

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17027 of 2009

Kalicharan Satapathy

.... ***Petitioner***
Mr. J.K. Lenka, Advocate

-Versus-

State of Orissa and others

.... ***Opp. Parties***
Mr. S.N. Das, ASC

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

**ORDER
14.02.2022**

Order No.

R.K.Pattanaik, J

05. 1. Briefly stated, the Petitioner pressed into service the instant writ petition invoking Article(s) 226 and 227 of the Constitution of India assailing the impugned order dated 10th September, 2009 (Annexuure-8) passed in O.A. No.1130 of 1999 by the Orissa Administrative Tribunal, Bhubaneswar which confirmed the punishment inflicted upon him by the Disciplinary Authority(DA) on the grounds inter alia that it is not only unlawful for the materials on record having not been properly appreciated but also for the fact that the order of removal to be disproportionate in nature and therefore, liable to be quashed with consequential direction for his re-instatement and grant of service including pensionary benefits.

2. In fact, the Petitioner joined in Government service on 25th November, 1963 and while he was serving as the Revenue Inspector(RI) at Bhanjanagar was transferred to work under the Tahasildar, Aska and as such joined there on 22nd January, 1971 and continued till 31st December, 1972, the date on which, he was relieved to join at Parlakhemundi but thereafter, he claimed to have fallen sick and was on leave from 1st January, 1973 and after being declared fit, submitted his joining report on 23rd June, 1976 seeking for a posting order. However, it is made to reveal that no order of posting was made, rather, a disciplinary proceeding was initiated for the Petitioner's unauthorized absence from duty which ultimately led to his removal from service with effect from 1st January, 1973 which subsequently stood modified by the impugned order to be given effect to from 2nd October, 1988.

3. Heard Mr. J.K. Lenka, learned counsel for the Petitioner and Mr. S.N. Das, learned Additional Standing Counsel appearing for the Opposite Parties.

4. Perused the counter affidavit dated 31st March, 2010 filed from the side of the Opposite Parties.

5. Mr. J.K. Lenka would contend that there has been gross illegality committed by the DA (O.P.No.3) for imposing a punishment as to removal from Government service by accepting the findings of the Inquiry Officer (IO) without considering the relevant evidence produced during the inquiry

which finally resulted in removal of the Petitioner from the Government service with effect from 1st January, 1973. It is contended that the absence from duty vis-à-vis the Petitioner could not have been termed as unauthorized as it was explained to be on account of illness from 1973 to 1976 as on 23rd June, 1976. Accordingly to Mr. J.K. Lenka, learned counsel for the Petitioner, the explanation for the absence was not only disbelieved but also a shockingly disproportionate punishment was imposed and confirmed by the impugned order under Annexure-8 which deserves to be interfered with. Mr. S.N. Das, however, justified the impugned order under Annexure-8.

6. The submission of Mr. J.K. Lenka is that the Additional District Magistrate, Ganjam, Chhatrapur vide Annexure-1 had been requested to take a final decision pursuant to the joining report dated 23rd June, 1976 of the Petitioner as no suitable action was taken for about 10 years. It is contended that notwithstanding the above, no posting order was made and instead, almost after a delay of 11 years, the disciplinary proceeding was initiated. The medical evidence so produced by the Petitioner, as according to Mr. J.K. Lenka, has also been rejected by entertaining serious doubt regarding its genuineness, inasmuch as, the absence from duty was duly explained to be on medical ground.

7. It is claimed that the absence from duty by the Petitioner is less than five years, whereas, the same was alleged to be 15 years which is factually wrong. In so far as the contention of the Petitioner is concerned, the leave was applied from time to time covering the period from 1st January, 1973 to 22nd June, 1976 which was proved by evidence. According to the Opposite Parties, the Petitioner had, in fact, tendered resignation on 3rd March, 1970 which was suppressed and thereafter, he remained absent from 1st January, 1973 willfully and claimed to have been on long leave. The Petitioner said to have produced copies of the certificate of postal receipts without the originals being furnished. The continuous absence from duty without approval was alleged during the inquiry and the findings thereon were found favour with the DA under Annexure-4. Of course, the fact of tender of resignation could not be substantiated but the unauthorized absence of the Petitioner from duty was stated to be satisfactorily established. The Petitioner, though claimed to have sent the leave applications, it could not be proved and therefore, at the end of the inquiry, it was held that neither there was leave duly applied for as per the rules nor any such leave for any part of the period was shown to have been sanctioned by the authority concerned, considering which, not only the IO but also the DA reached at a conclusion that the absence was willful and therefore, unauthorized. The evidence on record was perused by the RDC, Southern Division, Berhampur, Ganjam (O.P.

No.2), who, thereafter, confirmed the orders of the DA. The aforesaid decision was not disturbed by the impugned order under Annexure-8 as it was held that the Petitioner could not offer any plausible explanation about his absence from duty even for a period of 3½ years i.e. from 1st January, 1973 to 22nd June, 1976, however, while confirming the punishment, modified it to be effective from 2nd October, 1988. As it appears, the overwhelming material to show the unauthorized absence could successfully outweigh the evidence produced during the inquiry by the Petitioner, who was having the onus to show it to the contrary. As rightly pointed out, the Petitioner ought to have submitted the leave application at the place of his posting at Parlakhemundi after being relieved from Aska and again remained on leave for a long period without its approval. It has been contended from the side of Opposite Parties that as per the Rule 27 of the Orissa Service Code, no leave could have been sanctioned in favour of the Petitioner, who absented himself for more than five years which has been disputed by claiming it to be a period of 3½ years only. In any case, the absence from duty from 1973 till 1976 by the Petitioner could not be explained and the authority concerned, therefore, reached at a decision to remove him from Government service. A reference is also made to Rule 3, Section-I of Appendix-13 of the Orissa Service Code contending that the applications for leave including extension should be made to the authority competent to grant which the

Petitioner failed to do so. After having gone through the materials on record, the authorities below concluded that the Petitioner's absence could not be proved as unintentional and taking into account his conduct and the fact that the leave which was allegedly applied for found not to be sanctioned by the competent authority, the disciplinary action was taken, which in the considered opinion of the Court, did not result in any error or illegality which has subsequently been confirmed by O.P.No.2 and finally under Annexure-8.

8. It is apt to mention that the Supreme Court in ***Union of India and others Vs. P.Gunasekaran*** reported in (2015) 2 SCC 610 held and observed that a High Court is not to act as an appellate body, while dealing with disciplinary proceedings re-appreciating the evidence, as it can only examine (a) whether, the inquiry was held by a competent authority; (b) the inquiry is held according to the procedure prescribed in that behalf; (c) if there is any violation of principles of natural justice in conducting the proceedings; (d) if the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; (e) the authorities, if persuaded by irrelevant considerations; (f) whether, the conclusion of the inquiry, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at it; (g) the disciplinary authority fails to admit material evidence; or (h) it erroneously allowed inadmissible evidence which influenced

the findings; or (i) the finding of fact is based on no evidence at all. It is supplemented by an earlier judgment of the Supreme Court in ***B.C. Chaturvedi Vs. Union of India and others*** reported in (1995) 6 SCC 749, wherein, the powers of judicial review vis-à-vis disciplinary proceedings was discussed elaborately and it was observed that such exercise is not an appeal from a decision but a review of the manner in which the decision is made. The decisions (supra) have been quoted with approval in a recent judgment of the Supreme Court in the case of ***Union of India and others Vs. Dalbir Singh*** decided in Civil Appeal No.5848 of 2021 arising out of SLP (Civil) No.24095 of 2019 and disposed of on 21st September, 2021. Turning to the case in hand, the Petitioner held to have miserably failed to explain the default and long absence of about 3½ years from 1973 to 1976 as the evidence produced during the inquiry was not only found to be deficient but also unworthy of credence. Applying the ratio of the above decisions of the Supreme Court, it would be fair enough to conclude that the findings of the inquiry not to be in any way erroneous or illegal. The delay in initiating disciplinary action is unlikely to strengthen the stand of the Petitioner, who was reasonably proved to be a chronic absentee from duty. It is by now a well established position of law that adequacy or otherwise of evidence should be left to the consideration of the disciplinary authority and on that ground, findings of inquiry are not to be tinkered with. Furthermore when, the disciplinary

authority is the sole judge of facts having co-extensive powers with appellate authority to appreciate evidence or nature of punishment. In fact, in disciplinary inquiry, the strict proof of legal evidence or reliability of evidence cannot be permitted to be canvassed before a Court/Tribunal. Therefore, unless the conclusion in a disciplinary proceeding is shown as perverse or suffers from patent error on the face of the record, it is not liable to be disturbed. Having said that, the Court, examining the claim and contention of the Petitioner in juxtaposition to the inquiry, arrives at a logical conclusion that the impugned order under Annexure-8 upholding the concurrent findings suffers from no any legal infirmity and therefore, it calls for no interference.

9. Accordingly, it is ordered.

10. The writ petition, for the reasons discussed herein above, sans merit and therefore, is hereby dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

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