

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27603 of 2021

Kella Raman Murty **Petitioner**
Mr. C. Anand Rao, Sr. Adv.

-versus-

State of Odisha and Ors. **Opposite Parties**
Mr. G.R. Mohapatra, ASC

CORAM:
MR. JUSTICE S.K. PANIGRAHI

ORDER
10.05.2022

W.P.(C) No.27603 of 2021, WPC(OAC) No.2676 of 2013, WPC(OAC) No.1673 of 2013, WPC(OAC) No.1178 of 2019 and CONTC(CPC) No.89 of 2014

Order
No.
03.

1. These matters are taken up by hybrid mode.
2. All these writ petitions have been filed by the same petitioner, namely, Kella Raman Murty and he being a Government servant has challenged his suspension order, Enquiry Report, order of dismissal from service, and non-compliance of the order dated 01.08.2013 passed by the Orissa Administrative Tribunal, Cuttack (hereinafter 'the Tribunal').
3. Through the various petitions, the petitioner has prayed for the following reliefs:

In WPC(OAC) No.2676 of 2013- The Petitioner has prayed to quash the suspension order dated

05.08.2013 passed by the Agriculture Department, Government of Odisha with a further prayer to direct the opposite parties to reinstate him.

In WPC(OAC) No.1673 of 2013- The Petitioner has prayed to quash the Enquiry Report dated 09.11.2012, arising out of D.P. No.29974 dated 19.10.2009 submitted by the Project Director, watersheds, Cuttack.

In WPC(OAC) No.1178 of 2019- The Petitioner has prayed to set aside the office order dated 11.05.2019 issued by the Department of Agriculture & Farmers' Empowerment, Government of Odisha inflicting the penalties to recover Rs.2,78,139 and to dismiss him from Government service.

In CONTC(CPC) No.89 of 2014- The Petitioner has prayed to initiate contempt proceeding against the authorities of the Agriculture Department for non-compliance of the order dated 01.08.2013 passed by the Tribunal directing therein that no final orders shall be passed in the departmental proceeding pursuant to the notice dated 31.05.2013 till filing of the counter or without leave of the Tribunal whichever is earlier.

In W.P.(C) No.27603 of 2021- The Petitioner has prayed to quash the office order dated 11.05.2019 issued by the Department of Agriculture & Farmers Empowerment, Government of Odisha inflicting the penalties to recover Rs.2,78,139 and to dismiss him from Government service, and also to quash the order

of rejection of his appeal filed on 14.05.2019 against the order dated 11.05.2019.

4. The point that arises for consideration in all these writ petitions is one and the same. Hence all these writ petitions are clubbed together and being disposed of by this common judgment/order.
5. Shorn of unnecessary details, the substratum of the matter presented before this Court remains that the petitioner while working as a Junior Soil Conservation Officer (J.S.C.O.) in the office of the Assistant Soil Conservation Officer (A.S.C.O.), Jajpur, was placed under suspension vide order dated 13.02.1997 issued by the Deputy Secretary to Government of Orissa, Agriculture Department. Disciplinary Proceeding was initiated against him Vide Memorandum No.10229 dated 04.08.1997 by the Director of Soil Conservation, Orissa, Bhubaneswar (hereinafter 'the Director'). The Inquiring Officer i.e. the Soil Conservation Officer, Survey, Cuttack submitted his inquiry report to the Director on 24.11.1997. Proceedings initiated against the petitioner were finalized with punishment on 09.09.1999. The petitioner filed an appeal on 15.10.1999 challenging the said order of punishment. The Appellate Authority modified the punishment imposed on the petitioner vide order dated 21.08.2006. During pendency of the aforesaid D.P., the petitioner again placed under suspension by the Director vide order dated 07.02.2006. The petitioner filed O.A. No.992(C) of 2006 on 22.07.2006 challenging

the said order of suspension. Thereafter, the Director reinstated the petitioner in service vide order dated 22.07.2006 pending drawal of charges. D.P. No.8012 dated 07.08.2006 which was initiated by the Director with certain charges. During pendency of the above D.P., the petitioner was promoted to the rank of A.S.C.O. (Class-II) notionally on *ad hoc* basis vide notification dated 25.07.2007 issued by the Agriculture Department, Government of Odisha.

6. When the matter stood thus, the Government of Orissa, Agriculture Department superseded the D.P. No.8012 dated 07.08.2006 initiated by the Director and 3rd D.P. was initiated in D.P. No.29974 dated 19th October, 2009 framing fresh charges against the petitioner. On receipt of copy of the D.P. No.29974 dated 19th October, 2009, the petitioner filed a representation for supply of certain documents for preparing his defense statement. In spite of the fact that there was non-production of documents by the authority to the petitioner, the Enquiring Officer fixed the date on 08.11.2012 at 11.00 A.M. for enquiry in the office of the Project Director, Watersheds, Cuttack. On receipt of the letter dated 07.11.2012 of the Enquiry Officer, the petitioner informed the authority expressing his inability to participate in the enquiry on 08.11.2012 vide his letter dated 07.11.2012. However, to the utmost surprise of the petitioner, an ex-parte enquiry was conducted on 08.11.2012, and closed on the same day.

7. The petitioner had submitted representation dated 15.11.2012 protesting the procedure adopted by the Enquiry Officer enclosing his letters dated 22.10.2012, 06.11.2012 and 07.11.2012. The petitioner had also filed O.A.No.1673(C) of 2013 before the Ld. Orissa Administrative Tribunal. The Ld. Tribunal vide order dated 25.02.2014 directed to maintain status quo in so far as the petitioner is concerned. In spite of the said interim order of the Tribunal, the Disciplinary Authority awarded punishment on the petitioner vide order dated 01.03.2014. Therefore, the petitioner filed a contempt petition i.e. C.P. No.89(C) of 2014 before the Tribunal on 28.03.2014.
8. On receipt of the aforesaid contempt notice, the punishment order dated 01.03.2014 was kept in abeyance by the Department vide order dated 03.04.2014. Thereafter, all of a sudden, superseding the order dated 03.04.2014, the Department passed another order dated 11.05.2019 awarding punishment of recovery of Rs.2,78,139/- and dismissal from service against the petitioner.
9. Challenging the said order of punishment dated 11.05.2019, the petitioner filed O.A. No.1178(C) of 2019 before the Tribunal. As the Tribunal has been abolished in the meantime, finding no other way, the petitioner preferred an appeal before the Appellate Authority on 31.10.2019. But the Appellate Authority without considering the matter in proper perspective, grounds taken in the appeal

memorandum and without obtaining proper approval from the OPSC which reflects in the noting dated 28.07.2020, in violation of Rule-29 of the OCS (CCA) Rules, rejected the appeal of the petitioner vide order dated 04.03.2021. In the aforesaid factual backdrop of the case, the aforesaid cases have been filed by the petitioner.

10. Learned Counsel for the Petitioner submits that on receipt of both the letters of the Enquiring Officer, the petitioner expressed his inability to participate in the enquiry on the date fixed in writing which was communicated vide his letter No.2045 dated 07.11.2012. Learned Senior Counsel contends that without responding to the representation of the petitioner expressing his inability to appear on the date of enquiry, the Enquiring Officer hurriedly conducted the enquiry in ex-parte mode without verifying the case records and completed the enquiry within 13 hours in a single day on 08.11.2012 and submitted the enquiry report establishing all the charges framed in the aforesaid D.P. against the petitioner at the office of the Principal Secretary, Agriculture Department, Government of Odisha personally on 09.11.2012.

11. Learned Counsel for the petitioner further contends that without giving any opportunity to the petitioner to participate in the enquiry, based on the alleged charges and illegal findings of the Enquiring Officer and without verifying the evidences available on records, the Disciplinary Authority tentatively decided to accept

the findings of the Enquiring Officer and imposed the penalties of (i) recovery of Rs.2,78,139/- and (ii) dismissal from Government Service on the petitioner. It is further contended that the Disciplinary Authority as per the provisions contained under Rule-15 (10i) a) of the OCS(CCA) Rules issued show cause notice dated 31.05.2013 calling upon the petitioner to submit his representation against the tentative decision of the Disciplinary Authority within 15 days from the date of receipt of the notice. While issuing show cause notice, only the enquiry report without any relevant case records was supplied to the petitioner. Though the petitioner in response to the show cause notice made representations dated 01.06.2013 and 20.06.2013, but due to non-supply of relevant records/ documents, he was deprived of filing a properly constituted reply to the show cause notice.

- 12.** Per Contra, Learned Counsel for the State submits that the statement of the petitioner in letter dated 07.11.2012 is different from the statement made in his representation dated 07.11.2012. The petitioner had not requested for fixing another date for enquiry, rather he challenged the D.P. As the date of inquiry was fixed on 08.11.2012, the enquiry was conducted by the Enquiry Officer on the date fixed following the due procedures as per the OCS (CCA) Rules. As the petitioner was absent, the enquiry was conducted ex-parte. So far as giving of opportunity of hearing to the petitioner is concerned, it is contended that the petitioner was given

due opportunity at each stage of the proceeding. But no cooperation was received from his side. He did not submit his written statement of defense in time even after he was allowed one month more time for submission of the same. He also did not submit any defense statement before the Enquiry Officer. He was also supplied a copy of the enquiry report vide notice dated 20.11.2012 and called upon to submit his representation on the findings of the Enquiring Officer which was received by him on 11.12.2012. But he did not submit any representation within the stipulated time. In the above circumstances, as per the provisions of the OCS (CCA) Rules, the Disciplinary Authority considered the findings of the Enquiring Officer with reference to the charges framed against the petitioner and tentatively decided to impose penalty of (i) recovery of Rs.2,78,139/- and (ii) dismissal from Government Service on the petitioner. Hence, the aforesaid petitions filed by the petitioner challenging his suspension order, Enquiry Report, order of dismissal from service, non-compliance of the order dated 01.08.2013 passed by the Tribunal and infliction of punishment are fictitious and devoid of merit and the same are liable to be dismissed.

13. Heard learned counsel for the parties.

14. The settled legal proposition, remain that principles of natural justice are in built in the statutory rules and requires observance unless the same stand excluded by the rules itself. The adjudicating authority must be

impartial and without any interest or bias of any type; where the Adjudication Authority is exercising judicial or quasi-judicial power, the order must be made by that authority and that power cannot be delegated or sub-delegated to any other offices the adjudicating authority must give full opportunity to the affected person to produce all the relevant evidence in support of his case.

15. The High Court's jurisdiction has been clearly outlined in the case of **State Of Andhra Pradesh vs S. Sree Rama Rao**¹, where the Supreme Court while explaining the issue of violation of principle of natural justice in departmental proceedings held that:

"The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or ;where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds."

16. Supreme Court while dealing with a similar issue in the case of **Mathura Prasad vs Union Of India**

¹1963 AIR 1723.

&Ors.² iterated that while conducting departmental proceedings, the disciplinary authority must act in accordance to the rules laid down. In the lines of the Supreme Court:

“The disciplinary authority was a statutory authority. He was, therefore, bound to act within the four corners of the statute. Procedures relating to conduct of a disciplinary proceeding have been laid down by the Rules. He was bound to follow the same scrupulously.”

“When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under sub- Rules are required to be strictly followed.”

- 17.** It is obvious from the letters dated 06.11.2012 and 07.11.2012 of the Enquiring Officer that he hurriedly and mechanically conducted the enquiry ex-parte without verifying the case records and completed the enquiry within 13 hours in a single day on 08.11.2012 and submitted the enquiry report establishing all the charges framed in the aforesaid D.P. against the petitioner at the office of the Principal Secretary, Agriculture Department, Government of Odisha. Moreover, the letter No.2045 dated 07.11.2012 of the petitioner shows his readiness to appear in the enquiry process. His representation dated 07.11.2012 show that though he had not made prayer for rescheduling of the date of enquiry but he had requested the

²2007 (1) ALL MR 491.

Enquiring Officer to fix the enquiry at Cuttack. In such view of the matter, the Enquiring Officer hurriedly conducted the enquiry ex-parte violating the provisions contained under Rule-5 of the OCS (CCA) Rules and the Disciplinary Authority based on the findings of the Enquiring Officer with reference to the charges framed against the petitioner tentatively decided to impose penalty of (i) recovery of Rs.2,78,139/- and (ii) dismissal from Government Service on the petitioner. In such view of the matter, when the enquiry has been made ex-parte without following the due procedures of law and based on such enquiry report of the Enquiring Officer and the Disciplinary Authority tentatively decided to impose penalty, it is found just to remand the matter to Enquiring Officer for making enquiry afresh giving opportunity of hearing to the petitioner.

- 18.** Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court is inclined to quash the office order dated 11.05.2019 issued by the Department of Agriculture & Farmers Empowerment, Government of Odisha inflicting penalties to recover Rs.2,78,139 and to dismiss from Government service on the petitioner and order dated 04.03.2021 passed by the Appellate Authority dismissing the appeal of the petitioner. Resultantly, the matter is remitted back to the Enquiring Officer for a fresh enquiry in the disciplinary proceeding initiated against the petitioner vide Agriculture Department Memorandum No.29974 dated

19.10.2009 after giving adequate opportunity to the petitioner to participate in the enquiry and adduce evidence, if any, in support of his plea and also giving opportunity to Department to adduce rebuttal evidence.

- 19.** The aforesaid Petitions are, accordingly, disposed of in terms of the above directions. There shall be no order as to costs.
- 20.** Urgent certified copy of this order be granted on proper application.

BJ

