

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 13529 of 2016

Haripriya Meher

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Petitioner

Mr. S. Behera, Advocate

Vs.

***Commissioner-cum-Secretary to
Government and others***

.....

Opposite Parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

26.07.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. Behera, learned Counsel for the Petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel for the State.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 26.05.2016 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A. No. 1059 of 2015 and to direct Opposite Party No.3 to regularize her suspension period and release all the service benefits to the Petitioner.

4. It appears that the Petitioner, who was working as a Lady Supervisor, ICDS, Project, Khajuriapada was transferred to Daringibadi ICDS Project vide office order dated 26.06.2012 of the Collector, Kandhamal. She was relieved from Firingia on 06.07.2012 by the CDPO to enable her to join at Darnigibadi ICDS. But it is contended that she fell ill with effect from 06.07.2012 and submitted leave application before the competent authority with relevant

medical documents and subsequently extended the leave. But her leave prayer was rejected by the authority. The Collector, Kandhamal placed the Petitioner under suspension pending framing of charge against her. The order of suspension remained in force till 01.02.2013, on which date the Petitioner was reinstated in service. Though at the time of suspension, her headquarter was fixed at Daringibadi, but on reinstatement, she was posted at Khajuripada ICDS Project. However, the departmental proceeding continued on the charges of willful absence in Government duty, disobedience of order of the higher Authority and gross negligence in duty and she has been awarded punishment of stoppage of one increment without cumulative effect, the period from 06.07.2012 to 07.12.2012 was treated as leave due and admissible and the period of suspension from 08.12.2012 to 01.02.2013 was treated as such. She has taken a stand that the finding of the Inquiry Officer is based on no evidence. Though the Inquiry Officer found that as per the report of the DHH and SCB medical College & Hospital, she was not medically fit to join, but the Inquiring Officer held her guilty of willful negligence in not joining at Daringibadi. The further stand of the Petitioner is that some punishment which were not prescribed under OCS (CC&A) Rules, 1962 were awarded and the Appellate Authority has not assigned any reason while up-holding the punishment awarded by the Disciplinary Authority. Against that order, the Petitioner preferred Original Application before the Tribunal. The Tribunal disposed of the Original Application vide order dated 26.05.2016 by confirming the order of punishment against the Petitioner. Challenging such order, the Petitioner has filed the present Writ Petition.

5. Mr. Behera, learned Counsel for the Petitioner contended that

the order of imposition of penalty by the Disciplinary Authority, which has been affirmed by the Appellate Authority, cannot sustain in the eye of law as the same have been passed without following the Principle of Natural Justice. Therefore, he prayed for quashing of the said order. He further contended that the Tribunal without appreciating the fact in proper prospective, confirmed the order of punishment, which also cannot sustain.

6. Mr. S. Nayak, learned Additional Standing Counsel contended that the Petitioner being a responsible government servant has to adhere to the order passed by the authority with regard to the transfer and the order having not been complied with, the Authorities are competent to impose the order of punishment against the Petitioner. Thereby, the order so passed by the Tribunal is well justified and the same should not be interfered with.

7. Having heard learned Counsel for the parties and after going through the record, it appears that the Inquiry Report prepared by the Sub Collector, Kandhamal shows that proper procedure as envisaged in OCS (CC&A) Rules, 1962 has been followed on every stage and as such, the Petitioner was given opportunity to defend herself. But the 1st and 2nd show-cause notice under Rule-15 (10) of the OCS (CC&A) Rules, 1962 has been served on the Petitioner. So, there is no procedural mistake in conducting the Departmental Inquiry. The stand of the Petitioner that the finding of the Inquiring Officer is based on no evidence, has no leg to stand in view of the fact that she has not carried out the order passed by the Authority concerned. But so far as the illness is concerned, the stand taken by the Petitioner that she was certified by the DHH and SCB Medical College & Hospital

as not fit to join the duty, her non-joining in duty has not been considered by the Inquiring Officer. The Inquiring Officer has assigned the reason that as soon as she was reinstated and posted to Khajuriapada vide order dated 01.02.2013 of the Collector, Kandhamal, she woke up from illness and collected the said order and cancelled the leave applied for, till 07.02.2013 and after obtaining medical fitness certificate joined on 02.02.2013, which itself indicates that she intentionally avoided to work at Daringibadi and was trying for modification of the transfer order and after the same was modified, she joined. Therefore, this Court is of the considered view that once the employee did not carry out the order passed by the higher authority with regard to transfer, that itself amounts to disobedience of the order passed by the higher authority. As such, the imposition of penalty cannot be said to be illegal or arbitrary so as to cause interference by this Court at this stage.

8. In view of such position, this Court does not find any error apparent on the face of record so as to interfere with the same. Accordingly, the Writ Petition stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun