

(2024) 07 OHC CK 0048
In the Orissa High Court
Case No : Writ Petition (C) No.1797 Of 2018

Basanta Kumar Mishra

APPELLANT

Vs

Orissa State Road Transport Corporation, Paribahan Bhawan,
Bhubaneswar

RESPONDENT

Date of Decision : 16-07-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 311(2)

Citation : (2024) 07 OHC CK 0048

Hon'ble Judges : Dr. S.K. Panigrahi, J

Bench : Single Bench

Advocate : B.S. Tripathy I, Amitab Tripathy

Final Decision : Allowed

Judgement

Dr. S.K. Panigrahi, J

1. Through this Writ Petition, the Petitioner challenges the legality and/or validity of the impugned order dated 02.04.2016 passed by the Board of Directors of the Opp. party (communicated through letter dated 18.01.2018 of the General Manager (A) of the opp. party) confirming the order of punishment of compulsory retirement imposed upon the Petitioner by the Disciplinary Authority as a major of penalty on 25.07.2005 by further modifying the amount of recovery from Rs.4,30,000/- to Rs.3,00,000/-, inter-alia on the ground of being void ab-initio and violative of Regulations 136, 141 and 143 provisions of OSRTC Employees (Classification, Recruitment and Conditions of Service) Regulations/ 1978 (hereinafter "Regulation/ 1978") read with Administrative Order No.18 and 40 and violative of the principles of natural justice.

2. The petitioner, inter-alia, prays for quashing the impugned order of punishment with grant of all consequential service and monetary benefits until his date of retirement on 31.01.2012.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The petitioner joined the OSRTC as an Assistant Transport Manager (ATM) in the year 1982 and was promoted as District Transport Manager (DTM) in the year 1989.

(ii) During the tenure of the petitioner as DTM (Admin) of OSRTC Bhubaneswar, on 13.04.2004, a Hi-Tech Bus with registration number OR-02-Q-8410, while on its return trip from Umerkote to Bhubaneswar, was involved in an accident at Ampani Ghat in the District of Kalahandi, near Koksora. The bus fell 35 feet down the ghat, coming to rest in a nose-down, and precarious position.

(iii) Before it could be released from police custody and moved from the accident site on 19.04.2004, unknown miscreants set the bus on fire and stole its gear box and propeller shaft. An FIR was lodged on 19.04.2004, following which the vehicle was released and moved to the OSRTC premises.

(iv) The petitioner was called upon by the then Managing Director, OSRTC vide his letter No.13114 dated 25.05.2004 to furnish an explanation within 7 days as to why a major penalty proceeding would not be drawn up against him besides recovery for the entire loss sustained by the Corporation for his alleged negligence, misconduct and utter lack of responsibility. Upon receipt of the said letter, the petitioner furnished his explanation on 31.05.2004 indicating in detail the steps taken by him and the staff on the issue with a request to exonerate him of the allegations/charges.

(v) Notwithstanding, a departmental proceeding bearing No.19512 dated 03.08.2004 was initiated against the petitioner and he was called upon to furnish his defence explanation within 15 days as to why suitable disciplinary action shall not be taken against him besides recovering for the amount of loss sustained by the Corporation.

(vi) The petitioner furnished his explanation on 01.10.2004, inter-alia, combating the allegation as incorrect and contrary to law and by reiterating his stand as in his explanation dated 31.05.2004 prayed for being exonerated from the charges

(vii) Finally, an enquiry was conducted by the F.A-cum-Chief Accounts Officer OSRTC ex parte during his illness and submitted his Report dated 06.04.2005 based on which the Disciplinary authority through his letter No.9178 dated 28.04.2005 issued 2nd Show Cause Notice asking him to show-cause within 15 days as to why (i) the entire cost of loss sustained by the Corporation would not be recovered from him and (ii) he should not be dismissed from service for such alleged unpardonable negligence.

(viii) The petitioner furnished his 2nd show-cause reply on 09.05.2005, inter-alia, alleging violation of the principles of natural justice in the hands of the Inquiry Officer in not allowing to defend himself in the inquiry. The petitioner has also alleged the findings of the Inquiry Officer as unfair, unjust and highly prejudicial in nature.

(ix) While the matter stood thus, the petitioner received a letter No.74(C) dated 15.05.2005 of the Inquiry Officer and F.A. & C.A.O. in which he was directed to appear again before the Inquiry Officer on 10.06.2005 to state his defence to the 2nd show-cause notice without fail. The petitioner appeared before the Inquiry Officer and on his direction furnished his statement of sole affirmation on 10.06.2005. In course of the 2nd inquiry though the petitioner had specifically requested the Inquiry Officer to allow him to cross-examine Sri G.C.Jena, the then Law Officer, OSRTC, Lala Ashok Kumar Ray, the then Asst. Works Engineer, Bhubaneswar and Sri Nityananda Patra, the then AFM, Bhubaneswar, those who had given statement in course of the 1st inquiry behind the back of the petitioner, who could not participate in the 1st inquiry because of his ailments. However, the Inquiry Officer in course of the 2nd inquiry refused cross-examination of those departmental witnesses.

(x) On 02.08.2005, the petitioner received office order No.148(C) dated 25.07.2005 issued by the CMD by which punishment of compulsory retirement was imposed on him with effect from 25.07.2005 along with a penalty of Rs. 4.30 lakhs; to be recovered for the loss caused to the Corporation.

(xi) The aforesaid impugned order of punishment was passed against the petitioner by the former CMD on the same day, without supplying the petitioner a copy of 2nd enquiry report dated 25.07.2005 and asking him to furnish his representation on the findings in the 2nd enquiry report. Contending its illegality, the petitioner filed an appeal on 25.09.2005, followed by supplemental grounds of appeal submitted on 24.10.2005.

(xii) Aggrieved by non-disposal of appeal, the petitioner approached this Court in WP(C) No.1154/2006 with a prayer for quashing the proceeding inquiry report as well as resultant order of punishment. This court disposed the same vide order dated 18.07.2011 and set aside the impugned appeal order for being a non-speaking order and remitted the matter back to the appellate authority i.e., the Board for reconsideration of the appeal specially with reference to the irregularities pointed out by the petitioner.

(xiii) Based on the aforesaid direction, Board of Director of the Corporation/Appellate Authority heard the petitioner in person on 17.08.2012 and directed the Corporation to supply copies of 1st Inquiry Report, 2nd Inquiry Report, and statements of the witnesses to the petitioner and to ask him to submit his show cause on the enquiry reports to the Board of Director of the Corporation/Appellate Authority within 30 days. In response, the petitioner submitted the show-cause reply dated 25.02.2013

(xiv) While the matter stood thus, the petitioner was communicated with letter No.13779 dated 18.11.2015 of the General Manager(A), OSRTC in which the petitioner was requested to appear before the Corporation Board on 21.11.2015 at 11.00 AM for personal hearing. In response to the said letter, the petitioner appeared before the Board of Directors on 21.11.2015 and apprised him all the

facts involved in his case.

(xv) Notwithstanding personal appearance before the Board on 21.11.2015, when no order was passed by the Appellate Authority, the petitioner filed WP(C) No.11720/2016 seeking quashing of the impugned proceeding as well as order of punishment. Despite notice being issued on 13.07.2016, no counter affidavit was filed on behalf of the Corporation until 27.11.2017, when the matter was listed for hearing and the counsel for the Corporation sought for adjournment to file counter affidavit. However, as the matter was pending before the Appellate Authority, this Court disposed of the writ petition on 27.11.2017 directing the Appellate Authority to decide the appeal within a reasonable period.

(xvi) On 04.12.2017, after lapse of four weeks, when nothing was communicated to the petitioner, the petitioner filed CONTC No.51/2018 on 15.01.18, which is still pending.

(xvii) On 25.01.2018, the petitioner received letter No.1011 dated 18.01.2018 of the GM(A), OSRTC enclosing therewith copy of letter No.14991 dated 22.12.2017 of the GM(A), OSRTC with copy of order No.3783 dated 02.04.2016 of the former Chairman, OSRTC, said to have been the order of the Board of Directors maintaining the order of the disciplinary authority but modifying the proportionality of the quantum of money to be recovered to the extent of reducing from Rs.4.3 lakhs to Rs.3.00 lakhs.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) As a matter of fact there exists no provision in the Regulation, 1978 authorizing the Inquiry Officer to cause a 2nd inquiry and to furnish a 2nd finding in an ongoing proceeding in which he had already submitted his report. The course adopted by the Inquiry Officer at the behest and dictates of the former CMD was not only contrary to law but also misconceived in nature. Further, the said course adopted by the former CMD was contrary to law and was only because of his personal malice and bias against the petitioner and was/is intended to fill up the latches on the part of the Inquiry Officer in conducting an ex-parte inquiry.

(ii) Along with the said 2nd Show Cause Notice, the copy of the Inquiry Report dated 06.04.2005 was neither supplied to the petitioner nor was he asked to furnish his representation on the findings in the said enquiry report.

(iii) While the matter stood thus, the petitioner received a letter No.74(C) dated 15.05.2005 of the Inquiry Officer and F.A. & C.A.O. in which he was directed to appear again before the Inquiry Officer on 10.06.2005 to state his defence to the 2nd show-cause notice without fail. Though such a course adopted by the Inquiry Officer was unknown to law as after submission of the Inquiry Report the Inquiry Officer became functus-officio with no further authority to delve into the matter,

yet the petitioner was under coercion appeared before the Inquiry Officer and on his direction furnished his statement of sole affirmation on 10.06.2005.

(iv) In course of the 2nd inquiry, the petitioner had specifically requested the Inquiry Officer to allow him to cross-examine Sri G.C.Jena, the then Law Officer, OSRTC, Lala Ashok Kumar Ray, the then Asst. Works Engineer, Bhubaneswar and Sri Nityananda Patra, the then AFM, Bhubaneswar, those who had given statement in course of the 1st inquiry against the petitioner, who could not participate in the 1st inquiry because of his ailments. But the Inquiry Officer in course of the 2nd inquiry refused cross-examination of those departmental witnesses.

(v) As the impugned order of punishment was a nullity in the eye of law, the petitioner had preferred an Appeal on 25.09.2005 followed by supplemental grounds of appeal dated 24.10.2005, inter-alia, praying for setting the illegal order of compulsory retirement and allowing him all consequential service and monetary benefits.

(vi) All the aforesaid orders were sent to the native place of the petitioner, from perusal of which the petitioner could ascertain that the Corporation has been harassing the petitioner deliberately and willfully, as would be evident from the fact that if at all the Board has disposed of the Appeal of the petitioner on 02.04.2016 the same could have been issued to the petitioner and could not have been suppressed until 18.01.2018. There has been deliberate attempt to harass and humiliate the petitioner when he has not been paid his retirement benefits dues despite his compulsory retirement since 2011 and despite his second writ application WP(C) No.11720/2016 was filed for quashing the order of punishment as well as impugned proceeding on the ground of non-disposal of the Appeal pursuant to order dated 18.07.2011 of this Court passed in WP(C) No.1154/2006.

(vii) Even when the 2nd writ application was heard on 27.11.2017, the aforesaid matter was suppressed. It is the reasonable apprehension of the petitioner that upon receipt of the order dated 27.11.2017; the Chairman as well as GM(A) of the Corporation manipulated the records to show that the Appeal of the petitioner was disposed of on 02.04.2016. Perusal of the letter of the GM(A) dated 18.01.2018 would reveal that the GM(A) has not even referred to his earlier order dated 22.12.2017.

(viii) Further in the orders under Annexure-12 series there was nothing to indicate that the Board in its' 146th meeting held on 29.03.2016 considered the Appeal of the petitioner and finalized the same. The petitioner apprehends foul play in the hands of the Chairman as well as GM(A) of the Corporation. On the aforesaid premises the impugned orders are liable to be quashed.

(ix) The Board of Directors/Appellate Authority, though, has given personal hearing and heard the petitioner on 17.08.2012 and 21.11.2015, yet no order was passed. The impugned decision was unexpectedly made during the Board of

Directors meeting held on 29.03.2016, in which none of the members present had personally heard the petitioner or afforded the petitioner any personal hearing. In that view of the matter, the impugned decision must be held to be bad in law as there was no personal hearing of any nature being given by the Board of Directors while passing the impugned decision in their meeting held on 29.03.2016. Law does not permit such a course to be adopted by the Board of Directors in their meeting held on 29.03.2016. The impugned decision is therefore, liable to be quashed.

(x) The impugned charge-sheet would reveal that in the garb of charge-sheet, the petitioner was confronted with definite consequence of alleged guilt which is illegal. Such proceeding is unknown to law as such show- cause stood vitiated by unfairness and bias.

(xi) Assuming that the Board has disposed of the Appeal on 02.04.2016, yet perusal of the same would reveal that there was neither any consideration of the grounds urged by the petitioner in his Appeal Memorandum nor there was any consideration of the orders passed by this High Court on 18.07.2011 in WP(C) No.1154/2006 to the extent of holding irregularity in the inquiry proceeding. This Court in the order dated 18.07.2011 in WP(C) No.1154/2006 had observed that once the inquiry was completed and report was submitted to the disciplinary authority, the Inquiring Officer becomes functus officio unless the matter is again remitted back to the Inquiring Officer for further inquiry. Therefore, issuance of notice by the Inquiring Officer after submission of reply to the second show cause notice issued by the disciplinary authority is unknown to law and to that extent irregularity has been committed. After completion of inquiry and submission of report, the Inquiring Officer again summoned the petitioner to submit a reply to the second show cause notice. It is presumed that the Inquiring Officer must have given a second report to the disciplinary authority on the basis of the reply received from the petitioner. Therefore, the petitioner not only is entitled to get the copy of the first report submitted by the Inquiring Officer but also the second report, if any, submitted by the Inquiring Officer.

(xviii) While initiating the aforesaid proceeding the disciplinary authority has willfully and consciously ignored and thereby violated the Regulation 141 of the Regulations dealing with the proceeding for imposing a major penalty. In terms of the Regulation 141 the disciplinary authority is duty bound and obliged to frame a definite charge and to communicate the same together with the statement of allegations or a copy of the report on which the charge is based. A bare perusal of the proceeding would reveal that the charges are not only vague but also imprecise and indefinite in nature. The proceeding was drawn up in such a manner so that the petitioner would not be in a position to furnish any explanation in an effective and reasonable manner as no details have been furnished as to the accident of vehicle No. OR-02-Q-8410. The place of accident, time of accident, nature of accident was deliberately withheld from the charge/ sheet. Unfortunately the most vital aspect as to the steps taken by the Unit Head

Office staff namely Sri N.N. Patra, Asst. Foreman and Sri Santosh Kumar Pattnaik, Asst. Station Master on 14.04.2004 till 23.04.2004 were also deliberately withheld from the charge-sheet.

(xix) Thus, the impugned order of punishment is per-se bad and illegal and violative of the mandatory principles of natural justice and further shockingly unconscionable and disproportionate in nature.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

5. Per contra, learned counsel for the Respondent intently made the following submissions:

(i). The preliminary explanation was called for from the petitioner on 25.5.2004 against which the petitioner submitted an explanation dated 31.05.2004. Since the explanation was found not satisfactory, the Chairman-cum-Managing Director of OSRTC being the disciplinary authority initiated a proceeding on charge of negligence of duty lack of official responsibility and misconduct and causing heavy financial loss to the corporation.

(ii). The enquiry was conducted by giving full opportunity to the petitioner to defend the charges, during which both document and oral evidence was collected. Thereafter enquiry report was submitted holding that all the charges were established.

(iii). The enquiry officer found that the bus purchased on 09.02.2001 for Rs. 12.92 Lakhs and after allowing depreciation @ 11.11% per annum the written down value of the bus on the date of accident was assessed at Rs.8.61 Lakhs and held the petitioner liable for the loss of the bus but suggested to recover 50% thereof from the petitioner.

(iv). The Disciplinary Authority agreed with the findings of the enquiry report and issued a second show cause notice by letter No.9178 dated 28.4.2005 to show cause as to why the loss sustained will not be recovered from the petitioner and he should not be dismissed from service. The petitioner submitted his reply to the second Show Cause dated 9.5.2005.

(v). After considering all documents the Disciplinary Authority passed order of penalty dated 25.7.2005, the penalty of compulsory retirement and recovery of Rs. 4.30 lakhs towards 50% of the written down value of the vehicle.

(vi). The petitioner filed appeal against the order of penalty before the Board of Directors of the Corporation, taking all the grounds of fact and law, the petitioner also submitted additional grounds of appeal dated 24.10.2005. The appeal was disposed of by order dated 10.5.2006.

(vii). The copy of the enquiry report dated 06.04.2005 along with copies of the statements of witnesses and copy of the additional enquiry report dated 25.07.2005 were supplied to the petitioner under letter No.10758 dated 02.11.2012.

(viii). The petitioner submitted his reply dated 25.2.2013 on the enquiry report in detail taking the grounds for consideration by the Appellate Authority. The petitioner was called to be present for personal hearing before the Appellate Authority on 21.11.2015. The petitioner was heard in person by the Directors of the Board on 21.11.2015 and the appeal was disposed of by order dated 02.04.2016 by a reasoned order considering the points raised. The Appellate Authority was pleased to confirm the order of compulsory retirement but reduced the quantum of recoverable amount from Rs.4.3 lakhs to Rs. 3.00 lakhs.

(ix). Sri B.K.Behera, as the then Chairman-cum-M.D. had passed the order of penalty on dated 25.7.2005. ?? had retired from service on 10.11.2013 and Sri Manoj Kumar Chhabra became the Chairman-cum-M.D. on dated 11.11.2013 and he was the member of the Appellate Board which considered the Appeal as per the direction of this Hon'ble Court in W.P.(C) No.1154/2006.

(x). There was no defect in decision making process and all rules of procedure were followed and principle of natural justice was not violated in any manner. The Corporation has suffered loss due negligence of the petitioner and the quantum of penalty is quite reasonable and not disproportionate to the charges. There is no reason for interfering with the order of penalty.

IV. EXAMINATION OF LEGAL MATRIX:

6. It is trite in law that Power of judicial review exercised by a Court or a Tribunal against the orders of a departmental enquiry committee is only limited to ensuring that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

7. In case of *State of Orissa v. Bidyabhushan Mohapatra*, AIR 1963 SC 779 the Constitutional Bench of the Supreme Court noted that, considering the seriousness of the proven misconduct, the disciplinary authority possessed the authority and jurisdiction to impose the corresponding penalty. This penalty was not subject to review by the High Court under Article 226. The relevant excerpts are produced here in below:

"If the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

8. In *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 the Supreme Court also held that judicial review is not an appeal from a decision but a review of the

manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. The relevant excerpt is produced here in below:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

9. When an inquiry is conducted on the charges of misconduct by an employee of the state, the Court or Tribunal would be concerned only to the extent of determining whether the inquiry was held by a competent officer or whether the rules of natural justice and statutory rules were complied with.

10. In *Om Kumar & Others v. Union of India*, (2001) 2 SCC 386 the Supreme Court had also after considering the *Wednesbury Principles* and the doctrine of proportionality held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority, and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or the other of the well-known principles known as "*Wednesbury Principles*" namely whether the order was contrary to law, or whether relevant factors were not considered, or whether irrelevant factors were considered or whether the decision was one which no reasonable person could have taken. The Apex held as following:

"In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of*

India, [1987] 4 SCC 611, this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India*, [1995] 6 SCC 749, this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in *Ganayutham*.

Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context.

The Court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment." (Emphasis supplied)

11. Finally, in *Deputy General Manager (Appellate Authority) and Others v. Ajai Kumar Srivastava*, (2021) 2 SCC 612 the observation of the Supreme Court must be remembered:

"25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

- (i) whether the enquiry was held by the competent authority;
- (ii) whether rules of natural justice are complied with;
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion."

12. Now, with the above principles in mind, we shall consider the arguments of the counsel for the petitioners, one by one, against the arguments of the counsel for the Opp. Parties.

V. COURT'S REASONING AND ANALYSIS

13. I have heard the representations of the counsels appearing for the respective parties at length. This court shall now consider and scrutinize the contentions of the respective parties against.

14. Firstly, the petitioner has challenged the commencement of the second disciplinary inquiry on the basis that it is unlawful and void. He contended that

there is no provision within the Regulation of 1978 that authorizes the Inquiry Officer to initiate a second inquiry or to provide a second finding in an ongoing proceeding in which he has already submitted his report. I agree with the argument of the petitioner.

15. In the law of inquiry, a second inquiry is not permissible on the same allegations provided that the Disciplinary Authority in the first enquiry has decided the allegations on merits. In a case, where the allegations against the Government servant having been decided on merits, a final order is passed and penalty order of dismissal is unconditionally withdrawn, no fresh enquiry lies in law. In this regard, in *Sanjib K. Sen v. Director Admin., Govt. of India*, 1973 SLJ 692 the Calcutta High Court held as follows:

"4. In my view, a second enquiry is not permissible in law on the identical allegations subject to this condition that the disciplinary authority after the first enquiry has decided the allegations on merits. In this case the allegations against the petitioner had been decided on merits by the Enquiry Officer. The Enquiry Officer found him guilty and on that basis the disciplinary authority removed him from service. The petitioner accepted the said position and did not complain against the order of removal dated May 18, 1968. There is some force in the contention of Mr. Dutt that as the said order of removal was unconditional, a second enquiry before the Inquiry Officer should not be held in view of the fact that the first Inquiry Officer and the disciplinary authority have already decided against him on the basis of the same allegations. But in this particular case there are certain special facts which have got to be considered before deciding the question whether a second enquiry is permissible in law."

16. Thus, if a proper enquiry is held and finding is given in that enquiry whether of guilt or innocence, no power is left with the authority to hold again a second enquiry on the same charges. It is, indeed, open to the Disciplinary Authority to take a different view from the view recorded by the Inquiry Officer, yet it cannot go on conducting the inquiries again and again till the guilt of the employee is proved. It tantamounts to harassment even though the principle of double jeopardy is not applicable as has been held in *M. Kolandal Gounder v. Divisional Engineer, Tamil Nadu Electricity Board*. 1997 (1) SLR Mad.467 The relevant excerpt has been produced hereinbelow:

"7. A reading of the charge memo dated November 11, 1987 does not contain any reference to the disciplinary proceedings at all. It is also not found as to whether the earlier proceedings had been dropped or not. Since the allegations in the affidavit having not been controverted, I have no other go except to accept statement contained in the affidavit. The affidavit shows that [the enquiry was completed and the enquiry report was also submitted. The enquiry report was also against the Board. Therefore, in the said circumstances, there is no justification for conducting a second disciplinary proceedings on the very same charges, which have been not proved. Even though the principle of double jeopardy is not applicable, the law permits only disciplinary proceedings and not

Harassment. The second set of disciplinary proceedings with very same charges which have not been proved, tantamount to harassment. Allowing such practice is not in the interest of the public service. In the circumstances, I have no hesitation to hold that the charge memo dated November 11, 1987 deserves to be quashed. Accordingly, the writ petition is allowed. However, there will be no order as to costs."

17. Second, the petitioner was refused the opportunity to cross-examine Sri G.C.Jena, the then Law Officer, OSRTC, Lala Ashok Kumar Ray, the then Asst. Works Engineer, Bhubaneswar and Sri Nityananda Patra, the then AFM, Bhubaneswar, those who had given statement in course of the 1st inquiry behind the back of the petitioner, who could not participate in the 1st inquiry because of his ailments. However, the Inquiry Officer in course of the 2nd inquiry refused cross-examination of those departmental witnesses. No contention was made by the Opp. Party to rebut this argument.

18. Now, it is trite in law that opportunity to cross-examine the witnesses is the fundamental requirement to meet the principles of natural justice. In *Kuldeep Singh v. The Commissioner of Police*, 1999 (2) SCC 10 the Supreme Court outlined the importance of providing an opportunity to the delinquent to cross-examine the witnesses against him. The relevant excerpt is produced hereinbelow:

"Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness."

19. In the case of *S.C. Girotra v. United Commercial Bank (UCO Bank) and Ors*, (1996) 11 LLJ 10 SC the Supreme Court has held that:

"It is also clear that no opportunity was given to the appellant to cross-examine either the makers of that report, Mr. V.P. Jindal and Mr. J.R. Sharma or the officers who had granted such certificates which formed evidence to prove the charges which led to the order of dismissal passed by the disciplinary authority, even though those persons were examined for the purpose of proving the documents relating to them. In our opinion, the grievance made by the appellant that refusal of permission to cross-examine these witnesses was denial of reasonable opportunity of defence to the appellant, is justified."

20. Consequently, the inquiry officer is required to record oral evidence of the witnesses in the presence of the petitioner and provide the petitioner with an opportunity to cross-examine the witnesses. In this case, the inquiry officer neither recorded the evidence in the petitioner's presence nor allowed the petitioner to cross-examine the witnesses. Instead, written statements were obtained while the petitioner was ill and absent, thus depriving him of the opportunity to cross-examine the witnesses. It is established law that statements recorded in a person's absence cannot be used against them unless the person who made the statement is available for cross-examination to verify its accuracy. Therefore, in depriving the opportunity to cross-examine an important tenet of natural justice is violated.

21. Third, the petitioner contends that although the Board of Directors/Appellate Authority provided a personal hearing on 17.08.2012 and 21.11.2015, no order was issued at those times. The challenged decision was unexpectedly made during the Board of Directors meeting on 29.03.2016, where none of the members present had personally heard the petitioner or afforded a personal hearing. The petitioner argues that this process is illegal, as only those who conducted the personal hearing should issue the final order, and any subsequent involvement would invalidate the order.

22. Naturally, the next question which requires to be decided is whether the rule that the person or authority who heard the case should pass orders is an indispensable requirement in the observance of principles of natural justice.

23. According to the principles of natural justice, it is a fundamental rule that the adjudicator who hears a case should also be the one to render the decision on it. This principle is integral to maintaining the integrity and fairness of judicial/quasi-judicial proceedings. Should one judge hear the case and another judge render the decision, it constitutes a significant breach of the principles of natural justice. This is because the judge who did not hear the evidence and witness testimonies firsthand cannot fully appreciate the nuances and credibility assessments that are critical to making a just decision.

24. Furthermore, the involvement of multiple people in different stages of the departmental proceeding may undermine the confidence in the process, as they may perceive it as fragmented and inconsistent. It is essential for the preservation of institutional integrity and the administration of justice that the person who hears the case remains the same person who decides it, thereby upholding the foundational rule of natural law and ensuring the fair and just resolution of disputes. In *Gullapalli Nageswara Rao v. A.P.S.R.T. Corporation*, AIR 1959 SC 308, the Supreme Court held thus:

"The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the

concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

(Emphasis supplied)

25. This rule has its base on *R.V. Manchester, JJ. Ex Parte Burke*, [1961] 125 JP 387 where a decision was quashed because a member of the Bench who had not heard the evidence appeared to participate in the decision. The above mentioned case was also relied on by the division bench in Kerala High Court in *Union of India and Anr. v. E.K. Andrew*, [1999] 95 COMPCAS 537(KER) where it was held as follows:

"It is a cardinal principle of judicial system that a case should be decided by the authority hearing the arguments and that a successor cannot decide a case without hearing the arguments afresh on the ground that arguments have already been advanced before his predecessor who left the case without deciding it himself. The object of hearing arguments is to give an opportunity to a party to satisfy the Tribunal about the case set up by that party and to explain any adverse facts which may emerge on the record. Therefore it is essential that the successor must hear the arguments afresh. If one person hears and another decides, then personal hearing becomes an empty formality and a mere farce."

26. In light of the above discussion, it is evident that the justification of the learned counsel appearing for the Opp. Party would not hold water as indisputably, the Board which declared the final order had never heard the petitioner during the departmental proceeding.

27. Based on the aforementioned discussion, it is evident that the departmental proceedings are riddled with inconsistencies and irregularities, rendering them incapable of being legitimized by this court. Multiple violations of the principles of natural justice have occurred throughout the proceedings. These violations include, but are not limited to, the initiation of a second departmental inquiry after the inquiry officer had submitted his report in the first inquiry, the denial of an opportunity for the petitioner to cross-examine witnesses whose statements were recorded without his knowledge, and the issuance of an order by the Board whose active members had not heard the case. Additionally, the procedural lapses such as the delay in furnishing the final order and the lack of consistency in the evidence collection process further undermine the integrity of the proceedings. The cumulative effect of these procedural deficiencies and violations of natural justice principles fundamentally compromises the fairness and validity of the departmental proceedings, leading this court to conclude that

the entire process is legally untenable.

28. It is a well-established legal principle that when a court sets aside an order of punishment on the grounds of an improperly conducted inquiry, it should not unduly restrict the employer from conducting a subsequent inquiry in accordance with the law. The court must remand the case to the disciplinary authority to resume the inquiry from the point where it became invalid and to conclude it in compliance with legal requirements. However, an exception may be made in certain instances where the proceedings have caused such prejudice to the petitioner that a new inquiry would be unnecessary and would further exacerbate the petitioner's already significant suffering.

VI. CONCLUSION

29. In view of the aforesaid, it is noticed that the charge sheet was initially issued on 03.08.2004. However, the final order was not passed until 02.04.2016 and communicated by the letter dated 18.01.2018. The enquiry could not be completed in due time which can be attributed as an inordinate delay on the part of the Opp. Party only. Meanwhile, the petitioner had been retired since 31.01.2012.

30. This court holds that the protracted pendency of the departmental inquiry, lasting approximately 14 years, has inflicted significant prejudice upon the petitioner, causing both mental distress and financial loss. Furthermore, the petitioner's retirement benefits remain unsettled.

31. In view of the aforesaid facts and circumstances of the case, this Court is of the considered opinion that the proceeding and the orders emanating from it, inter alia, order dated 02.04.2016 deserve to be set aside and is hereby set aside.

32. The Opp. Party is directed to settle the retiral dues including pensionary benefits of the petitioner, as expeditiously as possible, preferably within a period of three months from the date of receipt of the copy of this order. It is also directed that the petitioner would be entitled for an interest on delayed payment/arrear at the rate of 8% per annum till the date of actual payment.

33. This Writ Petition is, accordingly, allowed.

34. Interim order, if any, passed earlier stands vacated.

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