IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OAC) No.3936 of 2013

Akshay Kumar Dwivedy .... ***Petitioner***

Mr.S.B.Jena and
Mr.S.Behera, Advocates

-versus-

State of Odisha & others .... ***Opposite Parties***

Mr. H.K.Panigrahi,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
23.03.2022.

Order No.

01. 1. This matter is taken up through hybrid mode.

2. In the present Writ Petition, the Petitioner challenges the order issued against him by the Divisional Forest Officer (KL) Division, Keonjhar (Opposite Party No.3) vide Memo No.l518 dated 23rd May, 2013 for recovery of Rs.35214/- basing on the findings of an audit report.

3. Sans unnecessary details, the facts of the case are that the Petitioner was working as Range Officer in Parjang KL Range under Keonjhar DFO in the year 2008-2009. It is stated that after a long gap of time, an audit party inspected and submitted report pointing out therein that huge quantity of KL kerries, which were said to have been purchased, were shown as damaged in the damage register, but when the DFO was asked to explain the same, he did not respond. Basing on such report, the Opposite Party No.3 issued order for recovery of the amount in question, i.e. Rs.35214/- from the Petitioner vide Annexure-3, which is impugned in the present Writ Application. It is stated that the impugned order is illegal and arbitrary since it has been issued without any enquiry and basing on a faulty audit report inasmuch as the audit was conducted behind the back of the Petitioner.

4. A counter affidavit has been filed by Opposite Party No.3 justifying the issuance of the impugned order. It is stated that the audit objections were valid, but were not complied with because of concealment of such fact at the time of meeting of the Joint Verification Committee held on 11th December, 2012. It is further stated that as the fact was decided by the Joint Verification Committee and approved by the Government, the issuance of the impugned order was neither illegal nor arbitrary. The same ground is taken to justify the absence of initiation of any departmental proceeding against the Petitioner before ordering recovery of the dues.

5. Heard Mr.S. Behera, learned counsel for the Petitioner and Mr. H.K.Panigrahi, learned Addl. Standing Counsel for the State.

6. It is submitted by Mr. Behera that the findings of the audit cannot straightaway form the basis of any punitive action, such as recovery of dues against a Government servant. In any case, the Government itself has issued a Office Memorandum directing that before ordering the recovery of the amount, the employee concerned should be proceeded against in a departmental proceedings instituted under OCS (CCA Rules, 1962 (for short "1962 Rules")/OCA Pension Rules, 1992(for short, "1992 Rules").

7. Mr. H.K.Panigrahi, learned Addl. Standing Counsel, while supporting the findings of the audit has, however, fairly conceded that an order of recovery cannot be issued only on the basis of an audit report.

8. In course of hearing, it is brought to the notice of the Court that the Government in Finance Department issued an Office Memorandum bearing No.8761/F dated 4th March, 2003 regarding recovery of dues arising out of audit objection. A reading of the said Memorandum reveals that referring to an earlier O.M. No.31740/F dated 22.8.1991 of the Government in Finance Department, it has been reiterated that the finding in an audit report /Para does not impose any liability on the Government servant concerned unless the same is established

in a departmental proceeding initiated against him under the 1962 Rules. In the Office Memorandum dated 4th March, 2003, it has been further held that where the loss of Government money either by misappropriation or otherwise as pointed out by audit is of a nature where no direct responsibility can be fixed without resorting to a fact finding enquiry, in such cases departmental proceedings should be instituted under the 1962 Rules/1992 Rules on the basis of the audit para/report. In the case at hand, it has been specifically contended by the Petitioner that the audit party had enquired into the matter behind his back and in a haphazard manner without considering the fact that after verification of the Form No.4-A, since those were not correctly maintained after inspection, the Petitioner has corrected the same. On such basis, it is evident that the audit party had taken an incorrect view apprehending that the entries have been manipulated. Since the Petitioner was never afforded an opportunity, he could not explain the factual position appropriately.

9. Having regard to the discussion made herein before, it is evident that the order of recovery under Annexure-3 runs contrary to the directives of the Government embodied in the Office Memorandum dated 4th March, 2003 inasmuch as the same being in the nature of a penalty within the meaning of Rule 13 of the 1962 Rules, departmental proceeding should have been initiated before issuance of the impugned order. The

impugned order, therefore, cannot be sustained in the eye of law.

10. In the result, the WPC (OCA) is allowed. The impugned order under Annexure-3 is hereby quashed.

(Sashikanta Mishra)
Judge

AKB