

**W.P.(C) NO. 2530 OF 2005**

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**THE HON'BLE MR. JUSTICE I.M.QUDDUSI  
AND  
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

2. The case of the petitioner is that he was serving as an Assistant Engineer (Electrical) in the erstwhile Electricity Board on deputation from the State Government. Two departmental proceedings were initiated against him numbered as 590 dated

07.06.1993 and 1374 dated 27.10.1993. In both the proceedings, there were allegations of misappropriation, misleading the authority by giving false information, negligence of duty and lack of maintenance of records. A common inquiry in both the proceedings was conducted by the Superintending Engineer, who found the petitioner guilty of some of the charges and recommended for his dismissal from service. The Government in consultation with the OPSC accepted the recommendation made by the Inquiry Officer and passed the order of dismissal of the petitioner from service under Annexure-12. Challenging the said order, the petitioner filed O.A. No.458(C) of 1998 before the Orissa Administrative Tribunal. The opposite parties filed their reply stating therein that no illegality was committed by the authorities and that all the procedures under Rule 15 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 were followed before passing the order of dismissal of the petitioner from service. After hearing the parties, the Tribunal by its order dated 05.05.2004 observed that it would not be proper on its part to interfere with the order of punishment, but the case can only be remitted to the authorities to reconsider the case of the petitioner on the question of punishment. Accordingly, the Tribunal remitted the case to opposite party no.1 to reconsider the case of the petitioner only on the question of punishment and directed to pass appropriate orders within four months. Against that order, the petitioner has preferred the present writ application.

3. Mr. Rath, learned counsel for the petitioner, submitted that the petitioner being a Government servant was sent on deputation to the Orissa State Electricity Board. Therefore, the provisions of Rule 19 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 were required to be followed and it was incumbent for the borrowing authority to obtain concurrence of the State Government (lending authority) before proceeding against the petitioner. He further submitted that the Inquiry Officer had not

followed the procedure envisaged under Rule 15 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962.

On the other hand, learned Additional Government Advocate supported the order of the Tribunal. He also contended that there was no procedural error or violation of the principles of natural justice during the departmental proceeding including the inquiry and the proceeding before the Tribunal.

Mr. D.P. Mohanty, learned Senior Advocate appearing for opposite party no.2, supported the contentions made on behalf of opposite party no.1. He further submitted that the scope of Article 227 is limited to correction of errors apparent on the face of the record or procedural irregularities leading to grave injustice, which are not present in the instant case.

4. Rule 19 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 lays down provisions regarding Officers lent to the Union or other State Government. As per the said provision, it is the duty of the borrowing authority to intimate the lending authority with regard to commencement of the disciplinary proceeding and also to obtain concurrence from the lending authority before imposing penalties.

5. The records of the Government were produced before us by the learned Additional Government Advocate as per direction of this court vide order dated 07.07.2005. Perusal of the same reveals that the borrowing authority had intimated the fact to the lending authority, which approved the same on 05.05.1993. Thereafter, the first charge was issued under Annexure-2 dated 17.06.1993. Similarly, the second charge after being approved by the State Government on 22.08.1993 was issued to the petitioner on 27.10.1993. So, there is no violation of Rule 19 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962. As such, the first contention fails.

6. Now, let us examine the second contention raised by Mr. Rath with regard to non-compliance of the provisions of Rule 15 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962. Such a contention was raised before the Tribunal, as is apparent from paragraph-4 of its judgment. But the Tribunal has not examined the same in detail and in paragraph-5 of the judgment has simply stated that ***in this case it can be stated that no prejudice has been caused as all the opportunity has been given and procedure of rule-15 have been followed step by step.*** It has also not examined whether any opportunity was given to the petitioner during the course of the departmental proceeding or there was violation of the principles of natural justice.

7. In view of the above, we are of the opinion that the impugned order passed by the Tribunal is not sustainable in the eye of law and is, therefore, liable to be quashed. Accordingly, the impugned order at Annexure-1 is quashed and the matter is remitted back to the Tribunal for fresh adjudication. It is open to the petitioner to raise all his contentions before the Tribunal. The Tribunal shall give adequate opportunity of hearing to the parties and dispose of the matter afresh in accordance with law and in the light of the observations made above within a period of three months from the date of receipt of this order.

8. In the result, the writ petition is allowed to the extent indicated above. There will be no order as to costs.

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**PRADIP MOHANTY, J.**

**I.M.QUDDUSI, J.** I agree.

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**I.M.Quddusi, J.**

