

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 19185 of 2012

Rushi Gumansingh

.....

Petitioner

*Mr. Asok Mohanty, Sr. Adv. along with
Mr. G.M. Rath, Adv.*

Vs.

State of Orissa and others

.....

Opposite Parties
Mr. S. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

01.08.2022

Order No.

12.

This matter is taken up through hybrid mode.

2. Heard Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. G.M. Rath, learned Counsel for the Petitioner and Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-Opposite Parties.
3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 10.09.2012 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1706 of 2009 under Annexure-11 and to issue direction to the Opposite Parties to give all service benefits with effect from the date he was supposed to get or at least from the date his juniors have got such promotion.
4. Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. G.M. Rath, learned Counsel for the Petitioner contended that though prayer was made for quashing of the Order dated 10.09.2012 passed by the Tribunal under Annexure-11, but he unequivocally confined his prayer to the extent that the Tribunal has exceeded its jurisdiction by making observation in paragraph-15 of the order itself, to the following effect:-

“Since the applicant had already retired from his

service in the meantime with effect from 30.09.2010 on attaining the age of superannuation during pendency of the Original Application and since show cause notice dated 25.07.2009 (Annexure-10) has been stayed by the Tribunal, as such the applicant has succeeded in non-imposition of the punishment of termination from his services prior to the date of his retirement. As such, the Disciplinary Authority will proceed with the disciplinary proceeding pending against the applicant as per Rule-7 of the OCS (Pension) Rules from the stage of earlier notice dated 25.02.2009 (Annexure-4), on issuing a fresh notice enclosing the report of the Inquiring Officer and reasons recorded by the Disciplinary Authority for differing with the findings of the Inquiring Officer.”

5. It is further contended that once the Tribunal has been pleased to quash the notice dated 25.02.2009, consequential notice dated 21.04.2009 and the notice of show cause dated 25.07.2009, it is incumbent upon the Authority to take steps as required under law. But the Tribunal has exceeded its jurisdiction by making observation in paragraph-15 of the Order, as mentioned above, which causes great prejudice to the Petitioner.

6. Mr. S. Nayak, learned Additional Standing Counsel appearing for the State-Opposite Parties contended that there is no error apparent on the face of the Order impugned passed by the Tribunal, so as to cause interference with the same at this stage.

7. Having heard learned Counsel for the parties and after going through the records, this Court finds that though the Petitioner has filed this Writ Petition seeking to quash the Order passed by the Tribunal, but subsequently in course of hearing Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. G.M. Rath, learned Counsel for the Petitioner, has confined his prayer to the observation made by the Tribunal in paragraph-15 of

the Order, as mentioned above. On perusal of paragraph-15, it appears that the Tribunal has observed that since the Petitioner had already retired from his service in the meantime with effect from 30.09.2010 on attaining the age of superannuation during pendency of the Original Application and since show cause notice dated 25.07.2009 (Annexure-10) has been stayed by the Tribunal, as such the Petitioner has succeeded in non-imposition of the punishment of termination from his services prior to the date of his retirement. As such, the Disciplinary Authority will proceed with the disciplinary proceeding pending against the Petitioner as per Rule-7 of the OCS (Pension) Rules from the stage of earlier notice dated 25.02.2009 (Annexure-4), on issuing a fresh notice enclosing the report of the Inquiring Officer and reasons recorded by the Disciplinary Authority for differing with the findings of the Inquiring Officer. But fact remains, whether the Petitioner imposed with punishment or not that itself a matter to be adjudicated by the Competent Authority, which is not within the domain of the Tribunal and, as such, the same causes prejudice to the Petitioner, in view of the observation made by the Tribunal. More so, once the Tribunal has prima facie satisfied and quashed the notice dated 25.02.2009, consequential notice dated 21.04.2009 and the notice of show cause dated 25.07.2009, it requires a de novo proceeding against the Petitioner and to that extent the observation made by the Tribunal that Disciplinary Authority will proceed with the disciplinary proceeding pending against the Petitioner, as per Rule-7 of the OCS (Pension) Rules, is absolutely without jurisdiction. More so, the Tribunal has acted in excess of its jurisdiction by making such observation. As a

consequence thereof, the observation so made by the Tribunal in Paragraph-15 of the Order dated 10.09.2012 in O.A. No. 1706 of 2009, cannot sustain in the eye of law and is liable to be quashed and is hereby quashed, keeping the other observations made in the said Order in tact. Further, the subsequent direction given by the Tribunal in paragraph-16 of the Order dated 10.09.2012 fixing the time limit, is also depend upon the State-Authority. However, it is open to the Opposite Party-State Authorities to take necessary steps in accordance with law, if they are so advised.

8. With the aforesaid observation and direction, the Writ Petition stands disposed of.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Ashok/Padma

