

ORISSA HIGH COURT: CUTTACK

WPC (OAC) No.4070 OF 2013

(An application under Article 226 and 227 of the
Constitution of India)

AFR Suvendu Kumar Routray Petitioner

-Versus-

State of Odisha & others Opp. Parties

Advocate(s) appeared in this case :-

For Petitioner	:	Mr. J.K. Mishra (2), Advocate
For Opp. Parties	:	Mr. H.K. Panigrahi, Additional Standing Counsel

CORAM

JUSTICE SASHIKANTA MISHRA

JUDGMENT

4th May, 2022

SASHIKANTA MISHRA, J. In the present writ application, the petitioner seeks to challenge the order of punishment passed by the Disciplinary Authority (opposite party no.2) and the order passed by the Appellate Authority (opposite party no.1) in rejecting his appeal filed against the order of

punishment.

2. Bereft of unnecessary details, the facts of the case are that while the petitioner was working as a Junior Clerk in Tangi Sub-Treasury, a proceeding was initiated against him on 28.12.1990 on several charges of misconduct. The petitioner submitted his reply denying the charges but the disciplinary authority decided to conduct an enquiry. Accordingly, an enquiry was conducted, which according to the petitioner was held without adhering to the principles of natural justice. The enquiry officer submitted his report on 24.03.1992 holding the petitioner guilty of the charges. Basing on the said report, the petitioner was visited with the punishment of withholding of the increments without cumulative effect by the disciplinary authority vide order dated 31.08.2010, which is enclosed as Annexure-5 to the writ petition. The petitioner preferred an appeal before opposite party no.1 raising several grounds including the ground of non-compliance of the principles of natural justice. The opposite party no.1 however, rejected his appeal by order

dated 15.11.2012, which is enclosed as Annexue-7 to the writ petition. Challenging the order of the disciplinary authority as well as the rejection of the appeal preferred by the petitioner, he approached the erstwhile Odisha Administrative Tribunal in O.A. No. 4070(C) of 2013, which has since been transferred to this Court and registered as the present writ application.

3. A detailed counter affidavit, rejoinder and counter to the rejoinder have been filed by the parties. However, in view of the order proposed to be passed by this Court, it is felt unnecessary to go into the same.

4. It appears from the materials on record and the submissions made by learned counsel for the parties, the petitioner had previously approached the erstwhile Odisha Administrative Tribunal in O.A. No.377 of 1995 challenging the order of punishment originally imposed by the disciplinary authority. Learned Tribunal vide order dated 08.08.2006 set aside the order of punishment and directed the disciplinary authority (opposite party no.2) to proceed with the enquiry and continue the same from the

stage of furnishing report of the enquiry officer to the petitioner by issuing notice to him to submit representation as he may wish to make against the findings of the enquiring authority and to finalize the proceedings as early as possible following the procedure to be adopted on receipt of the said representation. Pursuant to such order passed by the learned tribunal a show cause notice was issued to the petitioner along with a copy of the enquiry report purportedly as required under Rule 15(10)(i)(a) of OCS (CCA) Rules, 1962. The petitioner duly submitted his representation against the findings of the enquiry officer on 24.05.2007. However, by the order passed under Annexure-5, the disciplinary authority considered the representation of the petitioner as not convincing and satisfactory. Accordingly, show cause notice was issued to the petitioner proposing the punishment of withholding of three increments without cumulative effect. The petitioner also submitted his show cause reply on 09.03.2010, which according to the disciplinary authority, was not satisfactory and

accordingly, the proposed punishment was imposed and the proceeding was finalized. The petitioner, as already stated, submitted an appeal to the opposite party no.1 raising several grounds, both factual and legal. By order dated 15.11.2012, which is enclosed as Annexure-7, the appellate authority was of the opinion that the penalty imposed by the disciplinary authority is proportionate to the misconduct and accordingly held that the appeal petition being devoid of merit was therefore rejected.

5. Mr. J.K. Mishra, learned counsel appearing for the petitioner has argued that law requires the appellate authority to give proper and adequate reasons for its findings but in the instant case the appellate authority had rejected the appeal in a mechanical manner without in the least considering the specific grounds raised by the petitioner against the findings of the enquiry officer.

6. Mr. H.K. Panigrahi on the other hand, contends that when the appellate authority was of the opinion that the grounds raised by the petitioner are not convincing, he was not obliged to record his reasons in respect of each of

the grounds so raised by the petitioner and therefore, according to him the impugned order does not warrant any interference by this Court.

7. In this context it would be apposite to refer to the provisions of the OCS(CCA) Rule, 1962, Rule 13 of which lists the penalties that may be imposed on a Govt. servant. Withholding of increments without cumulative effect is one of the penalties that may be imposed as per Rule-13. Rule-22 provides that a member of the Odisha Civil Services Group-C or Group-D may appeal against an order imposing upon him any of the penalties specified in Rule-13 to the authority specified in his behalf. In the instant case it is not disputed that the Principal Secretary to Govt. in Finance Department is the appellate authority in so far as the petitioner is concerned. While Rules-24 to 28 provide for the various aspects of preferring of such appeal, Rule-29 relates to the consideration of appeals by the appellate authority. It would be profitable to quote Rule-29 at this stage.

“29. Consideration of Appeals – (1) In the case of an appeal against an order imposing any of the penalties specified in Rule 13 the

appellate authority shall consider –

- (a) whether the procedure prescribed in these rules has been complied with an, if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice.*
- (b) whether the findings are justified; and*
- (c) whether the penalty imposed is excessive, adequate or inadequate;*

and, after consultation with the Commission if such consultation is necessary in the case, pass orders-

- (i) Setting aside, reducing confirming or enhancing the penalty' or*
- (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;*

Provided that –

- (i) the appellate authority shall not impose any enhanced penalty which neither such authority or the authority which made the order appealed against is competent in the case to impose;*
- (ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity or making any representation which he may wish to make against such enhanced penalty; and*
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (vi) to (ix) or Rule 13 and an inquiry under Rule 15 has not already been held in the case the appellate authority shall, subject to the provisions of Rule 18, itself hold such inquiry or direct that such inquiry be held and, thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to*

make against such penalty, pass such orders as it may deem fit.

(2) In the case of an appeal against any order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.”

As bare perusal of Rule -29 as quoted above makes it clear that a specific duty has been cast upon the appellate authority to consider whether the procedure has been complied with and if not, if the same has resulted in violation of any provisions of the constitution or failure of justice and whether the findings are justified on the evidence on record and finally whether the penalty imposed is justified.

8. Law is well settled that the appellate authority being a quasi-judicial authority has to act fairly with due application of mind and as such, he must peruse the entire evidence taken during the enquiry, the enquiry report, the charges along with explanation of the delinquent government servant so as to come to a reasonable conclusion. In other words, the appellate authority must apply his mind and pass an objective order without being influenced by the findings of the enquiry

officer or of the disciplinary authority. Further, being the appellate authority, law mandates that it must pass a reasoned and speaking order.

9. Coming to the facts of the case, this Court finds that the appeal petition was disposed of by the appellate authority simply by holding that the penalty imposed by the disciplinary authority is proportionate to the misconduct. Evidently, all the grounds raised by the petitioner in his appeal petition relating to lack of opportunity to cross-examine the witnesses, alleged manipulation of documents, utilization of documents by the enquiry officer behind his back etc. have not at all been taken into consideration. It goes without saying that when the statute requires a thing to be done in a particular manner, it has to be done in such manner or not at all. Since Rule-29 casts a positive obligation on the appellate authority to consider and dispose of the appeal filed by the delinquent in a particular manner, it has to be done in that manner. Since the statute confers power on the disciplinary authority to impose punishment on a

delinquent government servant, the provision under Rule 29 is obviously intended to act as a safeguard against any arbitrary, unreasonable or illegal exercise of power by the disciplinary authority. After perusing the impugned order under Annexure-7 this Court is constrained to observe that the same is cryptic, non-speaking and entirely contrary to the statutory intent and therefore, deserves to be interfered with.

10. For the foregoing reasons therefore, this Court is of the view that the appellate authority should consider the appeal petition afresh and pass a reasoned order in accordance with law after granting opportunity of hearing to the petitioner, if he so desires.

11. The writ petition is therefore disposed by setting aside the order under Annexure-7 and by remitting the matter to opposite party no.1 to consider the appeal petition filed by the petitioner afresh strictly in terms of the provisions contained in Rule-29 of the OCS(CCA) Rules, 1962 and if the petitioner so desires, he may also be heard in person. The above exercise shall be completed

within a period of two months from the date of communication of this order or on production of certified copy thereof by the petitioner and the decision of the appellate authority shall be communicated to the petitioner within fifteen days thereafter.

12. The writ petition is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 4th May, 2022/ A.K. Rana