

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11051 of 2014

***Chief Secretary, Odisha,
Bhubaneswar & Anr.***

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Suresh Chandra Mishra

.....

Opposite Party

*Mr. A. Routray,
Advocate*

CORAM:

**DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO**

ORDER

31.03.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Govt. Advocate for the petitioners and Mr. A. Routray, learned counsel for the opposite party.

3. The petitioners have filed this writ petition challenging the order dated 16.04.2013 passed in O.A. No.3885(C) of 2010, by which State Administrative Tribunal, Cuttack Bench, Cuttack has quashed the punishment orders and restored all consequential benefits to the opposite party, who has already retired from service, within a period of three months.

4. Mr. A.K. Mishra, learned Additional Govt. Advocate for the petitioners contended that the opposite party, while working as Deputy Director (Marketing Intelligence), Food and Civil Supplies Department, was deputed to the Orissa State Civil Supplies Corporation as Manager, (Marketing), and joined there on 07.01.1981. He continued in the said post

till 25.09.1984. While he was so continuing, a disciplinary proceeding was initiated against him under Rule-17 of the OCS (CCA) Rules, 1962, vide order dated 10.09.1992, along with 20 others. As per letter dated 27.11.1992, he was allowed to inspect relevant documents, but, when he approached the concerned authorities, he was not allowed to peruse the relevant documents. He then requested the Superintendent of Police, Crime Branch as per letter dated 16.12.1992, for being allowed to inspect the relevant documents, but without any fruitful result. Even then in order dated 19.03.1994, the Secretary to Government in Revenue and Excise Department was appointed as the Inquiring Officer. The opposite party was directed to appear on 03.07.1995 for inquiry, but no inquiry was taken up on that day. However, again vide order dated 06.01.1997, the Secretary to Government, Food Supplies and Consumer Welfare Department, was appointed as the Inquiring Officer and the General Manager (PDS) of Orissa State Civil Supplies Corporation as the Marshalling Officer. The opposite party appeared again on 19.04.1997 as directed, but no inquiry was held. Subsequently, he appeared before the Inquiring Officer on 14.05.1997 and prayed for supply of records for his defence. He finally submitted the statement of defence on 15.03.2000 stating that as relevant documents had not been made available to him, he was unable to file his defence properly. However, the inquiry was fixed to subsequent dates and though the opposite party appeared on the said dates, no inquiry was conducted. The Inquiring Officer, who was thereafter transferred as Principal Secretary, Revenue Department, then submitted his inquiry

report on 17.01.2005 recommending that four annual increments of the opposite party may be withheld with cumulative effect and he may be censured. A show-cause notice was served with him vide letter dated 23.02.2005, to which he filed reply and finally represented against such inquiry report on 29.07.2005. He was then served with show-cause notice against proposed punishment of stoppage of four annual increments with cumulative effect and censure vide Secretary, Food Supplies and Consumer Welfare Department letter dated 31.05.2006. He replied to the said notice on 12.09.2006. The opposite party retired from service on 31.03.2009, but no decision had been taken in the departmental inquiry against him till that date. Since the borrowing authority, i.e. Orissa State Civil Supplies Corporation, had not requested the administrative department to initiate any such inquiry against the opposite party, the consequential proposed punishment so imposed cannot sustain in the eye of law and the same has to be quashed. Therefore, challenging the proposed penalty, the opposite party approached the Odisha Administrative Tribunal by filing O.A. No.3885(C) of 2010 and the tribunal, after receipt of the counter affidavit and rejoinder affidavit, came to a conclusion in paragraph-7 of the order dated 16.04.2013, which reads as follows:

“7. After perusing the available records and hearing the parties, it is apparent that the criminal case filed in the matter has since been acquitted as per judgment dated 16.5.2008 in GR case No.358 of 1989 in the court of SDJM(S) Cuttack. Moreover reasons for dropping the charges or withdrawing the charges against ten co-delinquents were never clarified despite repeated direction, but the applicant only has held guilty without any observation about the other co-delinquents in this joint inquiry report. The disciplinary proceeding file with record of day to day inquiry was also not

produced for examination to ascertain if procedure prescribed as per Rules 15 and 17 of the OCS (CC & A) Rules, 1962 and relevant orders in the matter have been followed. It has already been observed by this Tribunal in Paragraph 6 of order dated 31.10.2011 in O.A No. 46/2011 Maushik Bahan Sitha Vs. State of Orissa, that a joint inquiry under Rules 17 of the OCS (CC & A) Rules, 1962 against a retired employee is untenable as the juridical relationship between the employee and the employer ceases with retirement of the employee. The views of the OPSC have also not been communicated to the applicant and he allowed to show cause before imposition of punishment as per Rule 15(10) ii of the OCS (CC & A) Rules, 1962 and the quantum of punishment finally imposed is also excessively heavy and disproportionate to the charge against the applicant. In view of the aforesaid lacunae and other defects pointed out in the note of arguments in favour of the applicant, and particularly as the applicant has already been acquitted in the related criminal case against him, the disciplinary proceeding vide Memo No.29761/F & CS dated 10.09.1992 (Annexure -1), and the inquiry report dated 17.1.2005 (Annexure -7) are not tenable and as such stand quashed, along with the punishment orders. All consequential benefits be resorted to the applicant, who has already retired from service, within a period of three months from the date of receipt of these orders."

5. In view of such position, since the procedure as per the provision contained in OCS (CCA) Rules, 1962 was not followed and the quantum of punishment finally imposed was also excessively heavy and disproportionate to the charge against the opposite party, the tribunal quashed the same. In the meantime, the petitioner has retired from service. By virtue of interim order dated 16.07.2014 passed in Misc. Case No.9892 of 2014, the order of the tribunal has been stayed till disposal of the writ petition.

6. In that view of the matter, this Court is of the considered view that the tribunal has passed the reasoned order as mentioned above. Therefore, this Court does not find any error in the order dated 16.04.2013 passed by the State

Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.3885(C) of 2010 so as to cause warrant interference of this Court. Accordingly, the writ petition merits no consideration and the same is dismissed.

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(**DR. B.R. SARANGI**)
JUDGE

Alok/Sukanta

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(**SAVITRI RATHO**)
JUDGE

