

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3757 of 2012

Sarat Chandra Dash

.... Petitioner(s)

Mr. A.K. Mohapatra(1),
Advocate

-versus-

Revenue Divisional Commissioner

.... Opposite Party(s)

Mr. U.K. Sahoo,
Addl. Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.02.2022**

Order No.

1. 1. This application is filed challenging an order passed in the disciplinary proceeding on the premises that in passing the ultimate order of penalty, if there shall be exercise of power provided U/r.18 of the OCS(CCA) Rules, 1962 hereinafter in short be reflected as “the Rules, 1962” on its own by the disciplinary authority or in an exercise based on the direction of the higher authority.
2. Referring to the order at Annexures-3 & 4 more particularly the disclosures through Annexure-4 Mr. Mohapatra, learned counsel for Petitioner contended that for the provision at Rule 18 of the Rules, 1962 empowering the disciplinary authority to exercise such power, there was no occasion with the disciplinary authority to pass an order depending on a direction at Annexure-4, requiring to be followed by the Disciplinary Authority. It is, on the allegation of

violation of the statutory provision the impugned order is challenged herein. To satisfy his case Mr. Mohapatra, learned counsel for Petitioner also took this Court to the provision at Rule 18 of the Rules, 1962.

3. Mr. Sahoo, learned State Counsel through his counter submitted that there is in fact exercise of such power by the disciplinary authority as clearly disclosed in the order of punishment vide Annexure-3. It is also submitted by Mr. Sahoo, learned State Counsel that for there is already an exercise involving provision at Rule 18 of the Rules, 1962 by the disciplinary authority, the direction at Annexure-4 remains innocuous. It is, in the above premises, Mr. Sahoo, learned State Counsel objected the move of the Petitioner.

4. Considering the rival contentions of the parties and taking into account the questions raised challenging the manner of order of punishment, this Court finds, the provision at Rule 18(1) reads as follows:

“18. Special Procedure in certain cases –
Notwithstanding any contained in Rules 15, 16 and 17 –

- (i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge ; or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded in writing by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

- (iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure.

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit :

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary.”

5. Reading the above rule coupled with the order of penalty by the disciplinary authority at Annexure-3 this Court finds, though there is no dispute that Section 18 exercise lies with the Disciplinary Authority, further finds, the Disciplinary Authority in conclusion of the disciplinary proceeding has come to observe as follows:

“ Now, therefore, in view of the conviction of Sri Sarat Chandra Das, Ex.-Jr. Clerk office of the R.T.O, Puri at present working as such in the Compensation office Zone-II, Puri-I order for dismissal of the said convicted public servant Sri Das, Junior Clerk from Govt. service in terms of Rule-13 r/w Rule-18(1) of O.C.S. (C.C. & A) Rules, 1962 and as per the provisions of Article. 311 of the Constitution with effect from the date of issue of this order. Besides, the period of his suspension is treated as such.”

6. Considering the above aspect, this Court finds, the direction by the higher authority vide Annexure-4 becomes innocuous, as the Disciplinary Authority had already taken into account the provision at Rule 18 (1) of the Rules 1962 while passing the order of dismissal of the Petitioner from service. For there is no other ground of challenge involved herein, keeping the above in view, this Court finds no merit in the application.

7. The petition involved is accordingly dismissed.

(Biswanath Rath)
Judge

Ayas Kanta Jena

