



THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 9958 of 2024

Lalit Kumar Dash

.....

Petitioner

- Versus -

State of Odisha and others

.....

Opposite Parties

For the Petitioner : Mr. S.S. Rao, Senior Advocate, being
assisted by Mr. B. Mohanty, Advocate

For the Opp. Parties : Mr. Debaraj Mohanty, AGA (for O.P. No.1)
Mr. Subir Palit, Sr. Advocate being assisted
by Mr. D.R. Bhokta, Empaneled Counsel
(for O.P. Nos. 2 to 4)

CORAM:

THE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

AND

THE HONOURABLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing : 28.01.2026 & 21.05.2026

Date of Judgment : 27.05.2026

1. Integrity is not an ornamental virtue in public life; it is the structural steel that holds an institution upright. As Aristotle reminds us that character is not an accident of birth but the cumulative result of repeated choices. "Men acquire a particular quality by constantly



acting in a particular way.” Integrity, then, is not proclaimed, it is practiced. It is forged in the quiet consistency of conduct and in the administration of justice; this virtue assumes a heightened significance, for every act or omission by a public servant reverberates through the rights, liberties, and faith of the citizen.

The caution voiced by Warren Buffett is equally instructive as he says “In looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And if they don't have the first, the other two will kill you.” When integrity is absent, intelligence and energy do not redeem but endanger. In the judicial ecosystem where power is exercised not through force but through legitimacy, this warning acquires constitutional gravity. Thus, integrity is not merely one virtue among many, it is the condition precedent to the meaningful exercise of all others.

This case presents a difficult and nuanced intersection of duty, obedience and moral agency. It raises a question that has long engaged both law and ethics: can a public official, acting under the command of a superior, claim shelter under “good faith” when the act itself occasions harm or contravenes legal or procedural propriety ? The doctrine of obedience to superior’s orders, while



recognized in limited spheres, has never been an absolute defense in a system governed by the rule of law. The judiciary, as the custodian on the *qui vive*, must insist that good faith is not a written formula to ward off scrutiny. It is a substantive standard that is anchored in reasonableness, due diligence, and fidelity to law. An act done in good faith must be preceded by a bona fide effort to ascertain legality, to weigh consequences, and to avoid manifest illegality.

At the same time, the Court is not unmindful of the hierarchical realities within which officials operate. The pressures of command structures, the asymmetry of power, and the immediacy of operational demands can blur the line between duty and discretion. It would be unjust to judge every subordinate with the detachment of hindsight, ignoring the context in which decisions were made. The law, therefore, calibrates its expectations and it does not demand heroism in every case, but it does require honesty of purpose, reasonable care, and the courage to question what is evidently wrong.

This Court, therefore, approaches the present matter with a dual commitment: to uphold the principle that no individual is above the law, and to recognize that the law must be applied with a humane



appreciation of context. The inquiry is not merely whether the act was done, but whether it was done with the integrity that the office demands.

2. The facts in terse leading to the controversy in the present case commenced with the meeting of the Departmental Promotion Committee (DPC) held on 17.12.2019 under the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019, for consideration of promotion to the posts of Additional Deputy Registrar (J&E). Applying the criterion of “merit-cum-suitability with due regard to seniority” under Rule 38(1), the DPC found only two officers suitable and accordingly recommended their promotion. Thereafter, on 23.12.2019, the DPC again convened for considering promotion of Secretaries to the post of Assistant Registrar-cum-Senior Secretary and recommended six employees for such promotion. The recommendations of the DPC were approved by the then Hon’ble Chief Justice Mr. Justice K.S. Jhaveri and promotion notifications were issued on 24.12.2019.

Subsequently, during the tenure of Hon’ble the then Acting Chief Justice Kumari Justice S. Panda, the earlier promotion orders



dated 24.12.2019 were recalled on 21.01.2020 and fresh promotions were granted by invoking the exceptional power under Rule 38(10) of the 2019 Rules without convening a fresh DPC. Certain officers, who had not been recommended by the DPC, submitted representations before the then Acting Chief Justice. Though some of such representations were rejected, promotions were nevertheless granted to certain officers by invoking Rule 38(10). The representation of another officer remained pending by order dated 17.02.2020 due to pendency of a writ petition before this Court.

During May, 2020, representations were submitted by the aggrieved employees seeking restoration of their earlier promotions. At the relevant time, the present petitioner was functioning as the Registrar (Judicial) of the Court. According to the petitioner, he placed the relevant Administrative File along with corresponding papers and detailed notes before Hon'ble the then Chief Justice Mr. Justice Mohammad Rafiq explaining the procedural history and developments concerning the promotions and recall thereof. Upon consideration of the matter and in exercise of powers under Rule 52 of the 2019 Rules, Hon'ble the then Chief Justice Mr. Justice Mohammad Rafiq constituted a Special Committee on 30.07.2020



consisting of Hon'ble Justice S.K. Mishra, Hon'ble Justice C.R. Dash and Hon'ble Justice Biswajit Mohanty for examining the issues arising out of the promotion controversy.

On 31.07.2020, the DPC placed two separate notes before Hon'ble Chief Justice Mr. Justice Mohammad Rafiq seeking clarification regarding interpretation of the Rules and principles governing promotions. Consequently Hon'ble Chief Justice Mr. Justice Mohammad Rafiq formulated several queries and referred the same to the aforesaid Special Committee for its assistance and recommendations. The petitioner's specific stand throughout has been that, after submission of the file and documents before Hon'ble the then Chief Justice and constitution of the Special Committee, the concerned file remained beyond his control and custody.

The petitioner was thereafter relieved from the post of Registrar (Judicial) on 14.02.2021 upon his transfer and posting as District Judge. Since the Special Committee had not finalized the issues referred to it and several employees were nearing to retirement without consideration for promotion, the then Hon'ble Chief Justice Dr. Justice S. Muralidhar directed dissolution of the Special Committee and recall of all files pending before it. Pursuant thereto,



on 17.04.2021, the then Registrar (Judicial) submitted a report alleging that pages bearing Nos.116/C to 152/C of File No. XIX-23/1998 relating to promotion matters were missing.

Following the above development, explanations were sought regarding the alleged missing documents. A statement of Sri Sachidananda Dalai, Senior Grade Typist attached to the Registrar (Judicial), was also recorded, wherein he stated that certain correspondence pages had been separated and handed over to the petitioner during 2020. Thereafter, on 05.05.2021, Hon'ble Chief Justice Dr. Justice S. Muralidhar sought clarification regarding the procedure adopted in recommending promotions under Rule 38(10). On 08.05.2021 the then DPC Committee submitted a detailed report expressing concern over disappearance of the DPC minutes and certain related correspondence documents from the official records.

Consequently, departmental proceedings were initiated against the present petitioner alleging gross misconduct, dereliction of duty, administrative indiscipline and failure to maintain integrity and honesty. In the enquiry proceeding, one witness, namely Sri Suman Kumar Mishra, Registrar (Judicial) of the Court, was examined and Exts.1 to 29 were marked on behalf of the Department. Upon



conclusion of the enquiry, the Enquiry Officer submitted report vide Annexure-5 holding all charges proved against the petitioner, primarily on the grounds that the petitioner remained silent regarding the alleged missing documents and had improperly suggested invocation of Rule 38(10) while placing notes before Hon'ble the then Acting Chief Justice.

Based solely upon the findings of the Enquiry Officer, the Disciplinary Authority imposed punishment upon the petitioner under Rule 13(vi-A) of the OCS (CCA) Rules, 1962 by directing withholding of two increments cumulatively.

Thus, the present writ petitioner assails the disciplinary proceeding (hereinafter referred to as "D.P.") culminating in a finding of guilt and imposition of penalty in the form of withholding of two increments. The petitioner Lalit Kumar Dash, an officer belonging to the Orissa Superior Judicial Service, has approached this Court seeking exoneration from all the charges by quashing the final order of punishment dated 23.02.2023 in D.P. No.04. of 2021. It is further prayed that the entire disciplinary proceeding be declared illegal and perverse in the eyes of law, and that the



petitioner be extended all consequential service benefits attached to the Super Time Scale - 2022.

3. Heard Mr. S.S. Rao, learned Senior Advocate appearing for the petitioner; Mr. Debaraj Mohanty, learned Additional Government Advocate for the State - Opposite Party No.1; and Mr. Subir Palit, learned Senior Advocate appearing along with Mr. D.R. Bhokta, learned Empaneled Counsel for Opposite Parties No.2 to 4.

Submissions on behalf of the Petitioner

4. Mr. Rao, learned Senior Counsel appearing on behalf of the petitioner, assailed the impugned order of punishment on the ground that the same is founded entirely upon the enquiry report, which itself is vitiated by perversity, misreading of evidence and conclusions unsupported by the materials on record. The enquiry officer proceeded on the erroneous assumption that the petitioner had admitted the “missing” of documents from File No. XIX-23/1998, although no such admission was ever made. On the contrary, the consistent stand of the petitioner was that the correspondence papers containing pages 116/C to 152/C had been placed before the then Hon’ble Chief Justice along with the main file



and thereafter the matter was referred to the Special Committee constituted by the then Chief Justice, Justice Mohammad Rafiq. The petitioner specifically stated that the file might have remained with the Special Committee or elsewhere after being transmitted pursuant to the directions of the Hon'ble Chief Justice. Therefore, the very foundation of the enquiry report is based on presumptions and not on proved facts.

Mr. Rao submitted that the department failed to establish exclusive custody of the alleged missing documents with the petitioner. The records themselves disclose that after constitution of the Special Committee, the file had moved beyond the control of the petitioner. Ext.7 containing the noting of Hon'ble the then Chief Justice Dr. S. Muralidhar directing recall of the files from the Special Committee clearly indicates that the records were being handled by others after the petitioner's relieve on 14.02.2021. Significantly, the main file allegedly containing missing pages was never produced during enquiry and no movement register or record was exhibited to establish where the file remained from May 2020 till April 2021. In absence of proof regarding actual custody, the charge of misconduct cannot be sustained merely on suspicion.



Mr. Rao further contended that the enquiry officer wrongly shifted the burden of proof upon the delinquent officer. The observation in paragraph 33 of the enquiry report that the petitioner failed to prove his innocence clearly demonstrates that the enquiry proceeded on an impermissible standard contrary to the settled principles governing departmental proceedings. The burden always lies upon the department to establish misconduct on the basis of legally acceptable evidence. The sole witness examined by the department admitted during cross-examination that notings mentioning “as per kind direction of Your Lordship” are ordinarily recorded only when directions are already issued by the Hon’ble Judge concerned, and further admitted that approval of such notes by the competent authority implies application of mind by such authority. The witness also candidly admitted that the petitioner derived no personal benefit from the alleged missing papers and that the relevant documents were merely copies.

Mr. Rao also submitted that the charge relating to recommendations under Rule 38(10) of the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 is wholly unsustainable. The exercise of powers under Rule 38(10) lies



exclusively within the prerogative of the Hon'ble Chief Justice /Acting Chief Justice and any note prepared by the Registrar (Judicial) was merely part of the administrative processing of files. There exists no statutory prescription governing the exact format or content of administrative notes. The petitioner merely recorded suggestions "as per the kind direction of Your Lordship", which practice stands admitted by the departmental witness himself. Thus, in absence of any rule violation, mala fide intention, personal gain or dishonest conduct, the findings of "gross misconduct", "administrative indiscipline" and "failure to maintain integrity" are wholly disproportionate, arbitrary and unsupported by evidence. The petitioner accordingly prays that the enquiry report, consequential punishment order and denial of service benefits be quashed.

Submissions on behalf of the Opposite Parties

5. Mr. Palit, learned Senior Counsel appearing for the Opposite Parties submitted that the petitioner, being a senior judicial officer holding the sensitive post of Registrar (Judicial), was expected to maintain the highest standards of integrity, probity and administrative discipline. The materials on record clearly establish that the



petitioner himself caused separation of pages 116/C to 152/C from the main administrative file and got them kept in a separate fly-leaf folder through Sri Sachidananda Dalai. The petitioner has admitted such separation in his explanation. However, despite allegedly handing over the documents separately, he never recorded such fact in any note-sheet, never informed any superior authority regarding non-return of the documents, never initiated reconstruction of the file and never informed his successor upon transfer. His silence continued until issuance of show-cause notice. Such conduct itself constitutes grave dereliction of duty and administrative indiscipline on the part of the petitioner.

Mr. Palit contended that the petitioner deliberately ignored the statutory framework governing promotions under the 2019 Rules and facilitated exercise of extraordinary powers under Rule 38(10) without placing the matter before the Departmental Promotion Committee. Due to such improper notings and suggestions, several employees previously found unsuitable were promoted, while eligible candidates including reserved category candidates entitled under the Orissa Reservation of Vacancies Act and Rules, were ignored. The petitioner cannot escape responsibility by merely



stating that the notes were recorded “as per direction”. Being an experienced officer who had served in multiple capacities within the High Court Registry, he was fully aware of the governing rules and constitutional requirements relating to reservation and promotions.

Mr. Palit further submitted that the scope of judicial review in disciplinary matters under Articles 226 and 227 of the Constitution of India is extremely limited. The writ court cannot re-appreciate evidence as an appellate authority unless the findings are wholly perverse or based on no evidence. He placed reliance upon decisions such as *Union of India v. H.C. Goel*, reported in *1963 SCC OnLine SC 16*, *State of Andhra Pradesh v. S. Sree Rama Rao* reported in *1963 SCC OnLine SC 6*, and *State of Andhra Pradesh v. Chitra Venkata Rao*, reported in *(1975) 2 SCC 557*, to contend that adequacy or sufficiency of evidence cannot be examined in writ jurisdiction once there exists some evidence supporting the findings. The enquiry officer considered the explanations, documents and testimony on record and returned a reasoned finding holding all charges proved. The disciplinary authority thereafter independently examined the matter and imposed a proportionate penalty under Rule 13(vi-A) of the OCS (CCA) Rules, 1962.



The learned senior counsel submitted that the conduct of the petitioner strikes at the institutional integrity of the High Court establishment itself. Administrative records of the High Court are sacrosanct, and removal or separation of records without proper recording cannot be treated lightly. The petitioner's conduct in remaining silent regarding the missing records, coupled with his improper handling of promotion matters affecting the rights of employees and reservation principles, justified initiation of disciplinary proceedings and imposition of major punishment. The impugned order is therefore stated to be lawful, reasoned, proportionate and necessary to preserve public confidence in the administration of justice and institutional discipline within the High Court's Establishment.

ANALYSIS

6. The factual matrix of the case as appears from record is that the Petitioner, who is an officer of the rank of Odisha Senior Judicial Service, joined Odisha Judicial Service in the year 1997, and after several appointments at different levels and promotions, he joined the Registry of this Court initially in August 2002 as Assistant Registrar (Administration) and also worked with the Registry on



several other posts at different times. Subsequently, on 13.01.2020 he joined as Registrar (Judicial) in the Registry of this Court. Prior to that, since 26.08.2019 he also served as Registrar (Vigilance) in the Registry of the High Court. Subsequently, the petitioner was relieved from the post of Registrar (Judicial) on 14.02.2021, and thereafter while he was serving elsewhere in another capacity, he was served with a notice seeking an explanation regarding the missing of documents from page Nos. 116/c to 152/c in the Administrative File No.XIX-23/1998. Pursuant to such notice, an explanation / reply was submitted by the petitioner, which was found not satisfactory and, in lieu of that, a Departmental Proceeding (D.P. No.04. of 2021) was initiated. In the Articles of Charge in the D.P. the petitioner was charged with irregularities and illegalities contemplating enquiry under Rule 3 of the Odisha Government Servants Conduct Rules, 1959. The Articles of Charge was on the following counts:

- a) Gross misconduct;
- b) Dereliction of duty;
- c) Administrative indiscipline while dealing with administrative records;



- d) Failure to maintain absolute integrity and honesty.
7. Simultaneously, allegations were raised against the petitioner that while placing notes before the then Hon'ble Acting Chief Justice in matters of promotion of Secretaries and Personal Assistants, he suggested invocation of Rule 38(10) of the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 without adherence to the normal procedure contemplated under Rule 38(1) and without reference to the Departmental Promotion Committee.
8. The inquiry culminated in a report holding the petitioner guilty. Accepting the inquiry report, the disciplinary authority imposed the punishment of withholding of two increments with cumulative effect by order dated 23.02.2023. The said order is reproduced herein for ready reference:-

“With reference to your Confidential Letter No. 52 dtd.07.02.2023 on the above subject, I am directed to inform you that the Court on considering the representation of Sri Lalit Kumar Dash, Ex-Registrar (Judicial), Orissa High Court, Cuttack at present Judge, Family Court, Bhawanipatna and after examining the findings of the Enquiring Authority along with all the relevant documents and the materials on record in D. P. No.4/2021, the Court have been pleased to award Sri Dash with the major penalty of withholding of two increments with



cumulative effect as provided in Rule 13(vi-A) of the O.C.S(C.C.A) Rules, 1962.”

9. Having heard learned counsel for the parties and upon perusal of the pleadings, enquiry report, evidence adduced in the disciplinary proceeding and the impugned order of punishment, the following principal issues arise for consideration:

(i) Whether the finding regarding alleged missing of pages from 116/C to 152/C of File No. XIX-23/1998 and the consequential attribution of misconduct to the petitioner is sustainable in law and based on legally admissible evidence ?

(ii) Whether the charge relating to the petitioner placing notes before the Hon'ble Acting Chief Justice recommending exercise of power under Rule 38(10) of the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 constitutes misconduct, dereliction of duty, or lack of integrity so as to warrant disciplinary punishment ?

Apart from the above, ancillary issues relating to vagueness of charges, shifting of burden of proof, absence of mala fides, and proportionality of punishment also arise for consideration.



ISSUE NO. I

Whether the findings regarding missing documents and administrative indiscipline are sustainable ?

10. Before advertng to the facts, it is necessary to note the peculiar nature of the office of Registrar (Judicial) in a High Court Establishment. Such officer does not function as an autonomous executive authority. The office operates within a highly structured constitutional hierarchy where administrative notes are often prepared and processed in aid of decisions of Hon'ble Judges, particularly the Hon'ble Chief Justice. Institutional discipline, confidentiality and obedience to administrative directions form integral features of such office.
11. The foundational allegation against the petitioner is that while he was functioning as Registrar (Judicial) of the Court, pages 116/C to 152/C of the concerned Administrative File went missing and that, despite knowledge thereof, he remained silent and failed to inform the authorities or reconstruct the file. The Enquiry Officer has proceeded to hold that the petitioner, being custodian of the file, was



fully aware of the missing documents and deliberately suppressed the fact.

12. However, on a careful scrutiny of the materials available on record, this Court finds that the very substratum of the charge suffers from serious evidentiary deficiencies. Firstly, the original file allegedly containing missing pages was never produced during the enquiry proceeding. Neither the movement register nor any contemporaneous record demonstrating exclusive custody of the file with the petitioner from May 2020 till February 2021 was brought on record. In absence of production of the primary record itself, the conclusion that the documents were actually missing and that such disappearance occurred during the exclusive custody of the petitioner rests substantially on assumptions.

13. The petitioner's consistent stand, right from his explanation under Annexure-4, has been that pursuant to directions of Hon'ble the then Chief Justice Md. Rafiq, the relevant correspondence pages were separated and produced before His Lordship along with the main file for consideration of representations concerning promotions. The petitioner specifically stated that after Hon'ble the then Chief Justice



constituted a Special Committee and formulated queries, only the note prepared by His Lordship was returned to him for communication to the Committee Members and the file itself was not thereafter returned to him prior to his transfer.

- 14.** This explanation finds substantial corroboration from the contemporaneous notings and surrounding circumstances. Ext.6 demonstrates constitution of the Special Committee by Hon'ble the then Chief Justice Mr. Md. Rafiq after perusal of the records. Ext.7 dated 26.04.2021 by Hon'ble the then Chief Justice Dr. S. Muralidhar specifically directed recall of files pending with the Special Committee. The very tenor of the said noting indicates that the files had remained in circulation beyond the tenure of the petitioner as Registrar (Judicial). Significantly, the subsequent Registrar (Judicial) on 17.04.2021 noted that pages were missing, which itself establishes that after the petitioner's relieve on 14.02.2021, the file had already passed through other hands.
- 15.** The evidence of the sole departmental witness, namely PW-1, also materially weakens the departmental case. In paragraph 32 of his cross-examination, PW-1 candidly admitted that the queries



formulated by Hon'ble the then Chief Justice Md. Rafiq would not have been possible without in-depth study of the relevant papers alleged to be missing. In paragraph 36, he admitted that he could not say whether the petitioner derived any personal benefit from the alleged missing documents. In paragraph 33, it was also admitted that the documents were merely copies extracted from correspondence records and personal files. Therefore, not only there is absence of proof of motive or gain, but there is also no evidence of actual prejudice or administrative inconvenience caused due to the alleged disappearance of papers. Extract of the above deposition is reproduced herein for ready reference:-

“32. It is a fact that in Ext.7 under paragraph-7 some queries of Hon'ble the then Chief Justice formulated in the notes dated 11.08.2020 have been mentioned. I cannot say if those queries are not possible without in-depth study of relevant pages alleged to have been missing.

33. It is a fact that the documents alleged to have been missing were part of the correspondence portions of the file and those were matters pertaining to promotion of Secretaries to A.R.-cum-Sr. Secretaries.

xxxxx



36. I cannot say if Sri L.K. Dash has not gained any personal benefits from the meeting of the relevant pages.”

Most importantly, the Enquiry Officer appears to have proceeded on an erroneous presumption that the petitioner admitted the documents to be missing. No such admission is discernible from the petitioner’s explanation or from the evidence on record. Rather, the petitioner specifically asserted that the file may have remained with the Special Committee after having been placed before Hon’ble the Chief Justice. The Enquiry Officer nevertheless proceeded to hold that the petitioner intentionally suppressed the fact and failed to record a note regarding missing of documents. Such conclusion is not based on direct evidence but on inferential assumptions.

16. In the present case, there is complete absence of evidence demonstrating:

- (a) the precise stage at which the documents allegedly disappeared;
- (b) that the petitioner retained exclusive custody of the records;
- (c) that the petitioner removed the documents for any ulterior purpose;
- (d) that any prejudice was actually caused by the administration; or



(e) that the petitioner gained any benefit whatsoever.

- 17.** The Enquiry Officer has, in effect, shifted the burden upon the petitioner to prove his innocence. Paragraph 33 of the enquiry report specifically records that the petitioner failed to prove his innocence. Such approach is fundamentally contrary to the settled principles governing disciplinary proceedings. The burden always lies upon the department to establish misconduct on the basis of evidence. Failure of the delinquent to conclusively establish innocence cannot become a substitute for proof of guilt. Relevant part of paragraph 33 of the enquiry report reads as follows:-

“Therefore, it is held that the grounds taken in his defence is no way helpful to prove the innocence of the delinquent officer on this count. Accordingly, it is held that the department has well established its case and brings home the charge as leveled against the delinquent officer and therefore, he is held guilty of misconduct and dereliction of duty having failed to maintain absolute integrity and honesty.”

- 18.** This Court is therefore constrained to hold that the findings on Charges relating to administrative indiscipline, misconduct and failure to maintain integrity on account of alleged missing documents are vitiated by non-consideration of material evidence,



reliance on presumptions, and shifting of burden of proof. Hence, it's a case of no evidence.

ISSUE NO. II

Whether the petitioner committed misconduct by placing notes suggesting exercise of Rule 38(10) ?

19. The second charge relates to the petitioner allegedly suggesting invocation of Rule 38(10) of the 2019 Rules before Hon'ble the then Acting Chief Justice for promotion matters, bypassing ordinary procedures and thereby enabling promotions of allegedly ineligible persons. At the outset, it must be noted that Rule 38(10) confers extraordinary powers upon Hon'ble the Chief Justice. The final decision regarding invocation of such power indisputably rested with Hon'ble the Acting Chief Justice and not with the petitioner. The petitioner, as Registrar (Judicial), merely processed the files and placed notes before the competent constitutional authority.

The Notes in a Departmental file do not have the sanction of law to be an effective order. It is trite to state that the notings by an officer is an expression of his view point on the subject, which is meant only for internal use and for consideration of the other



officials of the Department and for the benefit of the final decision-making authority. Therefore, internal notings are not meant for outside exposure. Peculiarity in the present case the delinquent has prepared the note on the direction of Hon'ble the then Acting Chief Justice. The petitioner was not even allowed to express his opinion and his discretion has been restricted in view of the direction of his superior. If he would not have obeyed the direction of the superior to put the note as was directed by Her Lordship, that would have been insubordination on his part. In such caught 22 situations, the note appears to have been prepared by the delinquent. Hon'ble Supreme Court, taking note of various judgments on this point in the matter of **Mahadeo and others Vs. Sovan Devi and others, 2022 SCC Online SC 1118**, has been pleased to encapsulate the law, inter alia, observing hereunder –

“24. A noting recorded in the file is merely a noting simpliciter and noting more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by



issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/ overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

Viewing the evidence of this case in the prism of law would be necessary to appreciate under what circumstances such noting was prepared and placed by the petitioner before the Hon’ble ACJ. The sole departmental witness categorically admitted in paragraphs 28, 29 and 42 of his deposition that expressions such as “as per kind direction of Your Lordship” are routinely mentioned when prior directions have already been received from the authority. The witness further admitted that approval of the note by the authority implies application of mind by such authority. It was also admitted that in Ext.1 the petitioner had not independently suggested recall or cancellation of promotion orders and that such decisions were taken by Hon’ble the Acting Chief Justice on her own. The said



paragraphs of the deposition are reproduced herein for ready reference:-

“28. It is a fact that Ext.1 reveals that Sri L.K. Dash placed the records before Hon'ble A.C.J. as desired by Her Ladyship. It is a fact that in Ext.1 Sri L.K. Dash has not given any suggestion for recall/cancellation of the promotion order. It is a fact that Ext.1 reveals that the order of recall of the promotion orders was made by the Hon'ble ACJ on her own.

29. It is a fact that in the suggestion portions of Exts.2, 3 and 4 Sri L.K. Dash has mentioned "as per the kind direction of Your Lordship". It is a fact that usually such words like "as per the direction of Your Lordship" are mentioned in the notes by the Registrars when instructions are already given to them on those matters. It is a fact that approval of a note by the authority implies that the authority has applied his/her mind on the matter concerned.

xxxxxx

42. It is a fact that in the suggestion portion of Ext.29 Sri L.K. Dash has mentioned "as per the kind direction of Your Lordship".”

- 20.** Therefore, the allegation that the petitioner independently engineered or manipulated the exercise of Rule 38(10) stands unsupported by evidence. No rule, circular or administrative instruction has been brought on record prescribing any mandatory format of noting or prohibiting the Registrar from placing proposals upon receiving directions from the competent authority.



21. The enquiry officer has repeatedly observed that the petitioner displayed a “cavalier attitude” and shifted blame upon Hon’ble the then Acting Chief Justice. This Court is unable to sustain such reasoning. The petitioner’s defence was not an attempt to shift blame but a factual assertion regarding the procedural manner in which the files were processed. Once the departmental witness himself admitted the prevalent administrative practice and the fact that notings were made pursuant to the directions of the authority, the petitioner’s explanation cannot be termed dishonest or unethical.
22. The disciplinary proceeding does not disclose any material demonstrating mala-fide intention, personal gain, corrupt motive, or extraneous consideration on the part of the petitioner. Merely because certain promotion decisions subsequently became controversial or were reconsidered cannot automatically render the officer processing the file guilty of misconduct. In administrative law, there exists a clear distinction between an erroneous administrative decision and culpable misconduct. Unless the conduct of the officer is shown to be actuated by oblique motive, deliberate violation of rules, or dishonest intention, disciplinary liability cannot be fastened merely because a different administrative view



subsequently prevailed. The records reveal that the petitioner had merely processed the files in his capacity as Registrar (Judicial) and placed the relevant notes before the Hon'ble the Acting Chief Justice. The evidence of PW-1 itself establishes that expressions such as "as per kind direction of Your Lordship" were routinely employed where prior directions had already been communicated by the competent authority. The witness further admitted that approval of the note by the authority signifies application of mind by such authority. Therefore, once the competent constitutional authority independently considered the matter and exercised powers under Rule 38(10), the entire burden of the resultant decision could not legally be shifted upon the petitioner merely because he processed the file.

It is also significant that no statutory provision, administrative circular or binding guideline was produced before the enquiry officer to demonstrate that the petitioner was prohibited from placing such notes or that the format adopted by him amounted to misconduct. In absence of a clearly established norm having been violated, the finding of dereliction of duty becomes unsustainable. A disciplinary proceeding cannot proceed on generalized notions of



expected conduct divorced from identifiable legal or procedural obligations. This Court further finds that the enquiry officer repeatedly employed expressions such as “cavalier attitude”, “shifting of blame”, and “brazen attempt to suppress truth”, without correlating such observations to any substantive evidence on record. Departmental findings affecting reputation and integrity of a senior judicial officer cannot rest on rhetorical inferences or moral impressions. Findings in disciplinary proceedings must be founded upon objective materials capable of establishing misconduct on the touchstone of probabilities. In the present case, even such threshold is not satisfied. The evidence led by the department does not establish that the petitioner acted independently, manipulated records, fabricated recommendations, suppressed any statutory provision, or derived any advantage from the disputed promotions. On the contrary, the materials disclose that the decisions in question emanated from the exercise of powers by Hon’ble Chief Justices at different stages and under differing administrative perceptions. The Court is therefore of the considered opinion that the second limb of charges relating to invocation of Rule 38(10), alleged irregular



recommendations, and purported failure to maintain integrity is equally unsustainable in law.

- 23.** The concept of good faith assumes relevance in such circumstances. Good faith in administrative law and service jurisprudence does not necessarily require infallibility of judgment. It requires honesty of purpose, absence of mala fides and bona fide discharge of official duty. A subordinate officer acting transparently under recorded directions of superior authority, without concealment or personal benefit, ordinarily acts in good faith unless the directions are manifestly illegal or actuated by corrupt motive known to the subordinate officer.

In the present case, the petitioner did not conceal the source of the directions. On the contrary, he openly incorporated in the official note that the actions were being taken under the directions of the Hon'ble Acting Chief Justice. Such conduct militates against any inference of covert or dishonest intent.

- 24.** Another significant aspect is proportionality. The promotions, which were later found irregular, were ultimately recalled and *status quo ante* restored. No irreversible prejudice survived. The petitioner had



rendered long years of service without adverse record. In absence of any finding of corruption, personal gain or deliberate manipulation, the imposition of major penalty with cumulative effect appears disproportionate.

25. Judicial review over disciplinary proceedings is admittedly limited.

This Court ordinarily does not re-appreciate evidence as an appellate authority. However, where findings are based on misreading of evidence, omission of vital materials, or conclusions which no reasonable authority could have arrived at, interference becomes inevitable.

26. Consequently, this Court is of the considered view that the impugned order of punishment dated 23.02.2023 under Annexure-7 cannot sustain the scrutiny of law. The enquiry report under Annexure-5 and the consequential order of punishment under Annexure-7 are hereby quashed. The Opposite Parties are directed to restore all consequential service benefits in favour of the petitioner at the earliest considering the fact that the petitioner is retiring from service on 31.07.2026 on attaining the age of superannuation at the age of 60 years. This Court sincerely believe and expect that all



authorities concerned shall do well to see that the benefit of this judgment shall enure to the petitioner before he demits the office on superannuation in the month of July, 2026.

27. Accordingly, the Writ Petition is allowed.

(Manash Ranjan Pathak)
Judge

(Sibo Sankar Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 27th May, 2026.

Ashok Jagdev, Secretary &
S.K. Parida, ADR-cum-APS