

**(2011) 03 OHC CK 0070**  
**In the Orissa High Court**  
**Case No : O.J.C. NO. 3958 of 2002**

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|-----------------------------|----|------------|
| Sri Gopal Chandra Mohanty   | Vs | APPELLANT  |
| Utkal University and Others |    | RESPONDENT |

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**Date of Decision :** 22-03-2011

**Acts Referred:**

**Citation :** (2011) 2 OLR 379

**Hon'ble Judges :** B.P. Das, J; B.K. Misra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

B.K. Misra, J.—The petitioner who is an employee of Utkal University has preferred this writ petition challenging the order of punishment passed in Annexure-6 in which the Vice Chancellor, namely the Disciplinary Authority in consideration of the report of the Inquiring Officer and in exercise of the powers conferred under statute 302(H) of the Orissa Universities First Statutes, 1990 passed the following order:-

1. The period of their suspension i.e. from 15.2.1993 to 27.7.1995 shall be treated as such.
  2. They are warned not to repeat such mistake in future.
  3. They should not be posted against sensitive posts, i.e. Examination Sections.
  4. Their claim for promotion shall be denied once (This provision does not apply to those who have already been superseded during the pendency of the departmental proceedings i.e. 15.2.1993 to 16.5.2000). The Syndicate at its meeting held on 19.4.2000 has ratified the action taken by the Vice-Chancellor.
2. Thereafter, the Vice-Chancellor modified the same vide Annexure-5 and deleted the penal provision of paragraph 4(4).
3. The learned counsel for the petitioner argued with vehemence that when the

charges framed against the petitioner were not established, there is no reason as to why the period of suspension from 15.2.1993 to 27.7.1995 shall be treated as such and the order is not a speaking order. According to the "First Schedule" of the GCA Rules, the aforesaid punishment is a minor punishment. But according to the learned counsel for the petitioner even if this is a minor punishment, breakage of service from 15.2.1993 to 27.7.1995 of the petitioner has adversely affected his career and financially he would be hard hit. It was brought to our notice that when the Inquiring Officer could not find any material to substantiate the charges against the petitioner and when all the charges failed, the punishment awarded to the petitioner is uncalled for and cannot stand to judicial scrutiny.

4. It is an undisputed fact that the petitioner while working as a Section Officer faced a Disciplinary Proceeding along with two other Senior Assistants, namely, Harekrushna Dash and Rabindra Kumar Sahu in the year 1993. The petitioner was placed under suspension, but later on he was reinstated in service by order of the Disciplinary Authority on 27.07.1995. The Article of charges against the petitioner and two other delinquent Assistants were as follows:-

I. (a) Misuse of facsimile signature of Controller of Examination (C.E.) in issuing Admit Cards to ineligible candidates for B.Ed. 1992 Examination.

(b) Allowing students to appear the above examination without ensuring required deposit (amounting to Rs. 1,35,480/:-) from the concerned colleges.

(c) Failure to scrutinize application forms and documents for determining eligibility of candidates sponsored by two colleges.

II. (a) Accepting and offering bribe in allowing ineligible candidates.

(b) Misbehaviour with lady students and allowing them to sit for examinations illegally.

III. (a) Failure to follow the recommendations of the committee set up to allow failed students to appear in B.Ed. 1992 examination and failure to maintain integrity, devotion to duty and commitment of gross irregularity in office.

(b) Bringing bad name to the university by keeping the C.E. in dark of everything and taking illegal action.

(c) Tampering with the Alphabetical list and copies of many centres.

(d) Permitting ineligible students to appear for the said examination without approval of the competent authority,

(e) Not following instruction in the notification (Ex. I B.Ed. SS/CC/328/28818/92 dt. 28.5.92 Para-4).

5. The enquiry was taken up by the Inquiring Officer being appointed by the Disciplinary Authority. The Inquiring Officer in his report stated that the charges like bribery, rape and molestation etc. could not be proved against the delinquent

officers. Similarly, the Inquiring Officer arrived at the conclusion that with regard to the charge Nos. 1 and 3, no credible evidence or record could be produced by the department and therefore, the Departmental Inquiry could not unravel the truth. But in spite of that the Inquiring Officer recommended that the three charge-sheeted officer be warned for their negligence in duty and further suggested that the delinquent officers should not be posted in sensitive posts. Basing upon the report of the Inquiring Officer (Annexure-"D") the Disciplinary Authority, namely, the Vice-Chancellor was pleased to impose the penalty as indicated above. (Annexure-6).

6. A counter affidavit has been filed by the Opposite Parties 1 and 2 Mr. Nanda, learned counsel for the opposite party-University vehemently argued that serious charges were framed against the petitioner along with two other employees and even though the charges could not be established but for the benefit of the students and the Institution as well, the persons should not go unpunished. According to learned counsel for the Opposite Parties 1 and 2 the punishment awarded is too meagre and should not be interfered with by this court and that apart the petitioner could have appealed against the aforesaid order of punishment to the Hon''ble Chancellor.

7. We find from the order sheet that the writ petition was filed on 5.4.2002 and notices were issued on 18.6.2002. On 14.8.2003 this Court also directed the opposite party No. 1 to consider the petitioner's case for promotion and result thereof in respect of the petitioner shall be kept in a sealed cover, which shall be considered after disposal of the writ petition. Learned counsel for the petitioner submits that the same has been done by the University Authority. Now, in the meantime nine years have already elapsed and the petitioner has retired from service since 2003. The opposite party No. 3 has died in the meantime, against whom the petitioner claims his seniority. In view of the fact that alternative remedy for appeal can not be a bar to entertain the writ petition and considering the nature of dispute, we are unable to accept the argument advanced by the learned counsel for the opposite party to remit back the matter directing the petitioner to avail the alternative remedy. That apart, we have already indicated above that this is a case where no charge has been proved against the petitioner. It is trite that suspicion, however, strong cannot take place of actual proof even in domestic enquiries and no punishment can be awarded on surmises and conjectures as well as on suspicion no punishment can be awarded.

8. This view of ours finds support from the decision of the apex Court in the case of Nand Kishore Prasad Vs. State of Bihar and Others, , in which at paragraph 18 it is held that:-

Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystalised by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence,

i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India (UOI) Vs. H.C. Goel, , "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applied as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.

In the case of Roop Singh Negi Vs. Punjab National Bank and Others, at paragraph 17 it is held that:-

Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence, Suspicion, as is well known, however high may be, can under no circumstances be held to be substitute for legal proof.

9. In view of the aforesaid background of the case and law enunciated as above, we have no hesitation to set aside the orders passed in Annexures-5 and 6. Accordingly, we quash the orders under Annexures-5 and 6 and direct the opposite party to open the sealed cover i.e. the promotion kept in it, and extend all consequential benefits to the petitioner. The retiral benefit as was not given to the petitioner be paid to him within three months from the date of communication of this order.

The writ petition is accordingly allowed.

B.P. Das, J.

10. I agree.