

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10951 of 2004

Uma Shankar Sethi

....

Petitioner

Mr. S.S. Rao, Sr. Advocate

-versus-

Union of India and others

....

Opp. Parties

Mr. M.K. Pati, CGC

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

16.02.2022

Order No.

Dr. S. Muralidhar, CJ.

05.

1. The challenge in the present petition is to an order dated 8th July, 2004 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack (CAT) in O.A. No.112 of 2002 filed by the present Petitioner. By the impugned order, the CAT has dismissed the Petitioner's aforementioned application which had challenged an order dated 18th December, 2000 passed by the Appellate Authority (OP No.3) enhancing for quantum of punishment imposed on the Petitioner by the Disciplinary Authority (DA).

2. The backgrounds facts are that the Petitioner was working as Postal Assistant in Berhampur Postal Division. Regarding some acts of misconduct, a disciplinary enquiry was instituted against him. The charges held to be proved against the Petitioner included his failure to take "detailed charge of his office" between 19th and dated 27th July, 1995 as a result of which a Group-D official working there was able to misappropriate cash

deposited in several Savings Bank Accounts maintained at the Post Office. When the inquiry report was placed before the DA, he agreed with the inquiry officer (IO) regarding the finding of guilt on the specific charges. However, the DA awarded s a relatively lenient punishment of reduction in pay scale by three stages from Rs.4300-4000/- in the time scale pay of Rs.4000-100-6000/- for the period of three years with effect from 1st November, 1999 with a further direction that the Petitioner will not receive any increment in pay during the period of reduction and that on expiry of the said period, the reduction would have the effect of postponing future raises. The Petitioner admittedly accepted the above order of the DA and did not prefer any appeal.

3. The Appellate Authority however on his own decided to review the punishment on the ground that it was not commensurate with the misconduct of which the Petitioner was found guilty. Exercising his power under Rule 29(1)(v) of the CCS (CCA) Rules the AA issued a notice to the Petitioner on 23rd March, 2000 proposing to enhance the punishment to one of “removal from service” and to “recover the amount of loss incurred to the Government from undisbursed salaries and allowance from the Petitioner.”

4. After the Petitioner replied to the said notice, the impugned order dated 18th December, 2000 was passed by the AA taking a “lenient view” and awarding the punishment of “compulsory retirement” of the Petitioner from Government service with immediate effect.

5. The CAT, has following the decision of the Supreme Court in the case of *B.C. Chaturvedi v. Union of India 1996 SCC (L&S) 80* refrained from interfering with the punishment awarded and concluded that it was neither disproportionate nor shocking to the judicial conscience.

6. Mr. S.S. Rao, learned Senior counsel appearing for the Petitioner places reliance on the decision of *Yoginath D. Bagde v. State of Maharastra AIR 1999 SC 3734* and contends that there was a violation of principles of natural justice since while exercising the suo motu power of review, limited only to the question of punishment, the AA has deprived the Petitioner of an opportunity of questioning the findings of guilt. In other words, according to him if the AA intended to “revise” the order of the DA, it should not have been confined to the quantum of penalty but the entire matter should have been revised by the AA. He further contended that in the notice dated 23rd March, 2000 the AA already proposed the enhancement of punishment of removal from service thereby prejudging the issue.

7. On the other hand, Mr. M. K. Pati, learned counsel appearing for the Opposite Party Department of Posts supported the conclusion reached by the CAT and submitted that ultimately even the AA took a “lenient view” of the matter.

8. Having heard learned counsel for the parties, the Court is of the view that no interference is call for with the impugned order of the CAT. In the first instance, it is seen that the Petitioner

failed to file any appeal against the order of the DA and therefore, allowed the findings on merit as far as the proof of guilt on specific charges was concerned, to become final. The scope of revision or review, as the case may be, by the AA was, therefore, limited to the question of quantum of punishment. In other words, even though the AA had exercised the suo motu revisional power, the AA was not obliged to reopen the entire case. For the reasons already set out in the communication dated 23rd March, 2000 the scope of such suo motu revision was confined to whether the punishment awarded by the DA was commensurate with the gravity of charges held proved against the Petitioner.

9. As far as the decision in ***Yoginath D. Bagde***’ case (*supra*) is concerned, it is seen that in the said case the IO had exonerated the delinquent from all charges whereas the DA disagreed with those findings and came to the conclusion that the charges were established. It is in that context that the Supreme Court observed that the opportunity of being heard should have been offered to the delinquent at “all stages”. Therefore, the denial in that case of an opportunity to the delinquent to question the reversal of the IO’s finding on guilt was held to be violative of the principles of natural justice. In the present case, as already noted, the Petitioner never questioned the finding of guilt by the IO which was accepted by the DA and therefore by the AA as well did not question that finding. The Petitioner cannot now be heard to contend that the entire case should have been reopened by the

AA. The decision in *Yoginath D. Bagde* therefore does not held the case of the Petitioner.

10. The Court is of the view that giving the gravity of the charges held proved against the Petitioner, the AA was not an error in enhancing the punishment awarded by the DA to one of compulsory retirement from service.

11. Consequently, no ground is made out for interference with the impugned order. The writ petition is dismissed.

KC Bisoi

