

**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.6143 of 2013**

In the matter of an application under Article 226 & 227 of the Constitution of India.

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*Niranjan Mohapatra* .... *Petitioner*

*-versus-*

*Utkal Grameen Bank & Others* .... *Opposite Parties*

*For Petitioner* : *Mr. S.P. Mishra, Sr. Advocate*  
*Mr. R. Agarwal, Advocate*

*For Opposite Parties* : *Mr. P.V. Balakrishna, Advocate*

CORAM:  
JUSTICE V. NARASINGH

**DATE OF HEARING : 05.07.2023**

**DATE OF JUDGMENT: 05.07.2023**

**V. Narasingh, J.**

1. Heard Mr. Mishra, learned Senior Counsel instructed by Mr. Agarwal, learned counsel for the petitioner and Mr. Balakrishna, learned counsel for the Opposite Parties.

2. The petitioner while working as Branch Manager of Sumandi Branch of Rushikulya Gramya Bank, faced Departmental Enquiry in which he was found guilty by the

Enquiry Officer. Assailing the enquiry report at Annexure-10 and the notice to show cause vis-à-vis the report of such Enquiry Officer at Annexure-11 dated 19.01.2013 and 25.02.2013 respectively and the charge sheet, the present Writ Petition has been filed.

3. The prayer in the Writ Petition is quoted hereunder for convenience of ready reference:-

*“It is therefore prayed that this Hon'ble Court may graciously be pleased to admit this writ petition, issue Rule NISI in the nature of writ of certiorari/mandamus calling upon the Opp. Parties to show cause as to why the enquiry report dtd. 19.01.2013 as well as the show cause notice 25.02.2013 vide annexure-10 and 11 and the charge sheet dtd. 14.08.2008 shall not be set-aside/quashed and further as to why the Opp. Parties shall not be directed to supply all relevant documents as sought for by the petitioners before framing of charges and initiation of domestic enquiry.*

*And if the Opp. Parties fail to show cause or show insufficient cause the said rule be made absolute and the enquiry report dtd. 19.01.2013 as well as the show cause notice dtd. 25.02.2013 vide annexure-10 and 11 and the charge sheet dtd. 14.08.2008 be set-aside/quashed and the Opp. Parties be directed to supply the petitioner all relevant documents as sought for before framing of charge and initiation of domestic inquiry.”*

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4. During the incumbency as Branch Manager of Sumandi Branch of erstwhile Rushikulya Gramya Bank alleging

certain dereliction of duty, charge sheet was served on the petitioner. The memorandum of charges runs thus:-

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*“1. While allowing the operations in S.B.A/c no.2620 at Sumandi branch on 07.08.2003 you have violated and deviated established guidelines and procedures of the bank.*

*2. The above mentioned act where you have not discharged your duties with due diligence has resulted in financial loss of Rs.3,15,718.00 to the Bank.”*

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5. It is the case of the petitioner that because relevant documents were not provided to him, he could not submit his show cause for which memorandum of charges was served and enquiry was instituted.

6. During the pendency of such enquiry, referring to the denial of supply of documents, the petitioner approached this Court by filing W.P.(C) No.19636 of 2012 and the same was disposed of by order dated 02.11.2012. The order reads thus.

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*“Heard learned counsel for the petitioner.*

*The grievance of the petitioner in this writ application that in a disciplinary proceeding the authorities are not supplying the documents to the petitioner as required by him.*

*Learned counsel for the petitioner submits that the petitioner shall file an application before the Enquiry Officer on the next date of inquiry and in such event before proceeding with the inquiry the Enquiry Officer shall deal with the application, so filed by the petitioner and the relevant documents shall be supplied to him and thereafter he will proceed with the inquiry.*

*The writ application is accordingly disposed of.*

*Issue urgent certified copy.”*

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7. It would be apposite to note that taking into account the contention of the petitioner that he was facing a departmental proceeding, this Court specifically directed that “the relevant documents shall be supplied to him”.

8. In terms of the direction of this Court, the petitioner submitted a representation at Page-32 of the brief dt.08.11.2012. In the said representation while referring to the order passed by this Court adverted to above, the petitioner asked for the following documents.

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*“1) Copy of High Court Writ Petition No. W.P.(C) 17009/06*

*2) KYC Norms Circular of Bank upto 07.08.2003.*

*3) Internal Inspection report, questionnaire and its replies from 2003 to 2008.*

*4) Copy of Letter dtd. 11.06.2007 of Smt. Kuntala Behera.-MEX-2D.”*

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9. Admittedly, there was no response to such representation by the Opposite Party-Bank and the enquiry proceeded as evident from the enquiry report dated 19.01.2013. The Enquiry Officer under the heading “Documentary Evidence” dealt with the grievance of the petitioner referred to as CSO, requesting for copies of the documents to be presented as “Additional Defence Exhibits” and the said documents have been quoted in the proceeding by the Enquiry Officer.

10. For convenience of ready reference, the said documents and the noting of the Enquiry Officer is culled out hereunder:-

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*Besides the above documents, CSO requested for copies of the following documents to be presented as Addl. Defence Exhibits.*

*i.High Court W.P.(C) 17009 of 2006.*

*ii.Application copies did.11.6.2007 filed by Smt.Kuntala Behera*

*iii.Inspection reports and Inspection Questionnaires from 2003 to 2008 alongwith its Compliances relating to SB A/c position only.*

*iv.KYC (Know Your Customer) Circulars issued by H.O to branches upto 7.8.2003.*

*Pending receipt of the afore-noted documents from Management, CSO made oral presentations as below although he insisted that he is in need of the documents sought by him to defend his case effectively.*

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11. It is the submission of the learned Senior Counsel, Mr. Mishra that in spite of the petitioner approaching this Court and in the face of the order and petitioner making a representation in terms of said the order passed, sought for documents which would enable him to effectively defend his rights. Yet, such documents were not provided to him for which he was handicapped in presenting an effective defence resulting in adverse order being passed by the E.O. And, according to the learned Senior Counsel the non supply of documents goes to the root of the matter and being a facet of principle of natural justice, the impugned order of the Disciplinary Authority is

liable to be set aside solely on the said count and he relies on the judgment of the Apex Court in the case of **The State of Uttar Pradesh and others v. Rajit Singh in Civil Appeal Nos.2049-2050 of 2022** disposed of on 22.03.2022 and the judgment of the **Allahabad High Court** dated 18.09.2013 in **W.P.(C) No.1647 (SB) of 2010** in this context.

12. Per contra, learned counsel for the Opposite Party-Bank, Mr. Balakrishna states that the contours of interfering with a Disciplinary Proceeding are earmarked and hence whatever grievance the petitioner has, can be addressed if he chooses to prefer an appeal and hence this Court in exercise of its plenary jurisdiction ought not to interfere in the matter.

13. It is his further submission that there is nothing on record to show as to how the petitioner is prejudiced by the non supply of the documents.

14. It is the further submission of the learned counsel for the Opposite Party-Bank since no prejudice has been established by the petitioner, the order of the Disciplinary Authority ought not to be interfered and the petitioner should prefer appeal.

15. This Court carefully examined the order passed by the Enquiry Officer adverted to hereinabove. While the Enquiry Officer has diligently taken note of the grievance of the petitioner for non-supply of the document and response of the Bank thereto. Yet, while recording his finding, any reference to such prayer for supply of document is conspicuously absent.

16. In fact, it is worth recording that one of the documents sought by the petitioner is W.P.(C) No.17009 of 2006 and

application copies dated 11.06.2007 filed by one Smt. Kuntala Behera.

16-A. While recording his finding, the Enquiry Officer has referred to the account holder Smt. Kuntala Behera and also the Writ Petition filed by her.

16-B. On the face of it, the submission of the learned counsel for the Bank that the petitioner was not prejudiced does not stand to reason.

17. While coming to the submission of the learned counsel for the Bank regarding the power of the Constitutional Courts to interfere in a Departmental Proceeding, the boundaries are well laid. One of the exceptions to non exercise of jurisdiction is violation of principle of natural justice, as held by the judgment relied on by the learned Senior Counsel in the case of **State of Uttar Pradesh (Supra)**.

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*“As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case.”*

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17-A. It is clear that in case of violation of principle of natural justice, this Court is not precluded from interfering even

at the threshold without leaving the delinquent to explore the alternative remedies. Even otherwise, it is trite law that availability of alternative remedies have never been an impediment for the exercise of jurisdiction under Article 226 when the factual matrix so warrants.

18. The next question that this Court is called upon to answer is what relief can be granted to the petitioner. For that cue can be taken from the judgment of the apex Court in the case of **State of Uttar Pradesh (Supra)** that once the Courts sets aside an order of punishment on the ground that enquiry was not properly conducted, the Court cannot substitute its opinion for that of the Enquiry Officer. But it is not denuded of the power to remit the matter to the stage from which the enquiry can be conducted in an even handed manner balancing the interest of the organization as well as the delinquent.

19. In the light of the said judgment of the apex Court, this Court is persuaded to hold that there has been glaring violation of natural justice in the case at hand. Inasmuch, even in the face of order passed by this Court directing for supply of documents, the documents asked for were not supplied and there is no finding as to why such prayer of the petitioner was not acceded to as already noted. And, at the cost of repetition is restated that one of the documents has been specifically referred to by the Enquiry Officer in his finding.

20. Hence, in the given circumstances, this Court is left with no other option but to set aside the enquiry report at Annexure-10 and the show cause vis-à-vis such enquiry report at Annexure-11. Keeping in view the contours of jurisdiction of this Court in a Disciplinary Proceeding, it is directed that the



enquiry shall proceed from the stage of non-supply of the documents as referred to in **para-8** after furnishing the copies of such documents. List of the said documents is extracted hereunder for convenience of reference, at the cost of repetition.

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“1) Copy of High Court Writ Petition No. W.P.(C) 17009/06

2) KYC Norms Circular of Bank upto 07.08.2003.

3) Internal Inspection report, questionnaire and its replies from 2003 to 2008.

4) Copy of Letter dtd. 11.06.2007 of Smt. Kuntala Behera.-MEX-2D.”

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21. Since the petitioner has retired in the meanwhile, it is directed that the said enquiry shall be concluded within a period of six months from the date of receipt/production of the copy of this judgment. Needless to say giving adequate opportunity to the petitioner to put forth his stand. जयते

22. Accordingly, the Writ Petition stands disposed of. No costs.

**(V. Narasingh)**  
**Judge**

*Orissa High Court, Cuttack,*  
*Dated the, 5<sup>th</sup> July, 2023/Ayesha*