

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20623 of 2009

Nirod Chandra Sahani

....

Petitioner

Mr. Trilochan Nanda, Advocate

-versus-

State of Odisha and Others

....

Opposite Parties

Mr. S.N. Das, Addl. Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

Order No.

ORDER
22.03.2022

08. 1. The challenge in the present petition is to an order dated 16th October, 2009 passed by the Odisha Administrative Tribunal, Bhubaneswar (OAT) in O.A. No.1367 of 1999 and O.A. No.1856 of 1999 filed by the Petitioner.
2. The background facts are that the Petitioner entered into Government service as a Junior Clerk in the Collectorate, Bolangir with effect from 17th March, 1958. Thereafter, he was promoted to the rank of Upper Division Clerk. While working at the Tahasil Office, Bolangir a criminal prosecution was lodged against the Petitioner on the charge of criminal embezzlement of Government funds punishable under Section 409 of the Indian Penal Code. He was found guilty by the trial Court and the said conviction and sentence was confirmed by the Appellate Court.

However, the revision petition filed which was allowed by this Court by its judgment dated 21st April, 1980.

3. During the pendency of the criminal case, the Petitioner was placed under suspension from 11th February, 1967 onwards. Upon conviction by the Trial Court, he was dismissed from service with effect from 28th April, 1975. After the High Court acquitted him, he was reinstated in Government service by an Office order dated 27th April, 1984. The period from 2nd April, 1980 till the date of joining was treated as duty. However, no decision was taken regarding the period of suspension and the period of dismissal.

4. On 1st April, 1980 the Petitioner gave notice of voluntary retirement with a request to allow remaining on leave during the notice period. It is contended that in the absence of any communication the Petitioner 'presumed' that his notice was accepted on expiry of three months. However, on 3rd December, 1984 his request for voluntary retirement was refused by the Opposite Parties on the ground that he did not have more than 20 years of qualifying service. On 18th November, 1986 departmental proceedings was initiated against the Petitioner on the same charges for which the criminal case was instituted against him and ended in acquittal. On conclusion of the disciplinary proceedings on 5th October, 1991 the Petitioner was awarded the following punishment:

“1) The period of suspension from 11.2.67 to 27.4.1975 be treated as such.

2) The period of dismissal from 28.4.74 to 1.4.80 be treated as leave due as admissible.

3) Two increments of the delinquent be stopped with cumulative effect.

The delinquent is deemed to be reinstated with effect from 28.4.1975.”

5. The Petitioner’s appeal against the above punishment was dismissed on 22nd June, 1998. Meanwhile, a second disciplinary proceeding was initiated against him on 18th November, 1986 which culminated an order dated 4th September, 1992 removing the Petitioner from service with effect from 5th August, 1984. The appeal against this punishment was dismissed on 21st April, 1999.

6. It must be noted here that during the pendency of the present petition the Petitioner expired and by order dated 6th September, 2017 his legal representatives (LRs) including his wife and children were brought on record.

7. Today, learned counsel for the Petitioner informs the Court that the wife of the Petitioner has also expired. The children of the Petitioner at the time filing of the present writ petition in 2009 were aged 56 years, 50 years, 53 years, 47 years, 44 years and 42 years. Consequently, some of them are at present in their 60s and one of them is perhaps nearly 70 years old. It is very unlikely that any of the children would be interested in the family pension payable on the death of the Petitioner. Nevertheless, the Court has examined the case on merits.

8. As rightly analyzed by the OAT, one of the charges on which the Petitioner faced disciplinary proceeding was that he remained absent from duty from 4th August, 1984 till issuance of the charge memo dated 8th November, 1986. The second proceeding was also regarding his unauthorized absence. The Petitioner had no reasonable explanation to offer for his absence other than saying that he had assumed his request for voluntary retirement has been accepted. This submission is not convicting at all. For a person who had been in government service for a sufficiently long period of time, it is unlikely that the Petitioner did not know that unless his request for VRS was formally accepted, there could be no presumption in that regard.

9. The OAT has in the impugned order set aside the penalty of stoppage of increments with cumulative effect since that had not been enumerated as penalty under Rule 13 of the CCA Rules. It found no violation of principles of natural justice as the Petitioner had virtually admitted his unauthorized absence.

10. Having heard learned counsel for the LRs of the Petitioner, the Court is not satisfied that any ground has been made out for interference with the impugned order of the OAT. The central charge of unauthorized absence on duty was factually admitted by the Petitioner without any convincing explanation for such absence. It cannot be said, therefore, that the punishment awarded was unwarranted or disproportionate.

11. There is no merit in this petition and it is accordingly, dismissed as such.

12. An urgent certified copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.

