

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1605 of 2013

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

.....

Ramakanta Sathapathy

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. J.K.Rath, S.N.Rath,
P.K.Rout & D.N.Rath.

For Opp. Parties : Standing Counsel
Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 27.07.2022 and Date of Order: 11.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. J.K.Rath, learned Senior Counsel for the Petitioner and Mr. M.K.Balabantaray, learned counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner challenging the 2nd show cause notice issued under Annexure-9 as well as the initiation of the proceeding against the Petitioner under Annexure-5.

4. It is submitted that the Petitioner was appointed as a Junior Clerk on ad hoc basis in the establishment of Soil Conservation Officer, Rengali Division, Panpose with regular scale of pay as applicable to the post of Junior Clerk vide order dated 05.06.1984.

5. It is submitted that while so continuing pursuant to the order dated 05.06.1984, the Petitioner was allowed to work on Ad hoc basis until further orders vide order of the said Soil Conservation Officer, Rengali Division, Panpose dated 20.08.1985 under Annexure-2.

6. It is also submitted that subsequent to his appointment on Ad hoc basis, the Petitioner was not only sanctioned with the regular scale of pay as applicable, but also he was extended with the benefit of making contribution to his GPF Account No.33018AV (O) and was also issued with the GIS Pass Book, which is generally issued in favour of the regular Government employees.

7. It is further submitted that the Petitioner during his continuance on such Ad hoc basis was also allowed with the benefit of the revised scale as due and admissible under the different ORSP Rules.

8. Mr. Rath, learned Senior Counsel submitted that instead of absorbing the Petitioner in the regular establishment taking into account his long continuance on Ad hoc basis, a proceeding was initiated against the Petitioner vide Memorandum dated 30.03.2010 under Annexure-5. The Article of Charges framed against the Petitioner is quoted hereunder:-

“Whereas Sri Ramakanta Satapathy, Jr. Clerk, O/O. Asst. Soil Conservation Officer, Lahunipara during in incumbency as such in the O/O Soil conservation Officer,

Panposh has committed the irregularities by tampering / manipulation of Government records with ulterior motive regarding irregular appointment of Jr. Clerk (self). He suppressed the fact by supplying irrelevant facts to Director, Soil conservation, Orissa as he himself was the dealing clerk dealing with the establishment matter at that time. Later while supplying information to Director Soil conservation, Orissa vide S.C.O., Panposh Letter No.1329 dtd. 30.3.1988 he himself included his name in the list of irregular appointees.

Thus the following article of charges are leveled against him under Rule-15(fifteen) of OCS (CC&A) Rules, 1962.

I. Lack of absolute integrity, decorum of conduct, tampering / manipulation of Government records with ulterior motive regarding his irregular appointment as Jr. Clerk and violation of rule 3 & 4 of Orissa Govt. Servants Conduct Rules, 1959”.

9. It is submitted that on receipt of the Article of Charges, the Petitioner submitted his written statement of defence on 20.05.2010 under Annexure-6 and the Opposite Party No.2-Disciplinary Authority appointed the Enquiry Officer and Presiding Officer to conduct the enquiry vide his order dated 20.09.2010 under Annexure-7.

10. It is submitted that during conduct of such enquiry, the Petitioner moved an application before the Enquiry Officer on 13.06.2011 vide Annexure-8 by bringing to his notice the guidelines issued by the Government in the General Administration Department on 07.10.1994, wherein the State Government had decided in principle to absorb an employee on regular basis who has worked for more than 5 years. The Petitioner in the said application also prayed for to exonerate him from the charges.

11. It is submitted that on completion of the Enquiry, the Enquiry Officer submitted his report on 20.09.2011 with the following recommendations:-

“Thus the disciplinary proceeding may be finalized by awarding the following punishment on the delinquent Officer, as the charges were established:-

- i) He may be censured.
- ii) Two annual increments may be stopped with cumulative effect.
- iii) His promotion may be held up till his services is duly regularized.
- iv) The Administrative Department may be moved to regularize the services of the delinquent officer considering his length of service.”

12. It is submitted that on receipt of the Enquiry report, the Opposite Party No.2 issued the 1st show cause on 29.10.2011 with a direction to the Petitioner to make his representation against the finding of the said enquiry report. The Petitioner accordingly submitted his reply on 26.11.2011 under Annexure-10 with a prayer to regularize his service in terms of the G.A Department guidelines issued on 07.10.1994 and to exonerate him from the charges as the Petitioner has continued for more than 25 years on Ad hoc basis by that date.

13. It is submitted that instead of considering the genuine grievance of the Petitioner for his absorption in the regular establishment taking into account his long continuance w.e.f. 5.6.1984 and without considering his reply under Annexure-10, when the impugned 2nd show cause notice was issued on 18.05.2013 under Annexure-11, the Petitioner challenging the same filed the present Writ Petition.

14. Mr. Rath submitted that since in his enquiry report under Annexure-9, the Enquiry Officer never proposed punishment of dismissal from service, which is a major

penalty under Rule-13 of the OCS (CC&A) Rules, 1962, the Opposite Party No.2 in the impugned 2nd show cause without giving his disagreeing note to the said recommendation of the enquiry report straight away issued the said show cause proposing the punishment of dismissal from the Government service.

15. It is submitted that since the impugned show cause does not contain the disagreeing note of the Opposite Party No.2 and the reasons for disagreeing with the finding of the enquiry officer, the same is illegal.

16. Mr. Rath in support of the aforesaid submissions relied on the decision of the Hon'ble Apex Court in the case of **Punjab National Bank & Others-vrs- Kuma Bihari Mishra** reported in **1998 (7) SCC 84** and in the case of **Yoginath D. Baghde-vrs.State of Maharashtra & Others** reported in **(1999) 7 SCC-739**.

17. In **Punjab National Bank & Others-vrs- Kunj Behari Misra** reported in **(1998) 7 SCC 84**, Hon'ble Apex Court in Paragraph-17 has held as under:-

"These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (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 (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."

18. In *Yoginath D. Baghde-vrs.State of Maharashtra & Others* reported in (1999) 7 SCC-739, Hon'ble Apex Court in Paragraph-28 held as under:-

"In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded".

19. Mr. Rath, learned counsel for the Petitioner in support of his aforesaid submission also relied on a decision of the Hon'ble Apex Court passed on 02.01.2017 in Civil appeal No. 7600 of 2014 and

the decision of this Court reported in 2006 Suppl. I OLR 644 and 2006 (II) OLR 172.

20. In Civil Appeal No.7600 of 2014, Hon'ble Court in Para 7 & 8 held as follows:-

“7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry

Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on

account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”

21. In 2006 (supp. I) OLR 644, Hon’ble Court in Para 17 to 24 held as follows:-

“17. We have perused the inquiry report and found that there is no whisper therein regarding recording of any evidence. It appears that the Inquiring Officer/C.D.I. has only considered the contents of charge sheet and its reply. The explanation submitted by the Petitioner supported by some documents was accepted by him and he submitted his report accordingly. Therefore, the punishing authority has no other option than either to accept the Inquiry report or to reject the same and pass an order of de novo inquiry. It could not have formed its opinion beyond the record of inquiry proceeding. Therefore, in our opinion, in the instant case the first vital question involved is whether it was proper on the part of the punishing authority to disagree with the findings of the Inquiring Officer without giving any reason and whether the Petitioner could be held guilty in the absence of any material evidence in the inquiry proceeding. We have already quoted the relevant part of the orders passed by the punishing authority and the recommendation made by the Public Service Commission.

18. No doubt, a Commission of Inquiry was set up by the State Government, but the punishment was not based solely and directly on the basis of the report of the Commission of Inquiry. It was based on the departmental proceeding conducted by the Inquiring Officer/C.D.I. When the State Government received the inquiry report in the Disciplinary Proceeding, they had decided to accept the same. But when the P.S.C. sent a different recommendation, the Government changed its view, and decided to impose major penalty, i.e. reduction in rank and treatment of period of suspension as such. However, no reason was given by the State government for doing so. Merely taking a decision to accept the advice of the Commission regarding imposition of major punishment upon the Petitioner could not have

relieved the State Government from its responsibility of giving reasons for doing the above, there is specific provision in Rule 15(10)(i)(a)(b) of OCS (CCA) Rules 1962. According to the said Rule, it is mandatory on the part of the Punishing Authority to give reason in case of disagreement with the inquiry report. The said provision is quoted hereinafter.

“15(10)(i)(a)(b) if the inquiring officer is not the disciplinary authority, the disciplinary authority shall furnish to the Inquiring Officer and given him notice by registered post or otherwise calling upon him to submit within period of fifteen days such representation as he may wish to make against findings of the Inquiring Authority.

(b) On receipt of the representation referred to in Sub-clause (a) the disciplinary authority having regard to the findings on the charges is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed, he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons for disagreement, if any, with the findings of the inquiring officer and give him a notice by Registered post r otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representations as he may wish to make against the proposed penalty;

Provided that in every case in which it is necessary to consult the Commission under the provision of the Constitution of India and the Orissa Public Service Commission (Limitation of functions) Regulation, 1989 the record of Inquiry together with a copy of the notice given under Sub-Clause (a) and the representation if any, received within the specified time in response to such notice shall be forwarded by the disciplinary authority to the Commission for its advice.”

19. In the instant case, although the Inquiring Officer/C.D.I. did not find the petitioner guilty and specifically held that the charges framed against the petitioner were not proved, but the punishing authority has taken a view contrary to the findings of the Inquiring Officer that the charges leveled against the Petitioner were proved. Therefore, it

cannot be said that the punishing authority did not disagree with the inquiry report. It was the own suggestion of the Inquiring Officer, which was beyond the findings that the petitioner did not take extra care and on the basis, recommended the punishment of censure, which could not have been drawn that the conclusion of the Inquiring Officer was that the charges were proved against delinquent officer and as such the same was not in fact a disagreement with the finding of the Inquiring Officer by the punishing authority in imposing major punishment by the impugned order.

20. In the case of Joginath D. Badge v. State of Maharashtra and another reported in (1999) 7 Supreme Court Cases 739 the Apex Court held that:-

“It was open to the Disciplinary Authority either to agree with the findings recorded by the enquiring Authority or disagree with those findings. If it does not agree with the findings of the enquiring Authority, it may record its own findings. Where the Enquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Enquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. So also if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established, there would arise no difficult. Difficulties have arises in all those cases in which the enquiry authority has recorded a positive findings that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the

Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded."

21. In the case of State of Rajasthan . M.C. Saxena reported in A.I.R. 1998 S.C. 1150, the Apex Court has laid down that if the Disciplinary Authority gives reasons for disagreeing with the findings of the Inquiring Officer then the Court cannot interfere with those findings unless it comes to the conclusion that no reasonable man can come to the said finding.

22. If in the above-mentioned circumstances, the punishing authority has not given any reason for his disagreement with the finding recorded by the Inquiring Officer, it cannot be said that the Petitioner has been afforded an adequate opportunity of hearing, as he was not in a position to explain his case in his representation. Therefore, it can be said without any hesitation the adequate opportunity of hearing was not afforded to the petitioner to defend his case and the impugned punishment order has been passed in violation of principles of natural justice.

23. In view of the above mentioned facts and circumstances, we are of the firm view that the impugned order of punishment reducing the petitioner in rank from the post of Excise superintendent to those post of the Deputy Superintendent of Excise is not sustainable in the eye of law and the Tribunal has committed manifest error of law in dismissing the O.A.

24. Therefore, the writ Petition is allowed in part and the impugned order of punishment as well as the impugned order passed by the Tribunal in O.A. No.973(C) of 2005 confirming the punishment of reduction in rank are quashed. However, it will be open for the punishing authority to reconsider the matter in the light of the observation made in the body of this Judgment, in accordance with law.”

22. In 2006 (II) OLR 172, Hon’ble Court in Para 4 to 6 held as follows:-

4. We have gone through the impugned judgment of the Tribunal, judgment passed in the earlier O.A., inquiry report and the rules governing the field. Sub-rule 10(ii) of Rule-15, non-compliance of which is alleged by the petitioner, reads as under:

“The orders passed by the disciplinary authority shall be communicated to the Government servant, who shall also be supplied with a copy of the report of inquiring authority and where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority as well as a copy of the advice of the Commission, where the Commission had been consulted, and brief statement of reasons for non-acceptance of the advice of the Commission, if the disciplinary authority has not accepted such advice.”

On perusal of the aforesaid provision, it would be manifest that the Disciplinary Authority shall communicate the delinquent officer a copy of the report of the inquiring authority, the statement of findings together with the reasons for disagreement, if any, with the findings of the inquiring authority. But in the instant case, after the Tribunal's judgment in the earlier O.A., the petitioner submitted his interim comments on 28.07.1997. He was asked to furnish his final comments, if any, vide letter dated 01.11.1997 and he submitted his final comments on 24.12.1997. Thereafter, the punishment order was passed on 19.01.1999 withholding three consecutive increments with cumulative effect. It is worthwhile to mention that in the letter dated 01.11.1997, by which the petitioner was asked to submit his final comments, no reason was ascribed with regard to disagreement from the findings of the Inquiry Officer. Only he was asked to furnish his final comments.

5. The apex Court in Bagde's case (supra) in para 33 of its judgment has held as under:

“In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the

stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the 'right to be heard' would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

6. Admittedly, in the case at hand, the Disciplinary Authority disagreed with the findings of the inquiry authority. But at no point of time, the petitioner was made to know about the reasons for such disagreement. He was also never asked to submit his reply to the proposed disagreement by the disciplinary authority. In other words, the disciplinary authority has taken a final decision that the charges leveled against the petitioner have been proved. The petitioner was only asked to show cause against the punishment, not against the proposed disagreement. The Tribunal has lost sight of the aforesaid fact. Since the disciplinary authority did not give any opportunity of hearing to the petitioner before taking final decision in the matter relating to the disagreement, there has been violation of principle of natural justice. In our considered opinion, the ratio decided in Bagde (supra) is squarely applicable to the present case."

23. Mr. Rath accordingly submitted that since the impugned 2nd show cause does not contain the disagreeing note by the disciplinary authority and the reason for

disagreeing with the finding of the enquiry officer, the same is illegal and liable to be interfered with by this Court.

24. It is also submitted that this Court while issuing notice of the matter vide order dated 05.06.2013 not only stayed the operation of the said show cause issued under Annexure-11, but also the Petitioner was allowed to continue on Ad hoc basis and during pendency of the matter, he attained the age of superannuation on 31.03.2020.

25. Mr. Rath accordingly submitted that since the Petitioner during subsistence of the interim order was allowed to retire while working on Ad hoc basis, no order of dismissal can also be passed as against the Petitioner.

26. It is further submitted that the Petitioner on his joining on Ad hoc basis since was allowed regular scale of pay with opening of service book and contribution made towards GPF and GIS, the Petitioner is otherwise eligible for his absorption in the regular establishment.

27. Mr. Balabantaray, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that since the Petitioner entered into his service on Ad hoc basis by manipulating / tampering the Government records with ulterior motive regarding working as a Junior Clerk, the proceeding was rightly initiated against him under Annexure-5.

28. It is also submitted that in the said proceeding, the Petitioner was given all opportunity to defend himself. But when this Court put a question to the learned counsel for the Opposite Parties regarding non-furnishing of any

disagreeing note by the Opposite Party No.2-Disciplinary Authority while issuing the 2nd show cause, Mr. Balabantaray learned State Counsel failed to satisfy this Court on that point.

29. Perusal of the counter affidavit also does not reflect any stand taken by the Opposite Party No.2 with regard to non-compliance of the said provision i.e. giving reasons for disagreeing with the recommendation of the Enquiry Officer.

30. Heard learned counsel for the Parties.

31. Perused the materials available on record. This Court after going through the same finds that not only the Petitioner was appointed on Ad hoc basis with regular scale of pay, but also his service book was opened under Annexure-3 showing the date of entry in Government service as 10.06.1984. Not only that the Petitioner after such appointment on Ad hoc basis was allowed to continue with opening of his GPF Account and contribution was made towards GIS, which is generally allowed to regular Government employee. This Court further finds that since his appointment, the Petitioner was also allowed the benefit of revised scale in accordance with different ORSP Rules. But the Opposite Party No.2 instead of taking steps to absorb the Petitioner in the regular establishment, initiated the proceeding under Annexure-5 by holding the Petitioner responsible for tampering / manipulating of Government documents with an ulterior motive with regard to his appointment on Ad-hoc basis as a Junior Clerk. This Court also finds that the Opposite Party No.2 while issuing the impugned 2nd show cause notice on 18.05.2013 under Annexure-11 has not given any disagreeing note by giving

reasons for disagreeing with the finding of the Enquiry Officer.

32. Since impugned 2nd show cause has been issued without having any disagreeing note, in view of the decision of the Hon'ble Apex Court as cited (supra) and the provision contained under rule 15 of the OCS (CCA) Rules, 1962, the said 2nd show cause is not tenable in the eye of law. Though a submission was made to remand the matter for fresh disposal of the proceeding from the stage of the issuance of the 2nd show cause, but in view of the fact that the Petitioner by virtue of the interim order not only continued on Ad hoc basis but also he was allowed to retire on 31.03.2020 while continuing as such, any remand at this point of time will cause serious prejudice to the Petitioner.

33. In view of the fact that the Petitioner continued on Ad-hoc basis w.e.f. 10.06.1984 till 31.03.2020 by enjoying all the benefits as due and admissible to the post in question as a regular employee, the Petitioner is otherwise entitled for his absorption in the regular establishment for the purpose of getting the benefit of pension and pensionary benefits as provided under OCS, Pension Rules, 1992. Therefore, this Court in view of the admitted irregularity in the issuance of the impugned 2nd show cause issued on 18.05.2013 under Annexure-11, deems it fit and proper to quash the same and so also the proceeding initiated against the Petitioner under Annexure-5. This Court further directs the Opposite Parties to absorb the Petitioner as against the post of Junior Clerk and extend all the retiral benefits as due and admissible under OCS, Pension Rules, 1992. This Court directs the Opposite

Parties to complete the entire exercise within a period of three months from the date of receipt of this order.

34. 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 11th of August, 2022/Subrat

