

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1268 of 2012

Nirmal Kumar Sahoo

.....

Petitioner

*Mr. B. Routray, Sr. Counsel along
with Mr. M .R. Padhi, Advocate*

Vs.

State of Orissa & Others

.....

Opposite Parties

Mr. S.Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

17.11.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. B. Routray, learned Senior Counsel appearing along with Mr. M.R.Padhi, learned counsel for the petitioner and Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Opposite Parties.

3. The Petitioner has filed this writ petition seeking to quash the order dated 22.12.2011 under Annexure-15 passed in O.A No.4249 (C)/2010, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has disposed of the said O.A., so also the impugned proceeding under Annexure-1, order of punishment under Annexure-6, order of Appellate Authority under Annexure-8 as well as order of the Revisional Authority under Annexure-14, and further to issue direction to the opposite parties to reinstate the petitioner in service and grant all consequential service and monetary benefits as due and admissible in his favour.

4. Mr. B. Routray, learned Senior Counsel appearing for the petitioner contended that the Tribunal, vide order dated 22.12.2011, has modified the penalty of dismissal from service to compulsory retirement. Therefore, the Tribunal has committed gross error apparent on the face of the records, in view of the fact that it has not taken into consideration the factual matrix in proper perspective.

5. Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-Opposite Parties contended that the order of dismissal having been converted to compulsory retirement, the relief sought cannot be granted to the petitioner and, as such, the petitioner was guilty of committing misconduct and disobedience of order. In spite of that, the Tribunal has taken a liberal view in respect of the petitioner by converting the penalty of dismissal from service to compulsory retirement, for which he will be entitled to get retirement benefits. Therefore, the order passed by the Tribunal is well justified which does not warrant interference of this Court at this stage.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that while the petitioner was continuing as a Constable under the Commissionerate of Police, Cuttack, availed 45 days of leave, which was also granted w.e.f. 04.06.2008 and he was supposed to join his duty on 20.07.2008. But he remained absent without intimating or taking permission from the competent authority for enhancement of leave despite repeated recall notices were issued to him from his office. Accordingly, opposite party no.4 submitted charge sheet against the petitioner for unauthorized absence, gross

misconduct and disobedience of order directing him to submit his explanation within 15 days, failing which orders as deemed proper will be passed. On receipt of charge-sheet, he submitted his preliminary explanation on 30.10.2008 refuting the allegations and stating that during his entire career of 25 years of service he did not receive such solitary charge as made in the show-cause notice. He also stated that on 04.06.2008 he had availed 45 days E.L and was due to resume his duty on 20.07.2008, but because of suffering from severe back-ache just before 4 to 5 days of scheduled date of joining, he got himself treated at SCB Medical College & Hospital, Cuttack at Regional Spine Injury Centre and the treating doctor had advised him for bed-rest until further check-up. On 01.08.2008, the doctor advised the petitioner for another one month bed-rest and during that period he had received two recall notices from the Deputy Commissioner of Police, Cuttack, but he immediately sent information about his sickness and the advice of the doctor. In the said explanation, he also requested the disciplinary authority to drop the proceeding.

7. As the explanation of the petitioner was found unsatisfactory, opposite party no.4 appointed Nimain Ch. Sethi, OPS, Assistant Commissioner of Police, Commissionerate of Police, Cuttack, as Inquiry Officer. On 03.01.2009, the petitioner made a representation to opposite party no.4 for change of Inquiry Officer and place of enquiry on the ground that he was a victim of the aforesaid proceeding and because of his RTI application requiring information on misappropriation of medical reimbursement by the Commissioner of Police and the Inquiry Officer was subordinate to the Commissioner of Police, he

apprehended that he would not get justice from the said Inquiry Officer. But his representation was not considered and the Inquiry Officer completed inquiry and furnished his report holding the petitioner guilty of the charges. As a consequence thereof, opposite party no.4 issued second show-cause notice on 13.03.2009 along with a copy of the findings of the Inquiry Officer requiring the petitioner to furnish his explanation by 31.03.2009 as to why the punishment of dismissal from service shall not be awarded to him. During the interregnum, the petitioner approached Orissa Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.1306(C)/2009 praying for quashing the show-cause notice and the disciplinary proceeding. As such, the said O.A. was found to be premature and the Tribunal, vide order dated 26.06.2009, remanded the Paper Books to opposite parties no.1 & 3 to treat the same as representation of the petitioner and dispose of the same on merits as per the existing rules in the matter within a period of one month keeping in view the Government of Orissa, Home Department letter no.35251 dated 19.06.1992 relating to guidelines for award of major punishment under intimation to the petitioner.

8. Aggrieved by such order, the petitioner approached this Court by filing W.P.(C) No.9204 of 2009, but this Court, vide order dated 02.07.2009, did not feel inclined to interfere with the order passed by the Tribunal and directed the petitioner to file a fresh reply to the notice of show-cause to the disciplinary authority with a further stipulation that the same can be considered by the disciplinary authority while deciding the question as to whether the petitioner was to be punished in the departmental proceeding. In compliance thereof, the petitioner filed his reply to the 2nd show-

cause notice on 31.07.2009 praying for being exonerated from the charges and treating the period of overstay of leave as duty and not to impose any punishment proposed. After considering the same, opposite party no.4 passed the final order, vide DO No.2155 dated 11.09.2009, dismissing the petitioner from service with immediate effect by treating the period of unauthorized absence from 20.07.2008 till the date of service of dismissal order as leave without pay.

9. Being aggrieved by the order of dismissal, the petitioner approached the Tribunal by filing O.A. No.2226(C) of 2009, which was withdrawn, as in the meantime he had preferred appeal before the appellate authority in Appeal Memorandum dated 22.09.2009. Subsequently, he filed O.A. No.2985(C)/2009 praying for quashing the disciplinary proceeding as well as final order dated 11.09.2009 and the said O.A. was finally disposed of on 04.01.2010 requiring opposite party no.2 to consider the appeal taking into account the affidavit along with the documents, which were filed by the petitioner before the Tribunal and dispose of the appeal by a reasoned order meeting all the points raised by him in his appeal within a period of four weeks from the date of receipt of the order.

10. Being aggrieved by the order of the Tribunal, the petitioner approached this Court by filing W.P.(C) No. 1924 of 2010, which was dismissed, vide order dated 17.02.2010. Opposite party no.2, vide order dated 06.03.2010, rejected the appeal. Being aggrieved by such order, the petitioner preferred a revision under Rule 853 read with Rules 851 & 852 of Orissa Police Rules before opposite party no.2 on 05.04.2010 and the said revision was also dismissed by opposite party no.2, vide order dated 09.12.2010. Against the

said order, the petitioner again approached the Tribunal by filing O.A. No.4249(C) of 2010.

11. The Tribunal, taking into consideration the contentions raised by learned counsel for the parties, vide order dated 22.12.2011, came to a definite conclusion in paragraphs-25 to 28 of the order, which read as follows:

“25. However, the applicant had put up more than 25 years of service by the time he was proceeded against. Considering the past service, the Hon’ble Apex Court in the case of Surendra Prasad Shukla & State of Jharkhand and others (2011) 2 SCC (L & S) 372 in para 9 and 10 have held:-

“(9) The applicant had served under the Govt. as a i.e. for 34 years and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant so as to deprive him of his pension for the service he rendered for 34 long years was shockingly disproportionate to the negligence proved against him.

(10) We accordingly allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement.”

In appropriate cases the Courts and Tribunals can modify the quantum of punishment and reduce the same (referred to the decisions of the Hon’ble Apex Court in the case of Om Kumar vrs. Union of India (2001) 2 SCC 386 and B.C. Chaturvedi vrs. Union of India (1995) 6 SCC 749).

26. In the facts and circumstances, to better achieve the ends of equity, the punishment should be reduced to compulsory retirement by the Tribunal itself, instead of remitting that to the disciplinary authority for the purpose.

27. Thus, the impugned penalty of dismissal from service has been modified to compulsory retirement from service.

28. In the circumstances, we do not interfere with the charge memo at Annexure-1. We only interfere with the order (Annexure-6) of penalty, so also the order of appellate authority on the quantum of penalty.

To make it more clear that we do not interfere with their findings that the applicant has been found guilty. That stands. We only interfere with the quantum of penalty. The penalty/punishment of dismissal from service has been

modified to one of compulsory retirement from service with effect from the date from which the said order of dismissal was given effect to. To the above extent Annexure-14 stands interfered with.

Accordingly, the applicant shall be entitled to admissible pension and other retirement benefits in accordance with the rules in the field”.

On perusal of the above order, it appears that the penalty of dismissal from service has been modified to the punishment of compulsory retirement by the Tribunal.

12. In that view of the matter, we do not find any illegality or irregularity committed by the Tribunal in order dated 22.12.2011. Accordingly, the writ petition merits no consideration and the same is dismissed.

13. Mr. B. Routray, learned Senior Counsel appearing for the petitioner states that the Tribunal has modified the order passed by the disciplinary authority by reducing the penalty of dismissal from service to compulsory retirement, therefore, the financial benefit as due and admissible to the petitioner be paid within a stipulated period.

14. Accordingly, we direct the opposite parties to pay the financial benefits, as due and admissible to the petitioner, within a period of one month from the date of communication/production of the certified copy of the order.

15. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE

