

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2390 of 2013

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

.....

Mulia Patra

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.B.B.Rath & B.Rath.

For Opp. Parties : Standing Counsel
Mr. N.N.Satapathy.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:10.05.2022 and Date of Order: 2.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. B.B.Rath, learned counsel for the Petitioner and Mr. N.N.Satapathy, learned counsel for the State- Opposite Parties.
3. Though the Petitioner in the Present Writ Petition has prayed for multiple reliefs, but the Petitioner is aggrieved by the order of punishment passed by the District Education Officer, Keonjhar, the Opposite Party No.3 in upholding

the order of dismissal passed against the Petitioner vide order dated 10.06.2003 and confirmed vide office order dated 26.03.2013 under Annexure-19.

4. Mr. Rath, learned counsel for the Petitioner submitted that the Petitioner while continuing as an Accountant under Opposite Party No.3, the proceeding was initiated against him on 24.04.2002 with service of the charges.

5. Mr. Rath, learned counsel for the Petitioner submitted that on receipt of the charge memo under Annexure-4, the Petitioner moved an application on 10.05.2002 under Annexure-5 with a prayer to provide him some documents in order to enable him to file written statement of defence.

6. It is submitted that on the face of such application made on 10.05.2002, the Petitioner was never provided with the said documents and on the Petitioner finding no other alternative and on compelling circumstances filed the reply to the charges on 14.08.2002 vide Annexure-6. But it is submitted that prior to submission of the said reply on 14.08.2002, on additional charge memo was served on the Petitioner on 08.08.2002 under Annexure-7. The Petitioner on receipt of the said additional charges also submitted his reply on 02.09.2002 under Annexure-8.

7. It is submitted that even though the Petitioner participated in the said enquiry, but copy of the enquiry report nor any show cause were ever issued by the said Opposite Party No.3 to the Petitioner. Instead of doing so, when the Opposite Party No.3 issued a letter on 04.01.2003 indicating that since the Petitioner as per the enquiry report has misappropriated amount of Rs.1,81,316/-, the Petitioner is to appear on 22.01.2003 and to explain as to

why dismissal from service shall not be passed for such misappropriation and non-deposit of the aforesaid amount.

8. Mr. Rath, learned counsel for the Petitioner submitted that after receipt of the said letter dated 04.01.2003 under Annexure-9, the Petitioner submitted his explanation indicating therein that in the proceeding initiated against him, since no enquiry report has been supplied to him nor any show cause has been issued by the Opposite Party No.3, the Petitioner is not liable to pay the said amount as indicated in Annexure-9.

9. It is submitted that subsequently though some communications were made in between the Petitioner and the Opposite Party No.3, but at no point of time, the Petitioner was provided with the enquiry report nor any show cause as provided under Rule-15 of the OCS (CCA) Rules, 1962 (in short Rules).

10. It is submitted that without complying the provisions as provided under Rule-15 of the Rules, the Opposite Party No.3 passed the order of punishment on 10.06.2003 by dismissing the Petitioner from his service under Annexure-13.

11. It is submitted that challenging the order of punishment passed on 10.06.2003 under Annexure-13, the Petitioner preferred an appeal before the Opposite Party No.2 under Annexure-14. In the said memo of appeal, the Petitioner also took the specific stand regarding non-furnishing of the enquiry report as well as non-furnishing of the documents as prayed for vide letter dated 10.05.2002 under Annexure-5.

12. It is submitted that the Disciplinary Authority after

due hearing of the matter passed the order on 16.04.2004 by remanding the matter to the Opposite Party No.3 to cause a fresh enquiry and by indicating therein certain observations. In the said order, it is the specific finding of the Opposite Party No.2 that the enquiry report was never supplied and the said fact was admitted by the Inspector of School-Opposite Party No.3.

13. It is also evident in the said order that the Inspector of School failed to submit the relevant file with regard to the alleged misappropriation of the amount.

14. Mr. Rath, further submitted on such remand of the matter, though the Petitioner was issued a letter on 05.05.2004 under Annexure-17 to participate in the said enquiry, but once again without following the provisions contained under Rule-15 of the Rules and without complying the principle of natural justice, the impugned order dated 26.03.2013 was passed by the said Opposite Party under Annexure-19 by upholding the order of dismissal passed on 10.06.2003 under Annexure-13.

15. Mr. Rath accordingly submitted that since the provisions as contained under Rule-15 of the Rules has not been followed at all, by the Opposite Party No.3 that amount to non-compliance of the principle of natural justice.

16. Mr. Rath in support of his aforesaid stand relied on the decisions of the Hon'ble Apex Court in the case of **Menaka Gandhi vs. Union of India** reported in **AIR 1978 SC-597**, **Manohar Manikara Anchula vs. State of Maharashtra** reported in **AIR 2013 SC-681 & Ware House**

Corporation vs. Vijay Narayan Vajpayee reported in **AIR 1980 SC 840**.

17. In **Menaka Gandhi vs. Union of India** reported in **AIR 1978 SC-597**, Hon'ble Supreme Court in Paragraphs- 57, 58 and 61 has held as under:-

57. The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the, test of this requirement ? Is it 'right or fair or just' ? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Cooper v. Wandsworth Maneka Gandhi vs Union Of India* on 25 January, 1978 Indian Kanoon - <http://indiankanoon.org/doc/1766147/> 57 Board of Works(2). "A long course of decision---, beginning with Dr. Bentley's case and ending with some very recent cases, establish that, although there are no positive words in the statute requiring that the party shall be heard, yet-the justice of the common law will supply the omission of (1) [1974]2S.C.R.348. (2) [1863]14C.B.N.S.180. the legislature". The principle of audi alteram partem, which mandates that no one shall be condemned unheard, part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The

question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport ?

58. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club : "We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception ? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance ? I believe that it is very much more. If it can be summarised as being fair play in action—who could wish that it would ever be out of action ? It denotes that the law is not only to be guided by reason and by logic but that its purpose shall not be fulfilled; it lacks more exalted inspiration." (Current Legal Problems, 1973, Vol. 26, p. 16) And then again, in his speech in the House of Lords in *Wiseman v. Borneman*(1), the learned Law Lord said in words of inspired felicity: "that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is

only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches : there we may find what Byles, J., called "the justice of the common law". Thus, the soul of natural justice is fair play in action' and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Henning, M.R. in these terms in *Schmidt v. Secretary of State for Home Affairs*(1) :-where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations. Vide *American Journal of International Law*, Vol. 67, page 479. Magarry, J., describes natural justice "as a distillate of due process of law". Vide *Fontaine v. Chesterton*(2). It is the quintessence of the process of justice inspired and guided by fair play in action'. If we look at the speeches of the various law Lords in *Wiseman's case*, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or, was the procedure adopted by the Tribunal 'in all the circumstances unfair'? The test adopted by every law Lord was whether the procedure followed was "fair in all the circumstances" and 'fair play in action' required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him." The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?.

61. This Court, speaking through Hegde, J., in *I. K. Kraipak's case* quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add : "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they

do not supplant the law of the land but supplement it-Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the, application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice One fails to see why those rules should be made inapplicable, to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. The University of Kerala and Ors.* (1969)1 S.C.R. 317 the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case." This view was reiterated and re-affirmed in a subsequent decision of this Court in *D.F.O. South Khari v. Ram Sanahi Singh*(1). The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

18. In *Manohar Manikara Anchula vs. State of Maharashtra* reported in **AIR 2013 SC-681** Hon'ble Supreme Court in Paragraph-17 has held as under:-

17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before

the Commission. If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the Courts have even made compliance to the principle of rule of natural justice obligatory in the class of administrative matters as well. In the case of *A.K. Kraipak & Ors. v. Union of India & Ors.* [(1969) 2 SCC 262], the Court held as under : 17. It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust

decision in an *Manohar vs State Of Maharashtra & Anr* on 13 December, 2012 Indian Kanoon - <http://indiankanoon.org/doc/136770833/> 6 administrative enquiry may have more far reaching effect than a decision in a quasijudicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

19. In *State of Orissa vs. Binapani Das* reported in **AIR 1967 SC-1269** Hon'ble Supreme Court in Paragraph-12 has held as under:-

12. It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. 'The rafter the first respondent was required to show cause why April 16, 1907, should not be accept das the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.

20. In *Ware House Corporation vs. Vijay Narayan Vajpayee* reported in **AIR 1980 SC 840**, Hon'ble Supreme Court in Paragraph-14 has held as under:-

14. The appellant is a Corporation constituted under the Uttar Pradesh State Warehousing Corporation (Act 28) of 1956, which was

subsequently replaced by the Central Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporations which were under consideration in Sukhdev Singh's case (ibid). The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also the employment of the respondent was public employment and the statutory body, the employer, could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant-Corporation in exercise of the powers conferred on it by the statute which created it. The appellants' power to dismiss the respondent from service was also derived from the statute. The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant- Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (Opposite Party No. Managing Director, Uttar Pradesh ... vs Vinay Narayan Vajpayee on 16 January, 1980 Indian Kanoon - <http://indiankanoon.org/doc/156294/> 8 1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No. 1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after

perusing the respondent's explanation. The rules of natural justice in this case, were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court.

21. With regard to non-furnishing of the enquiry report which vitiates the proceeding. Learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court in the case of ***Union of India vs. Ramjan Khan*** reported in ***AIR 1991 SC 471, MD ECIL, Hyderabad vs. B.Karunakar*** reported in ***AIR 1994 SC 1074, Union of India vs. R.P. Singh*** reported in ***AIR 2014 SC 2541***.

22. Relying on the decision of the Hon'ble Apex Court as cited (supra). Mr. Rath prayed for interference of this Court with regard to the order of punishment passed under Annexure-19 by upholding the earlier order passed on 10.06.2003 under Annexure-13 as well as for appropriate order on the claim made by the Petitioner.

23. Mr. Rath, further prayed for extension of all service and financial benefits as due and admissible in favour of the Petitioner.

24. Mr. Satapathy, learned State Counsel on the other hand made his argument basing on the stand taken in the counter affidavit filed by the said District Education Officer, Keonjhar-Opposite Party No.3. Though in the said counter, it has been indicated that the Opposite Party No.3 proceeded with the enquiry in accordance with the provisions contained under Rule-15 of the OCS (CCA) Rules, 1962, but with regard to the allegations made by the Petitioner regarding non-supply of the enquiry report as well as show cause as contemplated under Rule-15 of the said Rules, it is submitted that since the question of misappropriation is alleged against the Petitioner, the

Opposite Party No.3 rightly passed the order of dismissal initially on 10.06.2003 under Annexure-13 and confirmed the same vide the impugned order dated 26.03.2013 under Annexure-19.

25. Mr. Satapathy, further submitted that the scope of the judicial review by this Court with regard to the punishment imposed in a proceeding is very limited.

26. Mr. Rath, learned counsel for the Petitioner on the other hand submitted that in view of the decision of the Hon'ble Apex Court reported in **AIR 1984 SC-1182, AIR 2003 SC 1843 and AIR 2005 SC-2080**, this Court has got ample jurisdiction and power to decide the matter on the question of punishment.

27. In ***State of N.C.T of Delhi and another vs. Sanjeev alias Bitto*** reported in **AIR 2005 SC-2080** Hon'ble Supreme Court in Paragraphs-15 & 16 held as under:-

15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See *State of U.P. and Ors. v. Renusagar Power Co. and Ors.* , AIR (1988) SC 1737. At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion

must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*.

16. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is 'illegality' the second 'irrationality', and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*, [1984] 3 All. ER. 935, (commonly known as *CCSU Case*). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See *Commissioner of Income-tax v. Mahindra and Mahindra Ltd.*, AIR (1984) SC 1182. The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice" thus: "There is a general presumption against ousting the jurisdiction of the Courts, so that

statutory provisions which purport to exclude judicial review are construed restrictively. There are, certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* this is doubtful. Lords Diplock, Scaman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. May prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest".

28. In *Indian Railway construction Co., Ltd. vs. Ajay Kumar* reported in **AIR 2003 SC-1843** Hon'ble Apex Court in Paragraph-13 has held as under:-

13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See *State of U.P. and others v. Renuagar Power Co. and others* (AIR 1988 SC 1737). At one time, the traditional view in

England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work “Judicial Review of Administrative Action” 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts *ultra vires*”.

29. In *Commissioner of Income-tax, Bombay and others vs. Mahindra and Mahindra Ltd. and others*

reported in **AIR 1984 SC-1182** Hon'ble Apex Court in Paragraph-11 has held as under:-

11. By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from *Barium Chemicals Ltd. v. Company Law Board*(1) case on the point. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. This Court in one of its later decisions in *Smt. Shalini Soni etc. v. Union of India and Ors. etc.*(2) has observed thus: "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote." Suffice it to say that the following passage appearing at pages 285-86 in Prof. de Smith's treatise 'Judicial Review of Commissioner Of Income ... vs Mahindra And Mahindra Limited & Administrative Action' (4th Edn.) succinctly summarises the several principles formulated by the Courts in that behalf thus: "The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case; In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can

conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category."

30. Heard learned counsel for the Parties at length.

31. Perused the materials available on record. After going through the same, this Court finds that on receipt of the charges, the Petitioner though vide letter dated 10.05.2020 under Annexure-5 prayed for supply of various documents, those documents were never supplied to him.

32. It is also apparent that the enquiry report was never supplied to the Petitioner nor any show cause was issued prior to passing of the order of dismissal initially vide order dated 10.06.2013 under Annexure-13. Non-supply of the documents and non-furnishing of the enquiry report as well as non-compliance of the provisions of Rule-15 of the Rules is also apparent in the order passed by the Opposite Party No.2 while initially dealing with the order of punishment in the appeal filed by the Petitioner under Annexure-15. Though while dealing with the matter, Opposite Party No.2 directed the Opposite Party No.3 to cause a fresh enquiry by giving opportunity of hearing to the Petitioner and to allow the petitioner to cross-examine the witness and to provide the document so required by him, but those things were never complied with by the said Opposite Party No.3. After issuing a notice on 05.05.2004 under Annexure-17 with a direction on the Petitioner to take part in the enquiry, the Opposite Party No.3 proceeded with the matter

basing on the alleged fresh enquiry report so submitted on 28.06.2007. Opposite Party No.3 after obtaining the permission of the Opposite Party No.2 uphold the order of dismissal so passed vide order dated 26.03.2013 under Annexure-11.

33. From the materials available on record, it is apparent that the conduct of the Opposite Party No.3 reflects a sorry state of affairs. Though the proceeding against the Petitioner initiated under Annexure-4 was a proceeding under Rule-15 of the Rules, but the Petitioner was never provided with the documents as prayed for under Annexure-5 and thereby enabling him to file his written statement of defence. Not only that the enquiry report was also never supplied nor any show cause was issued proposing the order of punishment if any. Therefore, the initial order of punishment passed by the Opposite Party No.3 on 10.06.2003 under Annexure-13 was set aside by the appellate authority by remanding the matter for fresh enquiry and disposal. The Opposite Party No.3 after such remand once again without following the provision contained under Rule-15, proceeded with the matter and upheld the order of punishment passed on 10.06.2003 vide order dated 26.03.2013 under Annexure-19. From the aforesaid conduct of the Opposite Party No.3, this Court finds that the order of punishment has been passed in complete violation of the principle of natural justice.

34. Relying on the decision cited by Mr. Rath and the view expressed by the Hon'ble Apex Court, this Court has got no hesitation in interfering with the office order dated 26.03.2013 passed under Annexure-19. While quashing the same, this Court directs that since the Petitioner has

retired in the meantime, the Petitioner will be treated to have been continued in his service till his superannuation. While directing so, this Court further directs the Opposite Parties to sanction and disburse all service and financial benefits as due and admissible in favour of the Petitioner within a period of four months from the date of receipt of this order. In order to mitigate the hardship caused to the Petitioner, this Court while allowing the Writ Petition imposes a cost of Rs.20,000/- on the then Inspector of Schools, Keonjhar who have passed the initial order of dismissal on 10.06.2003 and the subsequent order on 24.03.2013. The aforesaid cost is to be recovered from the salary / pension of the said District Education Officer, Keonjhar.

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

संस्थानिक न्यायो

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 2nd of August, 2022/Subrat