (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be

condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority”.

13. Similarly, the Hon’ble Apex Court in other decision in the case of **Yoginath D.Bagde** (AIR 1999 SC 3734) held as follows in Para-53 and 54:-

53. *It was lastly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinized by the Enquiry Officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or 32 of the Constitution, act as the Appellate Authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is well-settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh vs. The Commissioner of Police & Ors., (1998) (8) JT SC 603 : (1999) 2 SCC 10 : (1999 AIR SCW 129 : AIR 1999 SC 677 : 1999 Lab IC 437), this Court, relying upon the earlier decisions in Nand Kishore vs. State of Bihar AIR 1978 SC 1277 : (1978) 3 SCC 366 : (1978) 3 SCR 708; State of Andhra Pradesh vs. Sree Rama Rao AIR 1963 SC 1723 : (1964) 3 SCR 25; Central Bank of India vs. Prakash Chand Jain AIR 1969 SC 983; Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors. AIR 1976 SC 98 : (1976) 2 SCR 280 : (1976) 1 SCC 518 as also Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) & Ors. AIR 1984 SC 1805 : (1985)*

1 SCR 866 : (1984) 4 SCC 635, laid down that although the court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.

54. *In the instant case, we have scrutinized the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non- consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer”.*

14. In view of the non-compliance of the provision of Rule-15 coupled with the decisions cited by Mr. Panda, he prays for interference of this Court with regard to the impugned order of punishment passed against the

Petitioner under Annexure-9. Even though notice of the writ petition was issued on 28.07.2014 but in spite of several opportunity no counter affidavit has been filed by the State. Even vide order dated 29.03.2022 this Court though held that no further time will be allowed for filing of such counter affidavit, but no counter affidavit was filed by the State-Opposite Parties supporting the order passed by the Opposite Party No.1 under Annexure-9. In absence of such counter, Mr. Praharaj, learned counsel for the State-Opposite Parties submitted that no illegality and/or irregularity has been committed by the Opposite Party No.1 in imposing the order of punishment as the same has been made on the advice of the Opposite Party No.2.

15. Mr. S.B. Jena, learned counsel for the Commission based his argument basing on the counter filed by him. It is submitted by Mr. Jena that after perusal of the relevant records of the proceeding, the Commission agreed with the proposed punishment and gave his advice to proceed accordingly.

16. Heard learned counsel for the Parties.

17. Perused the materials available on record. This Court after going through the same finds that even though the Enquiry Officer in his report dated 04.12.2010 did not held the charges proved as against the Petitioner and submitted the report accordingly, the Opposite Party No.1 without giving a disagreeing note to the said report issued the first show cause on 06.06.2013 under Annexure-7 by proposing punishment of withholding of one

annual increment and with cumulative effect. Not only that after submission of the representation by the Petitioner against the said first show cause notice, the Opposite Party No.1 without issuing a second show cause straight away passed the order of punishment vide order dated 07.02.2014 under Annexure-9. Therefore, this Court is of the considered view that the Opposite Party No.1 prior to quashing of the impugned order of punishment has not followed the provision contained under Rule-15 of the OCS (CCA) Rules, 1962 and that amounts to non-compliance of the principle of natural justice.

18. Therefore, in view of such admitted position coupled with the decision relied on by the learned counsel for the Petitioner, this Court comes to the findings that the impugned order has been passed in complete violation of the principle of natural justice as well as in violation of Rule-15 of the OCS (CCA) Rules, 1962.

19. Hence, this Court deems it fit and proper to set aside the order dated 07.02.2014 passed by the Opposite Party No.1 under Annexure-9. While quashing the same, this Court directs the Opposite Parties to sanction and disburse the benefit as due and admissible by allowing the increments in favour of the Petitioner within a period of three months from the date of receipt of this order.

20. 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 5th of May, 2022/Subrat