

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.4564 of 2011

Debendra Nath Nanda *Petitioner*
Mr. A. Mishra, Adv.

-versus-

State of Odisha and Ors. *Opposite Parties*
Mr. H.K. Panigrahi, ASC

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
14.

ORDER
23.12.2022

1. This matter is taken up through hybrid mode.
2. The petitioner has filed this writ petition challenging the action of the opposite parties in allowing the departmental proceedings to continue which was initiated in the year 2005 till date though three different officers, who were entrusted with the task of conducting the enquiry failed to find the petitioner guilty of the charges and in the meantime the petitioner has retired from service sans any pension and pensionary benefits.

I. CASE OF THE PETITIONER AND SUBMISSIONS

3. Shorn of unnecessary details, while the petitioner was functioning as a Sub-Assistant Registrar of Cooperative

Societies, under the control of the Deputy Registrar of Cooperative Societies, Sundargarh and was sent on deputation basis to the Urban Cooperative Bank, Main Branch, Rourkela on foreign terms and conditions in pursuance to the order of the opposite party No.2 vide order dated 26.12.1997. The petitioner had neither opted nor represented to the authorities for a posting to the Bank, but due to his efficiency and honesty, he was chosen for the post of Branch Manager of the Urban Cooperative Bank, Main Branch, Rourkela. Pursuant to the order of the opposite party No.2 the petitioner joined the said Bank on 07.01.1998 and assumed the charge as Branch Manager of the Urban Cooperative Bank, Main Branch, Rourkela on 14.01.1998. He continued there till 12.06.2000 in such capacity of Branch Manager and subsequently as Chief Recovery Officer from the period from 13.06.2000 to 07.07.2001.

4. On 31.12.2005 a set of charges were framed by the opposite party No.2 against the petitioner for committing certain irregularities i.e. purchasing bills without authorised sanction and failing to realize the bills amounts during his incumbency as Branch Manager of Urban Cooperative Bank, Main Branch, Rourkela. Even though explanation was submitted by the petitioner to that effect and failing to

get satisfied with such explanation, the opposite party No.2, appointed the Deputy Registrar of Cooperative Societies, Sundargarh to enquire into the charges against the petitioner vide his letter No.5467 dated 24.03.2006. After enquiry, he submitted his report to the opposite party No.2 vide his letter dated 18.02.2008. A copy of the enquiry report was sent to the petitioner with a direction to submit his representation, if any, against the findings of the Inquiry Officer within a period of fifteen days of the receipt. Thereafter, a Surcharge Proceedings was initiated against the petitioner by the Assistant Auditor General of Cooperative Societies, Sundargarh with the certain allegations, one of which was relating to some purchase of Bills amounting to Rs.4,77,748/- i.e. the allegation on which the departmental proceeding was initiated. The Assistant Auditor General of Cooperative Societies after conducting a thorough enquiry and after verifying the accounts came to a definite conclusion that the petitioner cannot be held responsible for any of the allegations, for which the Surcharge Proceedings was initiated and as such exonerated the petitioner of all the charges. Having dissatisfied with the report submitted by the earlier Inquiry Officer i.e. the then Deputy Registrar of Cooperative Societies, the opposite party no.2 once again

referred the matter to the present Deputy Registrar of Cooperative Societies, Sundargarh to inquire into the matter. Accordingly, the present Deputy Registrar, Cooperative Societies, Sundargarh conducted a detailed inquiry into the matter and submitted his report to the opposite party No.2 in exonerating the petitioner. However, the opposite party No.2 instead of communicating his disagreement note asking the petitioner to submit his comments, preferred to make correspondences with the Deputy Registrar Cooperative Societies with regard to the Disciplinary Proceedings. At this juncture, the petitioner made a representation to the opposite party No.2 to dispose of the disciplinary proceeding at an early date so as to settle his pension and other retiral benefits. As the representation did not yield any result, the petitioner appeared before the opposite party No.2 in his grievance cell on 19.05.2010 thereafter on 06.03.2011 and lastly on 23.11.2011 but none of his appearance could satisfy the opposite party No.2, who even after receiving the reports of exonerations, preferred to keep the proceedings pending against the petitioner. Hence, he has filed this writ petition seeking to quash the entire proceeding based on the findings recorded by the Inquiry Officer as well as the order of Assistant Auditor

General of Cooperative Societies, Sundargarh in the Surcharge Proceedings and seeking direction to the opposite parties to release the pension and other pensionary benefits to the petitioner forthwith along with interest @ 18% per annum.

II. COUNTER SUBMISSIONS OF OPP. PARTY NO.1 /STATE

5. Learned counsel for the State submits that the petitioner while serving as Manager, , Urban Cooperative Bank, Main Branch, Rourkela during the period from 07.01.1998 to 12.06.2000 on deputation committed grave misconduct, found negligent in his duty and failed to protect the interest of the Bank as he had purchased the Bills from M/s. Synthochlor (India), Rourkela without any sanction which amounts to violating the practice and procedure of the Bank for which the Bank was exposed to financial risk and incurred financial loss. Upon framing of the charge, the petitioner participated in the inquiry and only after issuance of first show-cause notice, he came before the Tribunal challenging the departmental proceeding. It is submitted that the petitioner who participated in the inquiry should have waited till the proceeding is concluded. Since he has come up before this Court at the stage of issuance of first show-cause notice, the lis is not

maintainable as per law laid down by the Apex Court in *Ministry of Defence v. Prabhas Chandra Mirdha*¹ and *Chairman, Life Insurance Corporation of India and others v. A. Masilamani*².

6. It is further submitted that in the inquiry report it is found that the Sythochore (India) firm had executed a power of attorney in favour of Rourkela Urban Cooperative Bank in the year 1993 to Act on his behalf in connection with demand and receipt of Bills, dividend, signing and endorsement of cheque, promissory notes, Bills of exchange, signing of application form, contracts agreement, etc. An amount of Rs.5,00,000/- has been kept as security towards loan. The petitioner was posted to the Bank on 07.01.1998, even though he was very much aware of the fact that the account of said firm was running in debit balance, said firm was allowed "over drawn" and in course of the inquiry, the petitioner on confrontation took the plea that he trusted dealing assistant and the previous procedure of allowing over drawn was continued and he followed the same procedure. Further the findings of Inquiry Officer is that since in the dispute a case bearing No.43 of 2002 to 2003 which was filed against Sythochore

¹ 2012(11)SCC 565

² (2013) 6 SCC 530

(India) in the Court of the Deputy registrar of Cooperative Society, Sundargarh, it was held that the defendant i.e. Sythochore (India) is liable for payment of Rs.12,16,082/-. The petitioner is not at all responsible and the responsibility cannot be fixed upon the petitioner. The premise on which the inquiry officer exonerated the petitioner from the charges was disagreed by the disciplinary authority while issuing the second show cause notice. The order dated 07.11.2009 which the petitioner has relied upon, clearly reveals that the overddrawal was allowed by the petitioner and since the amount has been liquidated, the petitioner was made free from surcharge case which does not necessarily mean that the petitioner is innocent.

7. Similarly, the letter dated 30.11.2009 clearly reveals that a sum of Rs.13,82,45.58 is outstanding as on 30.09.2008 against M/s. Sythochore (India) limited and the bank has obtained a decree for recovery of the aforesaid amount. For the said lapses on the part of the petitioner, the Bank has sustained losses. In this view of the matter, the purpose of dispute case No.43 of 2002-2003 and surcharge Case No.70 of 2001 are completely different and those cases could not have been initiated, had the petitioner discharged the duties properly as entrusted to him. For the

lapses of the petitioner only, dispute case, surcharge case and a case before the DRT were initiated and it is only after an execution case was filed. The amount could have been recovered from the firm. Therefore, the plea like there is no loss to the Bank and the petitioner is not responsible, proof of loss to the Bank is not necessary etc. cannot be acceptable. The dereliction of duty, misconduct and negligence in discharging the duties is quite apparent from the inquiry report. The plea of trusting the Ministerial staff of the Bank cannot exculpate him from the charges. If at all, there is any irregularity in the departmental proceeding, the same may not lead to declare the entire proceeding illegal, rather the proceeding can be remitted back to start from the stage it is alleged to have been vitiated. Since issue involved in surcharge case vide Annexure-3, Dispute Case No.43 of 2002 are completely different from the issue involved in the charge framed against the petitioner in proceeding No.26293 dated 31.12.2005 vide Annexure-1 and each proceeding operates differently with different purposes, plea of innocence advanced by the petitioner, referring to the outcome of said ancillary proceedings may not come to his aid.

8. So far as the applicability of Section 19(4) of Odisha Tribunal Act is concerned, it would be applied only in a

case where the Court passes an order admitting the case. But, in the instant case, only notice has been issued.

III. COUNTER SUBMISSIONS ON BEHALF OF OPPOSITE PARTY NO.2

9. Learned counsel for the opposite party No.2 submits that the petitioner while working as Sub-Assistant Registrar of Co-operative Societies under the control of the Deputy Registrar of Co-operative Societies, Sundargarh he was sent on deputation to Urban Co-operative Bank Ltd., Rourkela is not a fact. In this regard, it has been submitted that the petitioner while working as Inspector of Cooperative Societies in the office of the Assistant Registrar of Co-operative Societies, Panposh was deputed to Urban Co-operative Bank Ltd., Rourkela on deputation on foreign service terms and conditions. Thereafter, he was promoted to the rank of Sub-Assistant Registrar of Co-operative Societies on 05.04.2002. It is also averred that due to his efficiency and honesty the petitioner was chosen for the post of Branch Manager of the Urban Co-operative Societies in the office of the Assistant Registrar of Co-operative Societies, Panposh for the period from 18.08.1992 to 06.01.1998 and was due for transfer. The authorities of Urban Co-operative Bank Ltd., Rourkela made a

requisition for the service of the petition on deputation basis. Hence, he was deputed to the Urban Co-operative Bank Ltd., Rourkela. Additionally, Disciplinary Proceeding under Rule 15 of OCS (CCA) Rules 1962 has been initiated against the petitioner based on the report of S.P.(Vigilance), Sambalpur Division.

10. The charges made against the petitioner were communicated to him to submit his written statement of defence if any within thirty days. In response, the petitioner submitted his written statement of defence denying all the charges. Hence, as per the provisions under sub-rule 4 of Rule 15 of OCS (CCA) Rules 1962, the opposite party No.2 appointed the Deputy Registrar of Co-operative Societies, Sundargarh as Inquiring Officer to inquire into the charges framed against the petitioner vide order No.5467 dated 24.02.2006. The surcharge proceedings No.70/01 was initiated against 21 delinquents including the petitioner on the basis of the Special Audit report for the year 1999-2000 for alleged overdrawal on SB and Current Accounts of UCB Ltd., Rourkela. The petitioner was surcharged for an amount of Rs.7,05,126.94 (Rupees seven lakh Five Thousand One hundred twenty-six and ninety-four paise) only. The order passed in the aforesaid surcharge case reveals that overdrawal was

allowed on SB and current Accounts. Since the amount has been liquidated or recovered, the petitioner had been absolved from the surcharge case, which does not necessarily mean that the petitioner is innocent.

11. It is further submitted that the report of the Inquiring Officer was communicated to the petitioner on 15.03.2008 as required under Sub-Rule 10(i)(a) of Rule 15 of OCS (CCA Rules 1962) and the petitioner submitted his statement of defence on dated 03.04.2008. While considering the statement of defence, the Disciplinary Authority observed as follows:

"As I find, there has been loss to the Bank, the responsibility cannot be shifted to the Dealing Assistant altogether. The lapses of the supervising officer cannot be ignored. Was there any action against the Dealing Assistant and what is the status of the amount of loss."

Accordingly, the Deputy Registrar of Co-operative Societies, Sundargarh was requested vide letter No.9626 dated 24.04.2008 to furnish the information as required by the disciplinary authority. In response, the Deputy Registrar of Co-operative Societies, Sundargarh submitted the required information vide his letter in which it is clearly indicated that a sum of Rs.13,82,045.58/- is outstanding as on 30.09.2008 against M/s. Synthochlor India Ltd. and the Bank has obtained a decree for recovery

of the aforesaid amount. In addition, the disciplinary authority further desired to have the following information to proceed further in the matter i.e. what action has been taken against the persons who were holding the post of the Branch Manager prior to 1998? and What is the present position of recovery from the loanee?

12. In response, the Deputy Registrar of Co-operative Societies, Sundargarh submitted the required information in his letter No.1387 dated 19.07.2010. Thereafter, the disciplinary proceeding No.26293 dated 31.12.2005 has been drawn up against the petitioner under Rule 15 of OCS (CCA) Rules 1962. Thereafter, 2nd show cause notice was issued to the petitioner vide letter No.11144 dated 04.07.2012 to submit his representation, if any, as he may wish to make against the proposed penalty. The petitioner submitted an application on 18.07.2012 praying for 30 days time to submit his representation.

IV.REJOINDER ON BEHALF OF THE PETITIONER

13. Learned counsel for the petitioner submits that though the petitioner was not found guilty by the Inquiry Committee but the 2nd show cause notice was issued against the petitioner and even after retirement a surcharge proceeding was also initiated against him on the same

issue for which the departmental proceeding was instituted. In that proceeding, the petitioner was absolved from charges. Further, the petitioner had taken steps for settlement of the outstanding and was able to do so. So far as the loss of Bank is concerned, it is clear that before purchasing the Bills, the petitioner had taken adequate steps as to the limit of the purchasing of bills and on getting the clearance. More so when he found that the institution is enjoying the Bills Purchase facility prior to his joining i.e. from 1992 onwards. Thus, it is proved that the petitioner had taken adequate protection before sanctioning the Bill Purchase and hence the allegation of negligence in his duties is not proved. Any act which is done in bonafide cannot be attributed as misconduct. Misconduct means an act arising from ill motive, acts of negligence and errors of judgment or innocent mistake do not constitute misconduct. It has been held by the Apex Court that it is however difficult to believe that lack of efficiency, failure to attain the highest standard or administrative ability, while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. From the observations made by the Deputy Registrar it is also clear that much prior to the joining of the petitioner, a huge

outstanding was pending against the M/s. Synthochior India, but no action was taken by the previous Managers to recover the same. Whatever was given by the petitioner, was recovered from the M/s. Synthochior India and the balance remained after such adjustment had been readjusted against the previous outstanding of the said party. It may not be out of place to mention here that although the earlier Managers had put the Bank to huge financial loss, but no action was initiated against them. Hence, the proceedings are liable to be quashed and the petitioner deserves to get the pension and other pensionary benefits with interest.

V. COURT'S REASONING AND ANALYSIS

14. It is the settled position of law that Departmental/Disciplinary Inquiry should be initiated without delay and, inordinate delay without proper explanation for the same furnishes ground for quashing the same. It is also settled that the Departmental Inquiry once initiated should be completed expeditiously and long delay in completing the inquiry without proper justification can also act as grounds for quashing the enquiry.

15. This is primarily because the departmental inquiry puts an employee under great strain and stigma. It has serious repercussions on their family as well. Therefore, a delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously. He should not undergo unnecessary mental agony and also monetary loss when the inquiry is needlessly initiated and prolonged without satisfactory explanation and without any fault on his part in delaying the proceedings. He is bound to be prejudiced in such an enquiry and constant strain and agony suffered by him cannot be compensated. Therefore, such an inquiry would be in violation of Article 14, 16 and 21 of the Constitution of India
16. In the matter of *State of A.P. Vs. N. Radhakishan*³, the Supreme Court took the view that while examining the question of quashing the disciplinary proceedings on the ground of delay all the relevant factors should be taken into account and disciplinary proceedings should be allowed to terminate after the delay, particularly when the delay is abnormal and there is no explanation for the delay and the Court has to consider the two diverse considerations i.e. the prejudice caused to the charged officer due to the delay and the fact that normally

³ (1998) 4 SCC 154

disciplinary proceedings should be allowed to take their own course as per relevant rules. The Supreme Court in this context held that: -

“It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The W.P. No.15534/2015 delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer

entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delayed defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

17. On perusal of the above-mentioned pleadings, this Court is of the view that protracting disciplinary enquiry and keeping a government official under charges of negligence and misappropriation causes unbearable mental agony and distress to the officer concerned and for the mistake committed by the department in initiating the disciplinary proceedings, the employee concerned cannot be made to suffer. The Supreme Court in the matter of **P.V. Mahadevan Vs. MD. T.N.Housing Board**⁴ held that:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony

⁴ (2005) 6 SCC 636

and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

18. In the present case, the disciplinary proceedings started on 31.12.2005 when a set of charges were framed by the opposite party No.2 against the petitioner for committing certain irregularities i.e. purchasing bills without authorised sanction and failing to realize the bills amounts during his incumbency, as the Branch Manager of the Urban Cooperative Bank, Main Branch, Rourkela. The opposite party No.2 appointed the Deputy Registrar of Cooperative Societies, Sundargarh to inquire into the charges vide his letter No.5467 dated 24.03.2006. After enquiry, he submitted his report to the opposite party No.2 vide his letter dated 18.02.2008. Thereafter, a Surcharge

Proceeding was initiated against the petitioner before the Assistant Auditor General of Cooperative Societies, Sunddrgarh. Thereafter, the assistant Auditor General of Cooperative Societies after conducting thorough enquiry and after verifying the accounts came to a definite conclusion that the petitioner cannot be held responsible for any of the allegations, for which the Surcharge Proceeding was initiated and as such exonerated the petitioner of all the charges. Not being satisfied by the report submitted by the earlier inquiry officer i.e. the then Deputy Registrar of Cooperative Societies, the opposite party no.2 again referred the matter to the present Deputy Registrar of Cooperative Societies, Sundargarh to enquire into the matter. Accordingly, the present Deputy Registrar, Cooperative Societies, Sundargarh conducted a detailed inquiry into the matter and submitted his report to the opposite party No.2 in exonerating the petitioner. As the representation did not yield any result, the petitioner appeared before the opposite party No.2 in his grievance cell on 19.05.2010 thereafter on 06.03.2011 and lastly on 23.11.2011 but none of his appearance could satisfy the opposite party No.2, who even after receiving the reports of exonerations, preferred to keep the proceedings

pending against the petitioner. This act of the opposite party is nothing but an indication of departmental apathy.

19. Even though the Opposite Party has strenuously argued in favour of the framing of charges against the petitioner, however, it is clear from the submissions that Opposite Party has been delaying the proceedings when none of the charges are being proved against the petitioner. This act of Opposite Party wrecks malafide intent.

20. Considering the facts and submissions of the case and the precedents cited herein, this Court is of the opinion that the Opposite Party should conclude the proceedings within a period of three months from today and intimate the outcome to the petitioner duly. It is also made clear that the opposite party shall not conduct the proceedings with a prejudicial mind set just to hold the Petitioner guilty.

21. This Writ Petition is, accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar