

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.713 of 2006

Sri Jagabandhu Sahu

..... Petitioner

Mr. G.M. Rath, Advocate

-versus-

State of Orissa and another

..... Opposite Parties

Mr. N.N. Satapathy, Standing Counsel for S&ME Department

Mr.P.V. Balakrishna, Advocate for Opposite Party No.2

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

10.02.2022

Order No.

06. 1. The challenge in the present petition is to an order dated 29th August 2005 passed by the Orissa Administrative Tribunal, Bhubaneswar (OAT) dismissing O.A. No.1803 of 1998 filed by the Petitioner.
2. The challenge in the O.A. was to an order dated 9th January 1998 passed by the Deputy Secretary to Government of Odisha in Department of School and Mass Education Department inflicting the punishment of recovery of 50% of the misappropriated amount of Rs.68,523/- from the gratuity of the Petitioner and reduction of his pension by 1/3rd, as a result of his being found guilty of misappropriation in a disciplinary enquiry conducted.
3. The central ground on which the challenge was raised to the above order was that it was in violation of the principles of natural justice, and in particular, in violation of Rule 15 (10) (a)

of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962(CCA Rules).

4. The OAT has in the impugned order noted that a copy of the enquiry report was indeed furnished to the Petitioner along with a show cause notice (SCN) dated 12th July 1997 asking him to explain why the proposed punishment should not be imposed. The OAT did not find any reason to disagree with the disciplinary authority (DA) as regards the punishment ultimately awarded.

5. Mr. Rath, learned counsel appearing for the Petitioner states that the alleged misappropriation was at a time when the Petitioner suffered from a personal tragedy of losing his son in a car accident and he was not in a fit mental state. He accordingly states that the statement contained in the Petitioner's letter dated 4th August 1997, in response to the SCN, that his case should be considered sympathetically and on compassionate grounds should not be treated as admission of any guilt. Secondly, he submits that the impugned order imposing the punishment and even the SCN preceding it do not give reasons for deciding to award the said punishment. It is further submitted that the punishment is disproportionate.

6. The fact of the matter is that the Petitioner gave in writing that the amount found to have been misappropriated could be recovered from his death-cum-retirement gratuity. He admitted to have made that statement. He sought to explain the misconduct by stating that "due to my son's tragic death, I lost my memory

and equilibrium of my mind. Due to this I did not know what I wrote to the Govt. about the charge framed against me”. The date on which the charges were communicated to the Petitioner was 7th February 1994 whereas the death of the Petitioner’s son took place on May 1990 which is long prior thereto. Such explanation is not therefore convincing at all and was rightly not accepted. The second line of defence was that “The thought of my son’s death made me completely mad and without proper verification, I signed the cash book maintained by Sri G. Gopinath, Head Clerk-cum-Accountant.” This again is not a convincing explanation since the charge was in fact a grave one and the above admission points to plain dereliction of duty.

7. The Court is also not satisfied that any further reasons had to be given for the punishment as proposed in the SCN. The Court is also unable to accept the plea that the punishment awarded is disproportionate. At the relevant time, the sum shown to have been misappropriated was substantial and punishment of recovery of only 50% thereof coupled with the reduction of pension by 1/3rd cannot be termed disproportionate.

8. There is no merit in this petition and it is dismissed as such. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge