

ORISSA HIGH COURT: CUTTACK

W.P.(C). No. 2188 of 2003

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Surendranath Mishra Petitioner

-versus-

Orissa Mining Corporation Ltd. Opp. Parties
Represented by its Chairman
and others

For Petitioner : M/s. J.M. Pattnaik
C. Panigrahi

For Opp.Parties : Mr. P.K. Khuntia

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing: 14.10.2014| Date of judgment : 28.10.2014

Dr. B.R.Sarangi, J. The petitioner while working as a Senior Accountant under Orissa Mining Corporation was subjected to disciplinary proceeding and as a consequence thereof he has been dismissed from service vide order dated 20.10.2008, Annexure-33. Therefore, the petitioner has filed this writ petition seeking the following relief:

"Issue a Rule Nisi calling upon the opposite parties to show cause as to why the order of suspension under Annexure-1 and the initiation of the proceedings under Annexure-2 and 13 and the Enquiry report under Annexure-27 shall not be quashed and if the opposite parties fail to show cause or show insufficient cause this Hon'ble Court may be pleased to issue a writ in nature of mandamus quashing Annexures-1, 2, 13 and 27 and further issue any other writ and/or writs, order and/or orders, direction and/or directions as this Hon'ble Court may deem fit and proper;

And declare/hold that the impugned order of suspension, the impugned proceedings, the perverse enquiry report submitted pursuant thereto and the impugned order as at Annexure-33 are ab-initio void, nonest and illegal and quash the same with concurrent award of exemplary costs.

2. The short facts of the case in hand are that the petitioner joined service as a Lower Division Clerk in Orissa Mining Corporation Ltd. on 16.07.1974 but due to restructuring of the cadre, he became a Junior Accountant w.e.f. 16.01.1980. He was brought over to work in the CPF Trust Board on 03.09.1983. While he was so continuing, he was promoted to the post of Senior Accountant on 22.10.1984. He was placed under suspension on 25.06.1990 vide order Annexure-1. The petitioner was issued with a charge-sheet vide Annexure-2 on 14.06.1991 on the allegation that he had contravened the CPF Rules causing substantial pecuniary loss to the CPF and had brought disrupts to the trust fund, neglected his duty grossly and had acted in a most irresponsible manner causing heavy financial loss.

The petitioner requested the authorities vide letters dated 6.7.1991 and 15.7.1991 for supply of the relevant audit report and CPF bye-laws in order to facilitate him to submit his reply. But the authorities directed to him to peruse the relevant records vide letter dated 26/27.07.1991. On receipt of the same, the petitioner again requested the authorities vide letter dated 02.08.1991 for supply of copies of the audit report but the same was not supplied to him.

Thereafter vide order dated 20.08.1991, opposite party no.4 was appointed as Inquiring Officer by the Chairman-cum-Managing Director of the OMC. Opposite party no.4, the I.O., directed the petitioner to appear before him for inquiry pursuant to letter dated 26.09.1991 vide Annexure-10. In compliance thereof, the petitioner appeared before the I.O. and submitted his preliminary show-cause reply. When the matter stood thus, for the selfsame allegation, the Chairman-cum-Managing Director, who was nonetheless the appellate authority as well as the revisional authority, issued another charge-sheet under Rule-14 of the OMC CCA Rules, 1976 to the petitioner. The petitioner again requested for supply of the documents, but he was denied even the extracts of the said documents by the authorities.

3. After inquiry, the I.O. submitted his report on 6.11.1993. Thereafter, the Chairman-cum-Managing Director on 6.11.1993 vide Annexure-27 enclosing a copy of the inquiry report called upon the petitioner to show cause within seven days as to why major punishment of dismissal from service would not be inflicted on him. In compliance with the same, the petitioner submitted his reply on 26.11.1993 vide Annexure-28, but no action was taken in the matter and the matter remained pending for more than five years. However, on 10.12.1998, the petitioner asked for supply of the documents which he wanted to take, but he was only been permitted to peruse the same vide letter dated 12.01.1999, Annexure-19. Thereafter the petitioner submitted an application to take the extracts of the documents vide Annexure-20, but he was not allowed to do so, as basing on the said documents the charges had been framed. On 20.06.1999, the Manager (Administration), OMC informed the petitioner that the records which he wanted to peruse had been seized by the Crime Branch. The petitioner again requested for supply of copies of the said documents and to allow him to peruse the same vide Annexure-23. The petitioner also mentioned the justification of perusing the said documents vide letter dated 3.8.1999, Annexure-24, but instead he was insisted to submit his reply to the charges in

absence of any document vide letter dated 08.12.1999, Annexure-25. However, the petitioner brought to the notice of the authority indicating his difficulty to file his reply in absence of the documents asked for, but without doing that the impugned order was passed against him on 20.10.2008, which is challenged in this writ petition.

4. Mr. J.M. Pattnaik, learned counsel for the petitioner, strenuously urged that the impugned order of dismissal, Annexure-33 dated 10.10.2008, was passed in gross violation of the provisions contained in Rule-14 of the Orissa Mining Corporation CCA Rules inasmuch as the petitioner was denied opportunity of giving effective reply on perusing the documents asked for and non-supply of the documents asked for by him was non-compliance with the principles of natural justice. Therefore, the entire proceeding was vitiated.

5. Mr. Pattnaik, further submitted that on the self-same charges one A.C. Prusty, who was working as a Senior Accountant at the relevant point of time was subjected to such disciplinary proceeding against whom an order was passed and this Court in O.J.C. No.2616/1995 by order dated 22.01.1996 set aside the said order of the disciplinary authority by allowing the writ petition and directing the opposite parties to reinstate A.C. Prusty to service. Against

such order the Orissa Mining Corporation Ltd. preferred SLP before the apex Court bearing No.11581 of 1996 which was converted to Civil Appeal No.14161 of 1996 and after hearing the parties the apex Court confirmed the order passed by this Court vide order dated 05.11.1996 as consequence whereof A.Ch. Prusty joined his service and continued till attaining the age of superannuation.

6. In order to substantiate his contention, learned counsel for the petitioner relied upon the case of ***State of Assam v. Union of India and Others***, (2010) 2 SCC (L & S) 812, ***SBI & Others v. Arvind Kumar Sukula***, (2006) SCC (L & A) 1035, ***Punjab National Bank v. Kunja Bihari Mishra***, (1998) SCC (L & S) 1783, ***Krishna Swami v. Union of India & Others***, AIR (1993) SC 1407, ***Southern Railway Officers Association & Another v. Union of India & Others***, (2009) 2 SCC (L & S) 552, ***Dr.L.P. Mishra v. State of U.P.***, AIR (1998) SC 3337, ***Three Cheers Entertainment Pvt. Ltd. V. CESC Ltd.***, AIR (2009) SC 735 and ***Surjiti Ghosh v. Chairman & Managing Director, United Commercial Bank & Others***, (1995) 2 SCC 474.

7. Mr. P.K. Khuntia, learned counsel for the opposite parties, strenuously urged that in view of the Rule-99 of the Orissa Mining Corporation CCA Rules alternative remedy

was available to the petitioner by preferring appeal against the order of his dismissal passed by the disciplinary authority. Instead of availing the same the petitioner having directly approached this Court invoking jurisdiction under Article 226 of the Constitution of India, the same is not maintainable.

He further urged that the High Court being not the appellate authority it cannot entertain this application. He further urged that reasonable opportunity was given to the petitioner and therefore there was compliance with the principles of natural justice. He further urged that reliance has been placed on A.C. Prusty case, but the decision rendered in his case is not applicable to the case of the petitioner as a criminal proceeding is still pending against the petitioner.

In order to substantiate his case, Mr. Khuntia, relied upon the case of ***State of Meghalaya & Ors. V. Mecken Singh N. Marak***, AIR 2008 SC 2862, ***Balbir Chand v. Food Corporation of India Ltd, and others***, AIR 1997 SC 2229 and ***Guru Prasad Bose (since dead) by L.Rs Mamata Rani Bose and others v. District Magistrate (ADM) Administration, OSRTC & Others***, 2014 (II) OCR 627.

8. After going through the records and hearing learned counsel for the parties, it appears that the Board of Directors of Orissa Mining Corporation Ltd. have framed a rule

called "Orissa Mining Corporation Service (Classification, Control & Appeal) Rules, 1976 (hereinafter referred to as '1976 Rules'). The petitioner was continuing as a Senior Accountant, which post has been classified as an E-3 Post as per Part-II of Rule-4 of 1976 Rules. In Part-III all appointments to the posts of E-0 to E-3 Grades whether by direct recruitment or by promotion shall be made by the Managing Director in accordance with the provisions of Orissa Mining Corporation Recruitment and Promotion Rules for Executives-1993 thereby the Managing Director is the appointing authority for E-3 Grades employees of the Corporation as per Rule-6 of 1976 Rules. As per Rule-8 in Part-IV of 1976 Rules, the appointing authority or any authority to which it is subordinate or any authority empowered by the Board or the appointing authority in that behalf may place an employee under suspension where a disciplinary proceeding against him is contemplated or is pending, or where a case against him in respect of any criminal offence is under investigation or trial. Therefore, Rule-8 of 1976 Rules vested power on the appointing authority to place an employee under suspension. Part-V of 1976 Rules deals with Penalties & Disciplinary Authority being empowered to initiate inquiry. Rule-11 of Part-V deals with Penalties and sub-rule (a) states about minor penalties whereas sub-rule (b) states about major penalties. Dismissal from service has been

categorized under sub-clause (ix) of the major penalties. Part-VI deals with procedure for imposing penalties whereas Rule-14 deals with procedure for imposing major penalties.

9. In the present case since a penalty of dismissal from service having been inflicted on the petitioner, the procedure under Rule-14 had to be followed by letter and spirit.

Part-VII deals with appeals whereunder rule-19 states as follows:

“an employee of the Corporation may appeal against an order imposing upon him any of the penalties specified in the rule 11 to the authority specially empowered by an order made by the Board in that behalf or in the absence of any such order or the authority specified in the schedule or where no such authority is specified to the authority to which the authority imposing the penalty is immediately subordinate”.

10. Part-VIII deals with review whereunder rule-31 states that notwithstanding anything contained in these rules, the Board/Chairman may on its/his own motion or otherwise call for the records of any case relating to Executive in E-0 to E-8 grades and Grade III and Grade IV employees in which a penalty has been imposed either by the disciplinary authority or appointing authority and review any order passed by any such authority which is appealable under the said rules and confirm, modify or set aside the order.

11. These are being the provisions governing the field, Rule-14 itself a mandates to follow the procedure envisaged therein to impose major penalty. The case in hand has to be examined in the light of the rules governing the field vis-à-vis the law laid down by the apex Court to arrive at a just conclusion on the issue in question. Sub-Rule (a) of Rule 14 of 1976 Rules provides that no order imposing on an employee any of the major penalties specified in the Rule-11 shall be passed except after an inquiry held, as far as may be possible, in the manner provided therein whereas Sub-Rule (b) provides that the disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry has to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the employee and he shall be required to submit, within such time as may be specified by the disciplinary authority, not ordinarily exceeding one month, a written statement of his defence, and also to state whether he desires to be heard in person. The disciplinary authority has been defined as the authority competent under the Rules to impose upon the employee any of the minor penalties specified in Rule-11.

12. On perusal of the records, it appears that the petitioner was allowed only 15 days' time to submit his written

statement of defence in place of one month as required under sub-rule (b) of Rule-14. In addition to the same, the charge-sheet was to be accompanied with the documents and list of witnesses through which the prosecution wants to prove the allegation. As a Senior Assistant is an employee coming under Grade-III category, the disciplinary authority was the Secretary of the Orissa Mining Corporation. But, on perusal of the charge-sheet, it appears that the Chairman-cum-Managing Director of the Corporation being not appointing authority or the disciplinary authority has issued the charge-sheet against the petitioner. May be the Chairman-cum-Managing Director of the Corporation is higher authority than that of the appointing authority but that ipso facto cannot take away the right of the appointing authority/disciplinary authority unless the Board of Directors confers such power on the Chairman-cum-Managing Director of the Corporation. On the materials available on record, it appears that the petitioner sought copies of the relevant documents and in spite of his filing repeated applications neither the same were supplied to him to give effective reply to the allegations/ charges levelled against him nor was any reply given to his application to be supplied with copies of documents and the authorities remained in great silence. The petitioner thereafter was compelled to file his reply. The aforesaid act of the opposite party-authorities

amounted to non-compliance with the principles of natural justice.

13. In ***Union of India & Others v. B. V. Gopinath***, (2014) 1 SCC (L&S) 161, the apex Court categorically held that the disciplinary authority alone is required to exercise the power of framing of charge otherwise it would go against established maxim *delegatus non potest delegare*. Since Rule-14 has prescribed the authority as per Schedule (i) so far as Grade-III employees are concerned, it was the Secretary who was the disciplinary authority and he alone could frame the charges. But, in the present case it is the Chairman-cum-Managing Director of the Corporation who was the appellate authority as per the schedule framed the charges consequent thereof the petitioner lost a forum. The Chairman having exercised his power contravening the Rules, the same was contrary to the judgment of the Apex Court mentioned (*supra*).

14. Admittedly in the instant case the Managing Director was the appointing authority or the disciplinary authority who initiated the proceeding and has imposed the major penalty of dismissal from service. Imposition of major penalty by the Managing Director has not been disputed in the counter affidavit filed by the opposite parties. In view of this,

the proceeding was vitiated. If a fact pleaded has not been denied/controverted, ultimately, to be taken as admitted in view of the principle laid down under Order 41 Rules 2 and 22 and Order 8 Rule 5 of CPC. The same principle has been reiterated in the case of **State of Assam** mentioned (supra). Applying the same to the present context there is no denial that the Managing Director of the Orissa Mining Corporation Ltd. being not the appointing or disciplinary authority having imposed harsh punishment of dismissal the proceeding itself was vitiated.

15. On the materials available on record, it also appear that the petitioner has been denied to the opportunity by supplying the documents and more so, the Managing Director though not the competent authority, supplied the copies of the inquiry report after reaching the conclusion for imposition of major penalty of dismissal. But law is that report of the I.O. is to be supplied to the delinquent by giving him opportunity before recording of ultimate finding of the disciplinary authority.

16. In **SBI and others v. Arvind K. Shukla**, 2006 SCC (L&S) 1035 and **Punjab National Bank v. Kunja Bihari Mishra**, (1998) SCC (L&S) 1783. In paragraph-17 of the said judgment, the apex Court held that the principle of

natural justice demand that the authority which proposes to decide against a delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, that report has to be given to the delinquent officer who can make a representation before the disciplinary authority, without which taking further action may be prejudicial to the delinquent officer. But it appears that no such compliance with principles of natural justice has been done in the present case.

17. In ***Dr. L.P. Misra, v. State of U.P.***, AIR 1998 SC 3337 and ***Three Cheers Entertainment Pvt. Ltd v. CESC Ltd.***, AIR, (2009) SC 735, the apex Court held that adhering the procedure prescribed under the rules is *sine qua non* in every proceeding. As it appears, since there is non-compliance with rules, the procedure initiated against the petitioner was vitiated. More specifically, the charge memo had to be proved by the disciplinary authority and in absence of any such approval of the disciplinary authority the charge memo became *non est* as well as the same cannot be sustained in the eye of a law laid by the apex Court in ***Paul George*** case (supra)

18. In the present context, the Chairman-cum-Managing Director initiated the departmental inquiry and inflicted punishment on the petitioner. Admittedly he being the

appellate authority acted as the disciplinary authority as a consequence whereof the right of appeal and right of review were lost to the petitioner.

19. In ***Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank and others*** (1995) 2 SCC 474, the same view was also taken by the apex Court. The contention raised by learned counsel for opposite parties that without availing the alternative remedy of appeal, petitioners' approach to this Court invoking the jurisdiction under Article 226 of the Constitution of India cannot be sustained in view of the fact that if the appellate authority, namely, Chairman-cum-Managing Director acted as disciplinary authority right of appeal was lost to the petitioner. Therefore, even while alternative remedy was available under the rules, because the appellate authority exercised the power of disciplinary authority, no other remedy was left to the petitioner than to approach this Court challenging the order of dismissal. The objection raised with regard to alternative remedy cannot be sustained in the peculiar facts and circumstances of the case.

20. Reliance was placed on Rule-19 which provides a forum of appeal and states that an employee of the Corporation may appeal against an order imposing upon him

any of the penalties specified in rule 11 to the authority specifically empowered by an order made by the Board in that behalf or in the absence of any such order or the authority specified in the schedule or where no such authority is specified, to the authority to which the authority imposing the penalty immediately subordinate. It appears that no materials have been produced before this Court by the learned counsel for the opposite parties to indicate that the Chairman-cum-Managing Director has been empowered by the Board authorizing him to initiate the disciplinary proceeding against the petitioner nor any materials were also produced to draw a conclusion that the Chairman-cum-Managing Director is competent to initiate such disciplinary proceeding being an appellate authority as per the schedule. The contention raised that even if the Chairman-cum-Managing Director initiated disciplinary proceeding, he was competent to do so, thereby against any penalty imposed by him, appeal lay to the Board of Directors the Chairman-cum-Managing Director being the subordinate to the Board of Directors. As per the schedule, the Board of Directors being the reviewing authority over the appellate order passed by the Chairman-cum-Managing Director, the petitioner is losing that forum. Therefore the entire action taken by the authority was contrary to the rules. The contention raised that this Court is not an appellate

authority is misconceived. Any action taken by the authority imposing major penalty against the petitioner can also be heard by this Court, if the same is without jurisdiction. The applicability of the judgment relied upon by the learned counsel for the opposite parties in ***State of Meghalaya & Ors. V. Mecken Singh N. Marak***, AIR 2008 SC 2862 and in ***Balbir Chand v. Food Corporation of India Ltd, and others***, AIR 1997 SC 2229 has been considered in the above facts and circumstances of the respective cases and as such the ratio of the said judgments are not applicable to the present context. So far as reliance placed on the judgment passed by this Court in ***Guru Prasad Bose (since dead) by L.Rs Mamata Rani Bose and others v. District Magistrate (ADM) Administration, OSRTC & Others***, 2014 (II) OLR 627 wherein this Court considering the facts and circumstance in proper perspective and rendered the judgment is concerned that is not applicable to the present case.

21. Coming to the another facet of argument advanced by the learned counsel for the opposite parties with regard to the applicability of **A.C. Prusty** case in **OJC No. 2616 of 1995** to the present case, it appears that Sri A.C. Prusty was working as an Asst. Accounts Officer in the very same CPF Section of OMC Ltd. and he had been subjected to disciplinary proceeding on the very selfsame allegation. While

considering the contention raised in the writ petition, this Court held that the writ Court could not sit in appeal over the findings recorded by the inquiry officer in a departmental inquiry in exercise of writ jurisdiction, it cannot re-appreciate the evidence itself whether or not the evidence on which the inquiry officer relied was satisfactory and sufficient for justifying his conclusion would be outside the Court of writ jurisdiction. However, if it is shown that the findings recorded by the inquiry officer are not supported by any evidence and the conclusion on the very face of it is so arbitrary and capricious that no reasonable person could have come to such conclusion, a writ Court would be justified in setting aside the said finding/conclusion.

22. Applying the said parameter, this Court examined the case of A.C. Prusty and set aside the order of punishment of dismissal imposed against him and directed to reinstate him in service. The said judgment was challenged before the apex Court in Civil Appeal No. 14163 of 1996 and the apex Court upheld the judgment of this Court by its order dated 5.11.1996. So applying the analogy of the case of A.C. Prusty to the present context, it appears that the I.O. while conducting inquiry did not act in consonance with the provision of law. More so, Rule-14 of the conduct rules has not been strictly followed. Therefore, this Court has no hesitation to hold

that the principles considered in the case of A.C. Prustry is squarely applicable to the present case.

23. On the aforesaid analysis, this Court comes to a definite conclusion that the impugned order of punishment imposed by the authority cannot be sustained. Accordingly, Annexure-33 dated 20.10.2008 is hereby quashed. Since the petitioner has already superannuated from service, the opposite parties are directed to compute all financial benefits due to him treating him to be inservice till the date of his superannuation and disburse the same to the petitioner within a period of four months from the date of communication of this order.

24. With the above observation and direction, the writ petition is allowed.

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Dr.B.R.Sarangi, J.

Orissa High Court, Cuttack
The 28th October, 2014/Alok/Ashok