(2010) 08 OHC CK 0035

In the Orissa High Court

Case No : O.J.C. No. 4532 of 1996

Shri Ashok Kumar Mohanty APPELLANT

Vs

The Orissa Small Industries Corporation Ltd. and another RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Citation : (2011) 1 OLR 731 Supp

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioner, in this writ application, assails the order passed by the disciplinary authority in Annexure-14 dated 28.1.1995 as well as the order passed by the appellate authority in Annexure-16 dated 19.1.1996.

2. The Petitioner was appointed as a Project Officer by the opposite parties-Corporation on 7th February, 1979 and he joined the post on 19.2.1979 in the Project Division of the Corporation. He was assigned with the work of verification of loan ledgers of Seed Capital Loan advanced by the Corporation. In course of verification, the petitioner came across the file of one M/s. Oceana Enterprisers, which had been granted Seed Capital Loan of Rs. 25,000/- by the Corporation on 21.2.1978. On examination of the Deed of Agreement and Deed of Hypothecation, it was found that two of the employees of the Corporation, namely, Parameswar Nayak and Ajay Kumar Mohanty were signatories as witnesses and the Managing Partner of the said firm was one Ashok Kumar Pattnaik. The name of the other partner was that of the petitioner i.e. Ashok Kumar Mohanty. When details of the said Ashok Kumar Mohanty were found to be same as that of the petitioner, the said fact was brought to the notice of the Managing Director of the Corporation. It is the further case of the petitioner that the Managing Partner Ashok Kumar Pattnaik had approached him to become a partner in the said firm, but he had refused before joining the Corporation. Suspecting foul play at the hands of Ashok Kumar Pattnaik, intimation was given

to the Managing Director of the Corporation. It was further found that for the purpose of setting up a Small Scale Industries at Paradeep, the aforesaid firm had taken a term loan of Rs. 3.75 lakhs from OSFC but there was some discrepancy with regard to father''s name of Ashok Kumar Mohanty mentioned in the Guarantee Deed. On the basis of the above intimation given by the petitioner, an inquiry was conducted by the Corporation in 1982-83 through the then Manager (Administration). The petitioner was never called to attend the inquiry, but the witnesses to the agreement executed between OSIC and M/s. Oceana Enterprisers were examined. On the basis of the preliminary inquiry, a departmental proceeding was started against the petitioner and he was put under suspension. The allegation in the charge is that the petitioner had taken a Seed Capital Loan from the Corporation on 22.7.1978 as the partner of M/s. Oceana Enterprisers. Subsequently, he joined the Corporation as an Officer on 19.2.1979. When the matter was detected, the petitioner denied with an explanation that the Managing Partner Ashok Kumar Pattnaik had forged his signature and availed a loan without his knowledge. In course of preliminary inquiry, evidence having been adduced to show that he had in fact taken the loan as a partner of M/s. Oceana Enterprisers, he committed fraud/dishonestly in connection with business/property of the Corporation and had acted in a manner prejudicial to the interest of the Corporation, charge was framed against him on these allegations.

After receipt of memorandum of charge, the petitioner submitted his reply and the inquiry was taken up by W. Easwar, Deputy General Manager (Finance), who was appointed as Inquiry Officer. At the end of inquiry, the petitioner was found guilty of the charge. After consideration of representation of the petitioner against the findings of the Inquiry Officer, the Managing Director of the Corporation in Annexure-14 dated 28.1.1995 directed termination of the petitioner from service and also directed that the period of suspension shall be treated as such. Against the said order of punishment, the petitioner preferred an appeal to the Board of Directors and by office Order dated 19th January, 1996, the petitioner was informed that the punishment imposed in the disciplinary proceeding has been partially modified by the appellate authority and he has been reduced in rank to the grade of Assistant Manager with effect from 28.1.1995 and that he shall not be eligible for promotion upto 6.1.1998. Challenging the aforesaid two orders passed by the disciplinary authority as well as the appellate authority, this writ application has been filed.

3. Shri N.K. Mishra, learned counsel appearing for the petitioner assailed both the orders with reference to the inquiry report on two grounds. It was contended by Shri Mishra, learned counsel appearing for the petitioner that the petitioner has been found guilty of the charge on the basis of the finding of the handwriting expert. Mr. R.K. Viz and deposition of P. Nayak, who had been examined in course of disciplinary proceeding, as P.W.2. The said finding of the handwriting experts had never been produced and proved by the department in course of inquiry and, therefore, no reliance could have been placed by the Inquiry officer

on the said documents. It was also contended that the evidence of P. Nayak, who was a signatory to the agreement executed between the Corporation and the Firm, could not have been accepted considering the fact that the said witness had been put under suspension at the time of examination and immediately after his examination in the proceeding, the order of suspension was revoked. According to the petitioner, the said witness was purposefully examined to depose against the petitioner by the Manager and the conduct of the management in putting the said witness under suspension and revoking the order of suspension immediately after his examination clearly proves the same. Shri G.R.A. Dora, learned Senior Counsel appearing for the Corporation submitted that the report of the handwriting expert had been produced in the departmental proceeding before the Inquiry officer but the petitioner did not adduce any rebuttal evidence. Moreover, Shri P. Nayak, being a signatory to the agreement, as a witness and being acquainted with the signature of the petitioner, there could not have been any reason for the Inquiry Officer to discard the evidence of the said witness.

4. Undisputedly, the Seed Capital Loan had been advanced by the OSIC to M/s. Oceana Enterprisers on the basis of an agreement executed on 22.2.1978. P. Nayak, who was examined in course of inquiry, was one of the witnesses to such agreement. The Deed of. Agreement and Deed of Hypothecation clearly show that M/s. Oceana Enterprisers had two partners namely, Ashok Kumar Pattnaik, who was the Managing Partner and Ashok Kumar Mohanty, the other partner. Though with reference to the documents executed with OSFC by the said firm, some submissions were made to the effect that the name of the father of Ashok Kumar Mohanty varies in certain documents in possession of OSFC, so far as present case is concerned, there is no dispute that the name of the father of the said partner Ashok Kumar Mohanty also tallies with the name of the father of the present petitioner. Prima facie being satisfied about the fact that the petitioner was one of the partners of the said firm and had taken loan from the Corporation as a partner, a preliminary inquiry was conducted. In course of preliminary inquiry, evidence was collected and the report of the handwriting expert was also obtained. It is admitted that in course of such preliminary inquiry, the petitioner had not been given an opportunity to participate and; therefore, law is well settled that any material collected during such preliminary inquiry could not be used by the Inquiry Officer so long as they are not produced as evidence in the disciplinary proceeding itself. Though the Inquiry officer has referred to the report of the handwriting expert at several places, list of exhibits as mentioned in the order sheet of the disciplinary proceeding shows that 24 documents were exhibited on behalf of the management and the report of the handwriting expert had not been proved and marked as exhibit. However, surprisingly, the Inquiry Officer has referred to the report of the handwriting expert in his report as Ext. 30. Therefore, there is substance in the submission of the learned counsel for the petitioner that neither the report of the handwriting expert was produced before the Inquiry Officer nor was it proved and marked as Exhibit and, therefore, no

reliance could have been placed by the Inquiry Officer on the said document. Even if the report of the handwriting expert is discarded, the evidence of P.W. 2., P. Nayak establishes the charge. This witness has specifically implicated the petitioner as one of the signatories partners of the said firm and there is no reason to discard his evidence. Law is well settled that in a disciplinary proceeding, this Court does not sit in appeal against the findings of the Inquiry Officer. Only when the Court is satisfied that the findings arrived at by the Inquiry Officer are based on no material, it may interfere with the same. Here is a case where evidence of P.W.2, P. Nayak establishes the charge. Therefore, this Court cannot sit in appeal over the findings of the Inquiry Officer, which is not only based on the report of the handwriting expert but also the evidence of P.W. 2 and come to a different conclusion. Even if the report of the handwriting of expert is discarded, the charge is established through evidence of P.W.2.

5. For the reasons stated above, there is no scope for this Court to interfere with the findings of the Inquiry officer and consequently with the orders of the disciplinary authority as well as the appellate authority.

6. The writ application is accordingly dismissed.

C.R. Dash, J.

7. I agree.