

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 16286 of 2011

State of Orissa

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Petitioner

Mr. A.K. Mishra, A.G.A.

Vs.

Dr. Raja Rajeswari Devi and Others

.....

Opposite parties

Mr. K.B. Panda, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

11.04.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Govt. Advocate for the State-petitioner and Mr. K.B. Panda, learned counsel for the opposite parties.

3. The State-petitioner has filed this writ petition assailing the order dated 24.06.2010 passed by the Odisha Administrative Tribunal, Circuit Bench, Berhampur in O.A. No.32(B) of 2008 vide Annexure-3 holding that the penalty imposed on opposite party no.1 is not maintainable and wrong had been done to opposite party no.1 and that has been partly remedied by giving retrospective promotion to her. The tribunal further held that there was no reason not to give all monetary benefits to her from the date she was given promotion and accordingly, directed the petitioner to calculate and pay the pay and allowances of opposite party no.1 in accordance with the date of promotion already given to her at par with her junior within a period of four months.

4. The factual matrix, as revealed from the record, indicates that opposite party no.1, who was the applicant in the original application, has already retired from Govt. Services and during her

incumbency as Addl. District Medical Officer, Ganjam from 29.11.2000 to 19.07.2003, she was proceeded against, vide charge memo dated 13.09.2005, for alleged disobedience of order and dereliction in duty. She submitted her written statement of defence denying the charges against her. Thereafter, the CDMO and some staff joined together against her to deprive her of the post and promotion, though she was in no way responsible for the allegations leveled against her. Dr. A.K. Tripathy, Joint Director of Health and F.W. (Medical), Orissa was appointed as inquiry officer and he submitted enquiry report on 15.12.2006, after conducting enquiry in presence of the charged officer-opposite party no.1 and marshalling officer. In his detailed and analytical report, the inquiry officer found that the disobedience of Govt. order on the part of the delinquent officer did not arise. However as regards negligence in duty, he observed that the applicant delinquent officer should have supervised the accounts of users fees, which she had failed to do. At the same time, the inquiry officer gave a finding that opp. party no.1 was compelled to do so. Accordingly, the inquiry officer suggested that for the charges of dereliction in duty, opposite party no.1 might be exonerated and proceeding might be dropped. But the disciplinary authority, vide order dated 04.09.2007 imposed penalty of censure and stoppage of one annual increment without cumulative effect. However, opposite party no.1 was notionally promoted with effect from 02.01.2006 to the rank of junior administrative grade (Joint DHS, Level-II) vide order dated 22.01.2008 and she was also given another promotion to the next higher cadre notionally with effect from 20.03.2008 vide order dated 05.07.2008. As the inquiry

officer recommended for exoneration from charges, there was no reason for the disciplinary authority to impose penalty on opposite party no.1. If disciplinary authority differs from inquiry officer he has to give reasons for disagreement and his disagreement should be communicated to the delinquent officer calling upon her to submit the explanation. As it appears, such procedure has not been followed in the present case. On the other hand, opposite party no.1 was given promotion in time. She challenged the order of punishment before the tribunal. After hearing, the tribunal came to a conclusion that on the basis of enquiry report, one charge was not established, whereas the other charge was partly established. But the order does not speak which part of the charge was established, and that apart the reason of disagreement with the suggestion of the inquiry officer by the disciplinary authority was not communicated to opposite party no.1. On the contrary, notice containing proposed penalty was issued to opposite party no.1 by the disciplinary authority holding that both the charges were proved against opposite party no.1.

5. In *State Bank of Patiala Vrs. S.K. Sharma*, (1996) 3 SCC 364, the apex Court held that there may be certain procedural provision, which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. Thereby, once enquiry was conducted and the inquiry officer gave a finding, if the disciplinary authority for any reason disagreed with the finding of the enquiry officer, he has to pass reason order disagreeing with the finding of the inquiry officer calling upon the delinquent officer to give his reply. But without complying the procedural aspect in proper perspective,

steps were taken imposing penalty by the disciplinary authority. Thereby, the action of the disciplinary authority is hit by procedural irregularity committed while imposing penalty on opposite party no.1. As such, opposite party no.1 has been given promotion twice after initiation of proceeding and she has retired from government service long since.

6. In that view of the matter, this Court is not inclined to interfere with the order dated 26.06.2010 passed by the tribunal in O.A. No.32(B) of 2008. Accordingly, the writ petition merits no consideration and the same is dismissed.

Alok/Sukanta



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE