

(2023) 05 OHC CK 0034

In the Orissa High Court

Case No : Writ Petition (C) No. 5291 Of 2019

Rabindra Kumar Nayak

APPELLANT

Vs

Regional Chief Conservator Of Forests, Bhubaneswar Circle,
Bhubaneswar & Anr

RESPONDENT

Date of Decision : 02-05-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309
Orissa Civil Services. (Classification, Control and Appeal) Rules, 1962 — Rule 2(c), 15,
15(4), 15(5), 15(6), 15(7)

Citation : (2023) 05 OHC CK 0034

Hon'ble Judges : Dr. B.R. Sarangi, J; M.S. Raman, J

Bench : Division Bench

Advocate : R.K. Patnaik, T.K. Dwibedy, B. Jalli, B.B. Acharya, U.K. Patnaik, A.K. Mishra

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, by means of this writ petition, seeks to quash the order dated 03.10.2018 passed in O.A. No.534(C) of 2011, by which the State Administrative Tribunal, Cuttack Bench, Cuttack, while dismissing the Original Application, has confirmed the order of punishment imposed by the disciplinary authority and upheld by the appellate authority; and further seeks direction to the opposite parties to extend three annual increments without cumulative effect and treat the suspension period from 27.06.2007 to 02.01.2008 as on duty with payment of duty pay and all other financial benefits.

2. The factual matrix of the case, in brief, is that the petitioner, while serving as Forester, Kusanga Section of Kusanga Wildlife Range under Divisional Forest Officer (DFO), Mahanadi Wildlife Division, Nayagarh, was placed under suspension, vide office order dated 27.06.2007 issued by the Divisional Forest Officer, Mahanadi Wildlife Division contemplating disciplinary proceeding. He was

served with statement of article of charges and statement of imputation in support of the article of charges together with the list of documents, by which the article of charges are proposed to be sustained. The statement of imputation in support of the article of charges framed against the petitioner runs as follows:-

"CHARGE NO-I: Suppression of facts and connivance with smugglers.

CHARGE NO-II: Causing pecuniary loss to State Exchequer.

CHARGE NO-III: Involvement in smuggling of minor Forest produces from the Sanctuary.

CHARGE NO-IV: Disobedience of instructions of higher authorities and non-cooperation with Divisional Mobile Unit.

CHARGE NO-V: Commission of criminal offence and giving false information."

He was called upon to file written statement of defence within ten days and, accordingly, he submitted the same on 28.11.2007. Thereafter, vide office order dated 01.01.2008, he was reinstated in service and was posted as Forester, Special in Banigochha East Wildlife Range with headquarters at Kuanaria with immediate effect. Vide office order dated 05.01.2008, the DFO, Mahanadi Wildlife Division himself made an inquiry under Rule-15 of OCS (CCA) Rules, 1962 and in exercise of powers conferred by Sub-rule (5) of Rule-15 of the said Rules, appointed Sribatsa Dash, Junior Clerk as the Presenting Officer. The DFO, Mahanadi Wildlife Division, Nayagarh issued a show-cause notice on the departmental proceeding drawn up against the petitioner, vide office order dated 23.10.2007. The Inquiry Officer submitted his report with the following findings:-

"1. Charge No.1 i.e. connivance with smugglers was not proved but the suppression of facts is provide beyond doubt.

2. Causing pecuniary loss to Govt. is provided beyond doubt.

3. Involvement in smuggling of minor Forest produces from the Sanctuary is not proved.

4. Disobedience of instructions of higher authorities and non-cooperation with Divisional Mobile Unit is partially proved.

5. Commission of criminal offence and giving false information is proved beyond doubt."

Accordingly, he recommended the following punishments:-

"1. His three annual increments may be stopped with cumulative effect.

2. His suspension period may be treated as such.

3. The loss sustained by the Govt. i.e. Rs.4,400/- may be recovered from Sri Rabindra Kumar Nayak, Forester.

4. He may be warned for the future.”

Consequently, agreeing with the findings and recommendation of the Inquiry Officer, the Divisional Forest Officer, Mahanadi Wildlife Division, Nayagarh proposed to award the following punishment on the petitioner:-

“1. His three annual increments are to be stopped with cumulative effect.

2. His suspension period i.e. from 27.06.2007 to 02.01.2008 treated as such.

3. The loss sustained by the Govt. ie. Rs.4,400/- is to be recovered from Sri Rabindra Kumar Nayak, Forester.

4. He is to be warned for the future.”

2.1 Against the said order of imposition of penalty, the petitioner preferred appeal before the Conservator of Forests-cum-Appellate Authority, who, vide order dated 17.01.2011, confirmed the order of punishment imposed by the disciplinary authority. Against the said order, the petitioner approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.534(C) of 2011 and the Tribunal, vide order dated 03.10.2018, confirmed the order of punishment imposed by the disciplinary authority as well as the appellate authority. Hence, this writ petition.

3. Mr. R.K. Patnaik, learned counsel appearing for the petitioner vehemently contended that the DFO, Mahanadi Wildlife Division, Nayagarh, being the disciplinary authority, himself conducted enquiry and appointed one Sribatsa Dash, Junior Clerk, as the Presenting Officer. Thereby, he is the prosecutor as well as the Inquiring Officer and has become the Judge of his own cause. As such, the enquiry conducted by the DFO, Mahanadi Wildlife Division, Nayagarh is illegal. It is further contended that after enquiry, the enquiry report was given to the petitioner and he was asked to file show-cause. Accordingly, he filed his reply to the show-cause on 08.04.2009 and, thereafter, the punishment was imposed by the disciplinary authority, i.e., DFO, Mahanadi Wildlife Division, Nayagarh, vide order dated 01.05.2009. It is contended that the DFO, Mahanadi Wildlife Division, Nayagarh, being the disciplinary authority, conducted enquiry and imposed penalty. Thereby, any action taken by the DFO, Mahanadi Wildlife Division, Nayagarh is hit by the principle of the Judge of his own cause. As a result, the order so passed by the disciplinary authority cannot be sustained in the eye of law and the same is liable to be quashed. To substantiate his contentions, he has relied upon the judgments of the apex Court in the cases of State of Uttaranchal v. Kharak Singh, (2008) 8 SCC 236; Mohd. Yunus Khan v. State of Uttar Pradesh, (2010) 10 SCC 539; and Ejaz Alam Siddique v. Presiding Officer, Industrial Tribunal, 2015(II) ILR-CUT-494.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the opposite parties vehemently disputed the contentions raised by learned counsel appearing for the petitioner and contended that the emphasis laid by the learned counsel for the petitioner, that the disciplinary authority at no point of time can

become an Inquiry Officer-cum-Punishing Authority in a particular departmental proceeding for the ends of law and fair play of justice, as because no person shall become Judge of his own cause, is completely unfounded and incorrect. He, thus, contended that the entire process including the action taken by the disciplinary authority is well within the ambit of law and in consonance with Rule-15 of the OCS (CCA) Rules, 1962 as well as the principles of natural justice and fair play. It is further contended that, vide order dated 05.01.2008 under Annexure-6, a Presenting Officer was appointed by the DFO, Mahanadi Wildlife Division, Nayagarh in exercise of powers conferred under Rule-15(5) of the OCS (CCA) Rules, 1962 in order to present the case/charges on behalf of the Mahanadi Wildlife Division Nayagarh. In view of such provision, the disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges and after considering such documentary and oral evidence, as is relevant or material in regard to the charges, as per Rule-15(6) prepared a report of inquiry, recording its findings on each of the charges together with reasons thereof upon conclusion of the enquiry under Rule 15(7) of the Rules. Opposite party no.2-DFO, Mahanadi Wildlife Division, Nayagarh, being the disciplinary authority, is thus competent and empowered to enquire into the charges framed against the petitioner and there is no infirmity or violation of the provisions of law as such. He laid emphasis that DFO, Mahanadi Wildlife Division, Nayagarh, the disciplinary authority, had framed the charges against the petitioner on the basis of the reports of the ACF, Mahanadi Wildlife Division, Nayagarh dated 27.07.2007, the Range Officer, Kusanga Wildlife Range dated 25.06.2007 and the Range Officer Mobile Unit, Mahanadi Wildlife Division dated 12.06.2007. Therefore, on the basis of the report of ACF, Mahanadi Wildlife Division dated 27.07.2007, the proceeding/enquiry was conducted by the DFO, Mahanadi Wildlife Division, Nayagarh by recording the statements of some of the witnesses, along with the petitioner, and the petitioner was granted sufficient opportunity to cross-examine the witnesses. The allegations having been established against the petitioner, punishment was imposed against him, which is within the domain of the disciplinary authority. Consequentially, no illegality or irregularity has been committed by the disciplinary authority by imposing such penalty. Thereby, dismissal of the writ petition is sought for. To substantiate his contentions, he has relied upon *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610.

5. This Court heard Mr. R.K. Patnaik, learned counsel appearing for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the opposite parties in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the merits of the case, it is of relevance to refer to the rules governing the field for just and proper adjudication of the case. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Odisha framed the Odisha Civil Services (Classification, Control &

Appeal) Rules, 1962 (hereinafter referred to as "OCS (CCA) Rules, 1962"). Rules 2(c), 15(4) and 15(5), being relevant for the purpose of the case, are extracted hereunder:-

"Rule-2(c). Disciplinary authority", in relation to the imposition of a penalty on a Government servant means the authority competent under these rules to impose on him that penalty."

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"15(4) On receipt of the written statement of defence or if no such statement is received within the time specified the disciplinary authority may itself enquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a board of inquiry or an enquiring officer for the purpose.

Provided that if, after considering the written statement of defence, the disciplinary authority is of the view that the facts of the case do not justify the award of a major penalty, it shall determine after recording reasons thereof what other penalty or penalties, if any, as specified in Clauses (i) to (v) of Rule 13 should be imposed and shall after consulting the Commission, where such consultation is necessary, pass appropriate order.

15(5) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the 'inquiring authority'). The Government servant shall have the right to engage a legal practitioner to present his case if the person nominated by the disciplinary authority, as aforesaid, is a legal practitioner. The inquiring authority may also having regard to the circumstances of the case, permit the Government servant to be represented by a legal practitioner."

The OCS (CCA) Rules, 1962, having been framed by the proviso to Article 309 of the Constitution of India, is legislative in character. The powers of the Governor under the proviso to Article 309 are the constitutional powers and legislative in character subject to act of legislation.

7. In *B.S. Vadera v. Union of India*, AIR 1969 SC 118, the apex Court in paragraph-24 of the said judgment held that it is also significant to note that the proviso to Article 309, clearly lays down that 'any rules so made shall have effect, subject to the provisions of any such Act'. The clear and unambiguous expressions, used in the Constitution must be given their full and unrestricted meaning unless hedged-in, by any limitations. The rules, which have to be 'subject to the provisions of the Constitution', shall have effect, subject to the provisions of any such Act'.

8. In *Bhakta Rame Gowda v. State of Karnataka*, AIR 1997 SC 1038, the apex Court, referring to its earlier Constitution Bench judgment in *B.S. Vadera v. Union of India*, AIR 1969 SC 118, held that rules made under the proviso to Article 309 of the Constitution are legislative in character. The same principle has

been reiterated in several judgments of the apex Court.

9. In view of the law laid down by the apex Court, as mentioned above, the OCS (CCA) Rules, 1962, having been framed under the proviso to Article 309 of the Constitution of India, is legislative in character subject to limitation, as mentioned above. On perusal of the provision contained in Rule-15(4) of the OCS (CCA) Rules, 1962, it is made clear that the disciplinary authority may itself enquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a board of inquiry or an Inquiring Officer for the purpose. In view of such power provided under Rule-15(4) of the OCS (CCA) Rules, 1962, the disciplinary authority can conduct the enquiry itself or may appoint a board of inquiry or an Inquiring Officer, if he considers it necessary to do so.

10. It is well settled law in *Nelson Motis v. Union of India*, AIR 1992 SC 1981 that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences.

Similar view has also been taken by the apex Court in *State of Maharashtra v. Nanded-Parbhani Z.L.B.M Operator Sangh*, AIR 2000 SC 725.

11. On the face of the above settled position of law, there is no ambiguity in the provisions contained under Rule-15(4) of the OCS (CCA) Rules, 1962. Therefore, the disciplinary authority may himself enquire into such of the charges being an Inquiring Officer and being disciplinary authority can also impose punishment and to assist the Inquiry Officer under Sub-rule (5) of Rule-15 of the OCS (CCA) Rules, 1962, the disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges. Therefore, it is well within the domain of the DFO, Mahanadi Wildlife Division, Nayagarh, who can himself conduct the inquiry and also can impose punishment as a disciplinary authority.

12. Much reliance has been placed on *Kharak Singh* (supra) by the learned counsel for the petitioner, wherein the Divisional Forest Officer acting as Inquiry Officer himself inspected the area where there was illicit felling, put certain questions to the respondent and after securing answers, submitted a report of enquiry. Neither was any presenting officer nor any prosecution witness examined. In that context, the apex Court in the said case held that the Inquiry Officer acted as investigator, prosecutor and also judge. Such a procedure is opposed to the principles of natural justice and the same was frowned upon by the Supreme Court.

Factually, the case in hand is absolutely distinguishable from the cited case, in view of the fact that on the basis of the report of the Assistant Conservator of Forests, Mahanadi Wildlife Division, Nayagarh, the DFO, being the disciplinary authority, pending contemplation of disciplinary proceeding, placed the petitioner on suspension and served with memorandum of charges calling upon the

petitioner to file written statement and on consideration of the same examined the witnesses and documents available on record by appointing presenting officer under Rule-15(5) of the OCS (CCA) Rules, 1962, caused enquiry and, thereafter, imposed penalty being disciplinary authority and, as such, there is no bar under Rule-15(4) for the DFO, Mahanadi Wildlife Division, Nayagarh to continue as Inquiry Officer and also the disciplinary authority. Thereby, the ratio decided in Kharak Singh (supra) has no application to the present case and the same is distinguishable.

13. In Md. Yunus Khan (supra), the apex Court held that the authority initiating disciplinary proceedings, becoming a witness thereto, accepting enquiry report and imposing punishment is impermissible and no person can be a judge in his own cause and no witness can certify that his own testimony is true. Thereby, the procedure adopted there, was in flagrant violation of natural justice and consequentially stood vitiated.

Factually, the present case is absolutely distinguishable from Md. Yunus Khan (supra). At no point of time, in the case at hand, the disciplinary authority has acted as a witness accepting enquiry report and imposing punishment on the delinquent-petitioner, rather the DFO, Mahanadi Wildlife Division, Nayagarh has acted in conformity with the provisions contained under the OCS (CCA) Rules, 1962 and, consequentially, the plea advanced by the learned counsel for the petitioner to that effect is not acceptable.

14. In Ejaz Alam Siddique (supra), learned Single Judge of this Court held that disciplinary authority himself was a witness in the proceeding and he has no competence to appoint the Inquiry Officer and acted as disciplinary authority. The ratio decided in that case is not applicable to the present case and it is akin to Md. Yunus Khan (supra). Thereby, the judgments of the apex Court and this Court relied upon by the learned counsel appearing for the petitioner are of no assistance to him.

15. In P. Gunasekaran (supra), the apex Court in paragraphs-12 and 13 laid down the principle with regard to scope of interference in a service matter and when interference with disciplinary proceedings is permissible. The said paragraphs-12 and 13 are extracted hereunder:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority has erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappraise the evidence;
- (ii) interfere with the conclusion in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience."

16. Taking into consideration the aforementioned principles laid down by the apex Court and applying the same to the present case, since the DFO, Mahanadi Wildlife Division, Nayagarh, being the disciplinary authority, has acted as an Enquiry Officer as per Rule-15(4) of OCS (CCA) Rules, 1962 and imposed punishment, thereby, he has acted within the parameters of the provisions of law by affording opportunity of hearing to the petitioner. As a consequence thereof, this Court does not find any error in the order impugned so as to cause interference of this Court.

17. In the result, therefore, the writ petition merits no consideration and the same is hereby dismissed, but, however, there shall be no order as to costs.

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