

(2025) 07 OHC CK 1289
In the Orissa High Court
Case No : Writ Petition (C) No. 14784 Of 2024

Asit Ranjan Jena	Vs	APPELLANT
State Of Odisha And Ors Vs		RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Police Act, 1861 — Section 23
Orissa Government Servant's Conduct Rules, 1959 — Rule 3, 4
Odisha Civil Services (Classification, Control & Appeal) Rules, 1962 — Rule 15

Citation : (2025) 07 OHC CK 1289

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : Biswabihari Mohanty, Samaresh Jena

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. The Petitioner has filed the present writ petition with a prayer to quash the order dated 30.8.2021 under Annexure-7 to the writ petition imposing punishment of "One Black Mark" on the Petitioner and the order dated 25.04.2022 passed by the Appellate Authority under Annexure- 9 to the writ petition as well as the order dated 19.07.2023 passed by the Revisional Authority under Annexure- 11 to the writ petition, which have upheld the order of punishment respectively. He has further prayed the Court to quash the Memorandum of Charge dated 25.04.2019 under Annexure- 1 to the writ petition and the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition.

FACTUAL MATRIX

2. Before proceeding with the analysis of the grounds of challenge, it will be beneficial to discuss the brief factual background leading upto filing of the present writ application. The Petitioner was initially appointed as a Direct Recruit Sub- Inspector of Police and was posted under Commissionerate of

Police Bhubaneswar- Cuttack- Bhubaneswar. On 13.02.2019 he was transferred from the Headquarter and was posted as S.I. of police attached to Baranga Police Station, where one Sashikanta Rout was working as the Inspector- In- Charge (hereinafter 'IIC'). The Petitioner was made the Diary Charge Officer (hereinafter 'DCO') for 22.03.2019 which lasted from 8:00 AM of 22.03.2019 to 8:00 AM of 23.03.2019, by the order of IIC, Baranga dated 21.03.2019.

3. The incident which led to initiation of departmental proceeding against the Petitioner occurred on 23.03.2019. The IIC, Baranga on reaching the Baranga, P.S. called the Petitioner, however, the Petitioner caused some delay in responding to such call. When the Petitioner appeared before the IIC, Baranga, it culminated into a verbal altercation between them, wherein, it was alleged that the Petitioner challenged the authority of the IIC in a high- pitched voice and used vulgar language towards the IIC, Baranga. Thereafter, IIC, Baranga reported the matter to the ACP, Zone- IV, Cuttack UPD, who went to Baranga, P.S. to conduct an enquiry into the allegation. ACP, Zone- IV, Cuttack UPD submitted his enquiry report dated 24.03.2019 to the Deputy Commissioner of Police, Cuttack UPD, confirming such allegation of insubordination, use of vulgar language and misconduct. Based on this report, departmental proceeding bearing Cuttack UPD Proceeding No. 23/2019 was initiated against the Petitioner by framing the charge of gross misconduct. The Petitioner submitted his explanation to the charge framed before the DCP, Cuttack UPD vide his letter dated 23.07.2019 under Annexure-2 to the writ petition, wherein he denied the allegations of misconduct, use of vulgar language and insubordination. However, finding the explanation unsatisfactory, enquiry was ordered by the DCP, Cuttack.

4. The Enquiry Officer after examining the 6 PWs and the relevant documents, submitted the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition. It was stated in the report that the despite being called repeatedly by the IIC, Baranga to attend the grievance of two outsiders, the Petitioner deliberately did not respond to the call of IIC, Baranga. It was further stated that the Petitioner indulged in argument with the IIC, Baranga in high pitched voice and threatened the IIC, Baranga that he will see him at DCP, office and DGP, office. It was also reflected in the report that the Petitioner has used some vulgar language towards the IIC, Baranga. It was also stated in the report that conduct of the Petitioner amounts to infringement of Rule 3 & 4 of Orissa Government Servant's Conduct Rules, 1959 and Section-23 of the Police Act, 1861. Based on these findings, the enquiry officer held the Petitioner guilty of the charge framed against him. The Disciplinary Authority after receipt of the findings of the Enquiry Officer, issued 1st Show Cause Notice to the Petitioner to provide explanation against the findings of the Enquiry Officer.

5. The Petitioner submitted his explanation to the 1st Show Cause Notice on 27.05.2021 under Annexure-4 to the writ petition. Finding the explanation to the 1st Show Cause Notice unsatisfactory, the Disciplinary Authority issued 2nd Show Cause Notice on 14.07.2021 proposing punishment of One Black Mark.

The Petitioner submitted his explanation to the 2nd Show Cause Notice on 02.08.2021 under Annexure-6 to the writ petition, with a prayer to take lenient view and reduce his punishment. The Disciplinary Authority found the explanation to the 2nd Show Cause Notice unsatisfactory and awarded the proposed punishment of "One Black Mark". Being aggrieved, the Petitioner preferred an appeal and subsequent revision against the order of punishment, however, the punishment was upheld by the Appellate and Revisional authority vide order dated 25.04.2022 and 05.07.2022 under Annexure- 9 and 11 respectively.

6. Being aggrieved by such orders, the Petitioner has filed the present writ application to quash the orders under Annexure- 7,9 and 11 along with the Memorandum of Charge dated 25.04.2019 under Annexure- 1 to the writ petition and the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition.

SUBMISSION FOR THE PETITIONER

7. Mr. Biswabihari Mohanty, the Learned Counsel appearing on behalf of the Petitioner at the outset submitted that, the finding of the guilt arrived at, in the Enquiry Report dated 24.04.2021 under Annexure- 3 to the writ petition is perverse and baseless and therefore, the order of punishment passed by the Disciplinary Authority on 30.08.2021 under Annexure- 7 to the writ petition is also illegal and unsustainable in the eyes of law. The Learned counsel for the Petitioner to substantiate the above mentioned contention, narrated the incident leading to the initiation of the enquiry against the Petitioner. He stated that the Petitioner was kept as the in- charge Diary Charge Officer for 22.03.2019 which starts from 8 AM of 22.03.2019 to 8 AM of 23.03.2019. He further stated that on 23.03.2019 at around 9:15 AM when the Petitioner's duty hour as DCO for 22.03.2019 was over and he was doing urgent official work on the computer system, he was called by the IIC repeatedly through a messenger. The Petitioner sought some time to save the files on the computer. However, the IIC expressed his annoyance towards the Petitioner over the few minutes delay in attending to his call, by shouting at him in a loud voice by using objectionable words.

8. The learned Counsel for the Petitioner further added that, the IIC ordered the Petitioner to attend to the two person allegedly waiting outside the police station, however, no such persons were not found waiting by the Petitioner. When the Petitioner objected to aforesaid behavior the IIC, it led to a verbal duel between the both. Thereafter, learned counsel for the Petitioner stated that based on this verbal duel, IIC made a complaint before the ACP Zone- IV, Cuttack, who on his own, conducted a Preliminary Enquiry. He further stated that ACP Zone- IV, Cuttack submitted the preliminary enquiry report dated 24.03.2019 before the Disciplinary Authority and based on such report dated 24.03.2019, Cuttack UPD Proceeding No. 23 dated 25.04.2019 was initiated against the Petitioner.

9. At this point, Learned Counsel for the Petitioner contended that, Preliminary Enquiry Report dated 24.03.2019 is illegal and lacks veracity as it was prepared

violating the Principles of Natural Justice because the Petitioner was not given an opportunity of hearing before preparation of the aforesaid report. The learned counsel for the Petitioner submitted that as the Preliminary Enquiry Report dated 24.03.2019 is illegal, therefore, the initiation of Cuttack UPD Proceeding No. 23 dated 25.04.2019 is also illegal.

10. Thereafter, the learned counsel for the Petitioner submitted that the Enquiry Report dated 24.03.2021 under Annexure- 3 to the writ application holding the Petitioner guilty of the charge framed against him, is perverse and illegal as such finding by the Enquiry Officer was reached ignoring the evidence adduced during the enquiry. To substantiate this, he drew the attention of the court to the statements of Damodar Sabar (P.W. - V) and Bharati Routray (P.W.- VI), who are the eye witnesses to the incident, and stated that their statements do not prove the allegations levelled against the petitioner. He further added that, only on the basis of the deposition of the Complainant i.e. the IIC, Barang (P.W.-IV) without any corroboration of such evidence by any of the witnesses examined, the finding of guilt was arrived at by the Enquiry Officer in the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petitioner. He therefore stated that such finding of guilt cannot be sustained in the eyes of law and as such the same cannot be the basis for imposition of the major punishment of 'One Black Mark'.

11. He further contended that, the order of punishment dated 30.08.2021 under Annexure- 7 to the writ petition was passed mechanically relying upon the finding arrived at by the Enquiry Report dated 24.03.2021 under Annexure-3 without considering the evidence adduced during the enquiry and the specific objection of perversity raised in the reply of the Petitioner to the 2nd show cause notice under Annexure-5 of the writ petition. Hence, he submitted that the impugned order suffers from illegality and arbitrariness.

12. Thereafter, he further submitted that the order passed in Appeal dated 25.04.2022 under Annexure-9 to the writ petition and order passed in Revision dated 19.07.2023 under Annexure- 11 to the writ petition suffers from the vices of perversity and arbitrariness as both the Appellate and Revisional Authorities have failed to properly appreciate the evidence adduced in the course of Enquiry. He further added that the Appellate and Revisional Authorities have mechanically found the charges as proved against the Petitioner, by solely placing reliance upon the Enquiry Report dated 24.03.2021 under Annexure- 3 to the writ application. The authorities have ignored the perversity of the Enquiry Report dated 24.03.2021 under Annexure- 3 to the writ application, because they have not taken into consideration the statements of eye witnesses namely Damodar Sabar (P.W.-V) and Bharati Routray (P.W.-VI), as the statements fail to prove the allegations levelled against the petitioner.

13. Learned Counsel for the Petitioner drew the attention of the court to the Rule 824(f) of Police Manual Rules and stated that the abovementioned rule categorizes punishment of Black Mark as a Major Punishment. He contended that imposition of such major punishment on the Petitioner for a few minutes of

delayed response to the order of the IIC is disproportionate and the same would definitely shock the conscience of this court. He further added that the punishment of Black Mark is imposed in case of violation or defiance of a lawful order or warrant mandated under Section 23 of the Police Act, 1861. However, in the present instance the IIC has not lawfully issued any order or warrant under Section 23 of the Police Act, 1861. He therefore submitted that, framing of charge against the Petitioner alleging violation of Section 23 of the Police Act, 1861 is vague, mechanical and baseless and Memorandum of Charge dated 25.04.2019 under Annexure- 1 to the writ petition as such is liable to be interfered with and quashed. To draw support to his prayer, he drew the attention of the court to the case of Chatrapal v. State of U.P., reported in 2024 SCC OnLine SC 146, wherein it was held that-

"17. It is trite law that ordinarily the findings recorded by the Inquiry Officer should not be interfered by the appellate authority or by the writ court. However, when the finding of guilt recorded by the Inquiry Officer is based on perverse finding the same can always be interfered as held in Union of India v. P. Gunasekaran, State of Haryana v. Rattan Singh and Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu... -xxx-"

(Emphasis Supplied)

14. Placing reliance on the arguments advanced, relevant documents relied and the judicial precedent cited, learned counsel for the Petitioner submitted that the order of punishment dated 30.8.2021 under Annexure-7 to the writ petition, order dated 25.04.2022 passed by the Appellate Authority under Annexure- 9 to the writ petition, the order dated 19.07.2023 passed by the Revisional Authority under Annexure- 11 to the writ petition, the Memorandum of Charge dated 25.04.2019 under Annexure- 1 to the writ petition and the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition are illegal, perverse, baseless, mechanical and have been passed without appreciating the relevant evidence and prayed this Court to quash the aforesaid assailed orders.

SUBMISSION FOR THE OPPOSITE PARTY- STATE

15. Per Contra, Mr. Samaresh Jena, Learned Assistant Standing Counsel appearing on behalf of the Opposite Party- State submitted that the impugned orders and actions are legal and calls for no interference by this Court. He submitted that the assailed orders arose out of a full- fledged departmental proceeding initiated under Rule 15 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962 read with Rule 3 of the Orissa Government Servant's Conduct Rules, 1959 and Section- 23 of the Police Act, 1861. Learned ASC strenuously argued that the power of judicial review in disciplinary matters is very limited and this case doesn't come under the purview of judicial review. To support his contention he relied on the case of The State of Rajasthan & Ors. v. Bhupendra Singh arising out of Civil Appeal Nos. 8546-8549 of 2024 and State of Andhra Pradesh v. Sree Rama Rao reported in AIR 1963 SC 1723 wherein the

position of law has been settled that the courts will not act as an appellate authority to reassess evidence. If the enquiry has been held fairly and the findings are based on evidence, the Court will not interfere merely because another view is possible.

16. He also submitted that the Cuttack UPD Proceeding No. 23 of 2019 was initiated after submission of preliminary enquiry report dated 24.03.2019. The charge memo dated 25.04.2019 under Annexure-1 to the writ petition was served upon the Petitioner giving him an opportunity of hearing, the inquiry was conducted by an independent Enquiry Officer and show cause notices were served on the Petitioner at relevant times. He further added that the Enquiry Officer examined key witnesses and corroborated the material aspects of the misconduct. The Petitioner was given opportunity to cross-examine the witnesses, however, the Petitioner declined the cross-examination. He contended that the disciplinary proceeding was conducted by observing all the procedures diligently and by relying on the adduced evidences, the Petitioner was found guilty for acts of gross misconduct, insubordination, and use of inappropriate language towards his superior and as a result of which he was awarded the punishment of One Black Mark.

17. He further argued that the Petitioner's contention that he was not the DCO on 23.03.2019 doesn't sustain. The entry in the Duty Charge Register and the testimonies of P.W.-V and P.W.- VI as recorded in the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition prove otherwise. He further added that the Disciplinary, Appellate and Revisional Authorities have passed speaking orders after due analysis of the evidence on record and after due consideration of the objections raised by the Petitioner. Therefore, the impugned orders are legal and doesn't warrant interference by the Court.

18. Thereafter, he submitted that the punishment of One Black Mark imposed on the Petitioner vide the order of punishment dated 30.8.2021 under Annexure-7 to the writ petition is not disproportionate, rather it is conservative considering the gravity of misconduct consisting of insubordination, vulgarity and challenge to superior authority in a disciplined police force.

19. Placing reliance on the arguments advanced, case laws cited and the relevant documents relied on, Leaned ASC submitted that the departmental proceeding was fair, lawful and in compliance with the principles of natural justice. As there is no procedural infirmity, perversity or miscarriage of justice, the impugned order doesn't warrant interference of the Court under Article-226 of the Constitution of India. He finally submitted that the writ petition is devoid of merit and is liable to be dismissed.

ANALYSIS

20. Heard Mr. Biswabihari Mohanty, the learned counsel representing the Petitioner and Mr. Samaresh Jena, learned ASC representing the Opposite Party-State, perused the pleadings, documents cited and case laws relied on by either

side.

21. The Petitioner is held guilty of charge of gross misconduct and has been awarded the punishment of One Black Mark and this finding has been consistently upheld by the Appellate and the Revisional Authority. However, the learned counsel for the Petitioner has strenuously argued that the finding of guilt is illegal, arbitrary and perverse as the evidences adduced in the enquiry process in UPD No. 23 of 2019 do not support the finding reached. He has also argued that the infliction of major penalty of One Black Mark is highly disproportionate in comparison to the gravity of the charges levelled, to the extent that it would shock the judicial conscience of this court.

22. It is pertinent to mention that the Memorandum of the Charge dated 25.04.2019 under Annexure- 1 to the writ petition, states that-

"S.I. A.R. Jena being a member of Police organization and abide by rules to discharge and carry lawful orders, has failed to follow such provisions as per Act, 23 of Police Act, 1861 and as per Rule 3 of OGSC Rules, 1959, he has failed to maintain decorum of conduct by using vulgar languages to IIC, Baranga P.S. This amounts to gross- misconduct and he is liable to prosecute under Appendix- 49 of PMR Volume-II."

On perusal of the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition, it is found that based on the statement of the witnesses, the Enquiry Officer has made the following findings that- the Petitioner deliberately did not respond to the repeated calls of the IIC; the Petitioner indulged in argument with the IIC in high pitch voice; threatened the IIC to see him at DCP and DGP office and that the Petitioner has used some vulgar language against the IIC. Based on these findings, the Enquiry Officer has held the Petitioner guilty of the charge framed against him under Rule 3&4 of the OGSC Rules, 1959 and Section 23 of the Police Act, 1861. Subsequently, the Petitioner was imposed with the major punishment of One Black Mark and the said finding and punishment has been upheld in the Appellate and Revisional Proceedings.

23. On perusal of the Preliminary Explanation, Reply of the Petitioner to 1st and 2nd show cause notices as well as the Appeal and Revision Petition submitted by the Petitioner; it is found that the Petitioner has consistently denied the charges levelled against him. He has stated that his duty hours were over when the IIC called him and as he was doing work on computer he was late by few minutes to attend the call of the IIC. This few minutes delay irritated the IIC and the IIC expressed his discontentment upon the Petitioner in a loud voice. The Petitioner protested to the same and this led to a verbal duel between them. The Petitioner has consistently maintained that he hasn't used any vulgar language against the IIC. In view of this factual background, the Petitioner has pleaded over and over that his actions doesn't amount to gross misconduct as neither he has disobeyed any lawful order of his superior authority nor he has used any language or acted in a manner which violates Rule 3 of the OGSC Rules, 1959 and Section 23 of

the Police Act, 1861. The Petitioner has also made the plea that the punishment of One Black Mark imposed on him is a major punishment and is seriously disproportionate to the Charges framed against him.

24. The court finds merit in the plea raised by the Petitioner. The statements of Damodar Sabar (P.W.- V) and Bharati Routray (P.W.- VI), who are the eye witnesses to the incident, does not support the finding in the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition, to the extent that the Petitioner has disobeyed any order of the superior officer or used any vulgar language against the IIC. At this point, it is beneficial to refer to the order dated 25.04.2022 passed by the Appellate Authority under Annexure- 9 to the writ petition, wherein it is observed that-

"It is found that PW No. V and VI i.e. OAPF/204 Damodar Sabar and ASI Bharati Routray respectively are the main witness and eye witness of the matter. Both have proved that SI Ajit Ranjan Jena was DCO on 23.03.2019. Besides they have proved that the appellant was busy in Computer work in the computer room of the PS while the appellant was called by IIC through PW No. V OAPF/ 204 Damodar Sabar. The Appellant Asit Ranjan Jena appeared before the IIC with some delay due to his engagement in computer work and both the PWs have also proved that there was exchange of words between the IIC and SI Asit Ranjan Jena due to delay in responding the IIC. But they have not proved regarding the use of vulgar language by the appellant, only the report of the ACP, Zone- IV and the statement of the ACP and IIC statement of the ACP and IIC stated regarding use of vulgar language by the appellant. The Appellant being a member of a disciplined department like Police he should have maintained utmost decorum of conduct as per provisions of rules but he failed to follow the same. He should have mend himself in future."

(Emphasis Supplied by Court to Underlined Portion)

Despite the aforesaid observation, the Appellate Authority has upheld the punishment imposed on the Petitioner by stating that-

" Discipline is cornerstone Police Department. Appellant might have some engagement because of which he could not appear promptly. Ideally appellant should have explained politely and asked for pardon.

However, he resorted to heated arguments with senior in front of junior officers. If this indisciplined act is condoned then IIC will lose his authority to commend and control the Police Station. Even though the behavior of the appellant appears to be impulsive in nature I am not inclined to overlook it. I do not find enough reason to exertion the punishment awarded by Disciplinary authority, DCP Cuttack. Hence, I hold the punishment of one Black Mark just and fair and in consonance with the act of misdeed."

25. From the evidences adduced as well the materials placed in course of the Departmental enquiry and the observation made in the order dated 25.04.2022

under Annexure- 9 to the writ petition passed by the Appellate Authority, the Court is of the considered view that the finding of guilt in the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition, is perverse and arbitrary as it is not sufficiently supported by materials and evidence on record. As the order of 30.8.2021 under Annexure-7 to the writ petition imposing punishment of "One Black Mark" on the petitioner, is based on the finding of guilt in the aforesaid Enquiry Report, the order of punishment also doesn't sustain in the eyes of law. Moreover, the order dated 25.04.2022 passed by the Appellate Authority under Annexure- 9 to the writ petition and the order dated 19.07.2023 passed by the Revisional Authority under Annexure- 11 to the writ petition, are passed mechanically without considering the evidences and material on record and therefore, are perverse and arbitrary in nature as well.

CONCLUSION

26. In view of the analysis made and drawing support from the decision of the Hon'ble Apex Court in the case of Chatrapal (Supra), this court deems it proper to quash the order of 30.8.2021 under Annexure-7 to the writ petition imposing punishment of "One Black Mark" on the petitioner as well as the order dated 25.04.2022 passed by the Appellate Authority under Annexure- 9 to the writ petition and the order dated 19.07.2023 passed by the Revisional Authority under Annexure- 11 to the writ petition. Furthermore, the Memorandum of Charge dated 25.04.2019 under Annexure- 1 to the writ petition and the Enquiry Report dated 24.04.2021 under Annexure-3 to the writ petition is also quashed.

27. Writ Petition stands allowed. However, there shall be no order as to costs.

.....