



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37227 of 2023

In the matter of an application under Articles 226 and 227 of the Constitution of India.

.....

Chhabi Behera

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : Mr. S. Mallik, Advocate

For Opp. Parties : Mr. P.P. Behera, ASC

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:25.02.2026 and Date of Judgment:25.02.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.
3. The present Writ Petition has been filed *inter alia* with the following prayer:-

“Under the aforesaid facts and circumstances the petitioner humbly prays that this Hon’ble Court may graciously be pleased to,

1. *Quash the impugned order dtd.23.05.2018 as at Annexure-6.*



2. *Direct/order that the pension and gratuity shall be released in favour of the petitioner within a stipulated period with admissible interest thereon.*
 3. *Pass such other order(s) / direction(s) as may be deemed fit and proper in the bona fide interest of justice”.*
4. It is contended that Petitioner while in service, the proceeding under Rule-15 of the OCS (CCA) Rules, 1962 (in short ‘Rules’) was initiated against him vide Memorandum dtd.06.05.2003 under Annexure-1 with the following charges:-

ANNEXURE-I

“Article of Charges:- During the incumbency of Sri Chhabi Behera as COD, Nuapada, it is revealed from the report of the Collector, Nuapada and approved special audit report on the accounts of Sri Nrusingha Charan Jena, Ex-M.I. of Sinapali Block of Nuapada District Departmental Storage Centre, Sinapali for the period from September, 2001 to August 2002, that Sri Nrusingha Charan Jena, Marketing Inspector, Sinapali Block have misappropriated Q.14661.50 of B.P.L. rice Q.1434.87 of Levy Sugar Q.201.30 of Annapurna rice and Q.2462.25 of Antyodaya Anna Yojana rice amount to Rs.15316241.85. Thus he is charged with negligence in duty and lack of supervision.

ANNEXURE-II

Statement of Imputation of charges

Charge No.1 That during his incumbency of CSO-cum-D.M. OSCSC Ltd.. Nuapada for the Period from 18.12.2001 to 18.7.2002 he did not submit tour programme of tour diary regarding his tour. But on verification of the log book of the office jeep it is seen that he has visited Sinapali Block six times on dated 13.2.2002, 21.3.2002, 31.3.2002, 3.4.2002, 2.5.2002, and 13.6.2002, but he has never submitted any report or compliance regarding his visit and supervision of PDS in Sinapalli. He has also not appraised his higher authority regarding the functioning of PDS in Sinapali block, as he has not submitted his tour diaries, the very purpose of visiting Sinapali Block by office Jeep does not serve the interest of public.



He has mis-utilised the office vehicle for unproductive works in abuse of powers, supervising negligence failure to detect and prevent misappropriation of FDS stock by M.I.

Charge No.2 *The during his incumbency as c.5.0.-cum-D.M..OSCSC Ltd.. Nuapada Sri N.C. Jena, M.I. Sinapali got wide scope to misappropriate Q.14661.30 of BPL rice Q.1434.02 of levy Sugar. 4.201.30 of Annapurna rice Q.2462.25 Antyodaya Yojana 'rice amounting 3.15316241.85 due to his negligence and lack of supervision. As CSO-cum-D.M. he has never tried to review and supervise the working of PDS in Sinapali Block for months together. Because of his negligence in duty Sri Jena Ex-M. I. continued his nefarious activities unabatedly and misappropriated essential commodities causing dislocation of the PDS in entire Sinapali Block.*

This shows his gross supervisory negligence in discharging Government duties.

Charge No.3

That, the Collector Nuapada has passed marginal order on the report of the Sub-Collector, Nuapada to ask the Sub-Collector, Nuapada to submit the draft charges against Sri N.C. Jena, M.I., Sinapali Block and he has perused the letter on 11.6.2002. But being a responsible Government servant he did not by their to take any action in the matter. It tantamounts to disobedience of orders of higher authority, in contravention of rule-4, of Government servant conduct Rules 1962.

Charge No.4

That during his tenure as CSO-cum-D. M. Nuapda he is not conducted monthly physical verification of storage events, D.S. Depot, Kerosene wholesalers/sub-wholesaler, Miller events which is his first and foremost duties, particularly, in checking of storage go down at Sinapali led to misappropriation of essential commodities and dislocation of public distribution system for which highly subsidized rice stock by not at all reached to the poor beneficiaries.

This shows his gross of negligence in duties and misconduct.

ANNEXURE-III

Memo of Evidence



1. Log Book of the office Jeep bearing No. OR02K-2924 for the period from 13.2.2002 to 13.6.02.

2. Audit Report No. 28640 dt. 20.12.2002.

3. Letter No.175 dated 3.6.2002 of the Collector, Nuapada. Eye of Witness

1. Sri Bishnu Charan Das, Auditor, F.S. & C.W. Department”.

4.1. It is contended that Petitioner filed his written statement of defence to the charges on 05.12.2003 under Annexure-2.

4.2. It is also contended that prior to initiation of such a proceeding, Petitioner who was placed under suspension vide order dtd.25.09.2002 under Annexure-3 was reinstated vide order dtd.30.09.2004 under Annexure-4.

4.3. It is further contended that after such initiation of the proceeding on 06.05.2003, vide office order dtd.24.09.2003, Commissioner of Departmental Enquiry of the G.A Department was appointed as the enquiry officer to enquire into the charges so framed against the Petitioner. However on the face of such appointment of the enquiry officer vide order dtd.24.09.2003, no enquiry was ever conducted. Accordingly, after about 12 years and vide office order dtd.28.04.2016, Officer on Special Duty-cum-Deputy Secretary of the Department was appointed as the Enquiry Officer by Opposite Party No.1 to be the disciplinary authority.



4.4. Learned counsel appearing for the Petitioner contended that on such appointment of a fresh Enquiry Officer vide office order dtd.28.04.2016, Petitioner at no point of time was issued with the notice to appear before the Enquiry Officer. However, the enquiry officer so appointed vide office order dtd.28.04.2016, submitted the enquiry report on 19.12.2016 and basing on such report, Petitioner was issued with the 1st show cause vide notice dtd.31.12.2003. It is however fairly contended that Petitioner could not make any reply to the 1st show cause so issued on 31.12.2016.

4.5. It is however contended that without issuing the 2nd show cause proposing the punishment in terms of the provisions contained under Rule-15(10)(i)(b) of the Rules, Petitioner was imposed with the punishment vide the impugned order dtd. 23.05.2018 under Annexure-6. Vide the said order, punishment so proposed in the 2nd show cause was imposed on the Petitioner.

4.6. While assailing the impugned order of punishment, learned counsel appearing for the Petitioner contended that since after appointment of the 2nd enquiry officer vide order dtd.28.04.2016, no enquiry was ever conducted prior to submission of the report on 19.12.2016, basing on such report, Petitioner could not have been issued with the 1st and thereafter the 2nd show cause under Rule-15(10)(i)(a) &(b) of the Rules proposing the punishment, if any. Rule-15(10)(i)(b) of the Rules reads as follows:-



“15(10)(i)(b)- On receipt of the representation referred to in Sub-clause (a) the disciplinary authority having regard to the findings on the charges, is of the opinion that nay of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed, he shall furnish to the delinquent Government servant a statement of its findings along with brief reasons for disagreement, if any, with the findings of the inquiring officer and give him a notice by Registered post or otherwise stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed penalty.

Provided that in every case in which it is necessary to consult the Commission under the provision of the Constitution of India and the Orissa Public Service Commission (Limitation of Functions) Regulation, 1989 the record of Inquiry together with a copy of the notice given under Sub-clause(1) and the representation if any, received within the specified time in response to such notice shall be forwarded by the disciplinary authority to the Commission for its advice”

4.7. It is accordingly contended that since after appointment of the 2nd enquiry officer vide office order dtd.28.04.2016, no enquiry was ever conducted, relying on the enquiry report dtd.19.12.2016 punishment in question could not have been imposed, vide the impugned order dtd.23.05.2018 under Annexure-6. Hence the same is not sustainable in the eye of law and it requires interference of this Court.

4.8. It is further contended that because of the pendency of the proceeding since 06.05.2003, Petitioner though has retired from his services on attaining the age of superannuation on 30.04.2008, but till date he has not yet been released with his retiral benefits, save and except the provisional pension.



4.9. It is also contended that Petitioner because of such un-due harassment, has lost his mental balance and is not in a position to give any further instruction in the matter.

5. Mr. P.P. Behera, learned Addl. Standing Counsel basing on the stand taken in the counter affidavit when supported the impugned order, this Court passed the following order on 08.09.2025:-

“1. This matter is taken up through hybrid mode.

2. Heard.

3. Considering the nature of order passed by this Court on 06.03.2025, learned Addl. Government Advocate is directed to produce the proceeding file on the next date positively.

4. As requested, list this matter in the week commencing 13.10.2025”

6. Pursuant to the aforesaid order, learned ASC produced the relevant proceeding file of the Petitioner in Court. This Court after going through the proceeding file finds that after initiation of the proceeding vide Memorandum dtd.06.05.2003, Petitioner filed the written statement of defence on 05.12.2003. But prior to filing of the written statement of defence, vide order dtd.24.09.2003, Commissioner for Departmental Enquiry was appointed as the Enquiry Officer to enquire into the charges and submit his report. However, no enquiry report was submitted by the Enquiry Officer so appointed vide order dtd.24.09.2003. Opposite Party No.1 being the disciplinary authority appointed Officer on Special duty –



cum-Deputy Secretary of the Department as Enquiry Officer vide order dtd.28.04.2016.

6.1. This Court after going through the file finds that after his appointment as the Enquiry Officer vide order dtd.28.04.2016, Petitioner has not been issued with any notice for his appearance before the Enquiry Officer. But basing on the enquiry report so submitted on 19.12.2016, Petitioner was issued with the 1st show cause on 31.12.2016, which was served on him on 07.02.2017.

6.2. Since Petitioner could not any reply to the 1st show cause, 2nd show cause was issued to him vide notice dtd.27.05.2017, proposing the punishment of withholding of pension permanently, withholding of gratuity in full and to treat the period of suspension as such. Such 2nd show cause issued on 27.05.2017 proposing the punishment after being confirmed by the Orissa Public Service Commission vide letter dtd.13.03.2018, Petitioner was imposed with the punishment so proposed in the 2nd show cause vide the impugned order dtd.23.05.2018 under Annexure-6.

7. Having heard learned counsel appearing for the Parties and considering the submissions made, since this Court after going through the proceeding file finds that after appointment of the 2nd enquiry officer vide order dtd.28.04.2016, Petitioner was never noticed to appear before the Enquiry Officer nor any enquiry was held to



prove the charges, basing on the enquiry report submitted by the Enquiry Officer on 19.12.2016, Petitioner could not have been issued with the 1st and thereafter the 2nd show cause proposing the punishment, if any. Since no enquiry was never conducted in accordance with law, basing on the enquiry report dtd.19.12.2016 under Annexure-5, Petitioner could not have been imposed with any punishment vide the impugned order dtd.23.05.2018 under Annexure-6.

7.1. Even though learned ASC made a submission to remit the matter for fresh disposal from the stage of appointment of the enquiry officer so made vide order dtd.28.04.2016, but this Court taking into account the fact that the proceeding is of the year 2003 and Petitioner has since retired w.e.f. 30.04.2008 is not in favour of remitting the matter for fresh disposal in accordance with law. Not only that the enquiry of the matter has not yet commenced, even though the proceeding has been initiated since 06.05.2003.

7.2. Since without following the provisions contained that under Rule-15 of the OCS (CCA) Rules, 1962 and without conducting any enquiry, the proceeding has been disposed of vide the impugned order dtd.23.05.2018 and Petitioner is going without his retiral benefits for the last 15 (fifteen) years, this Court is inclined to quash the impugned order. While quashing order dtd.23.05.2018 so passed by Opposite Party No.1 under Annexure-6, this Court directs Opposite Party No.1 to release all the retiral



benefits as due and admissible to the Petitioner within a period of four (4) months from the date of receipt of this order. However, it is observed that failure to pay the retiral benefits as directed within the aforesaid period will entail the Petitioner to get interest @ 6% p.a. on his entitlements all through.

8. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th February, 2026/Subrat