A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.13253 of 2014

(Application under Articles-226 and 227 of the Constitution of India, 1950)

Prafulla Kumar Samal .... ***Petitioner***

-versus-

Chairman, Orissa Forest Development Corporation Limited & Others .... ***Opposite Parties***

For Petitioner : ***Mr. Sanjib Mohanty, Advocate.***

For Opposite Parties : ***Mr. C.A. Rao, Sr. Advocate for Opposite Party No.-1***
Mr. S.K. Behera, Advocate for Opposite Party No.2

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING :20.07.2022
DATE OF JUDGMENT :20.07.2022

V. Narasingh, J.

1. Petitioner was a field Assistant of Opposite Party-Corporation. Being aggrieved by the Order passed by the Appellate Authority dtd. 30.08.2013 at Annexure-19, confirming the order of dismissal passed by the Disciplinary Authority

(Divisional Manager, OFDC, Boudh (CKL) Division) dtd.13.02.2009 at Annexue-17 has preferred the present Writ Petition.

2. Learned counsel for the petitioner submits the petitioner who is an Orthopedically Handicapped person was appointed as a mate in Sambalpur Division in the year 1987 and in the year 1989 his services were regularized. He was subsequently promoted to the rank of Field Assistant. While working as Field Assistant the petitioner was transferred from Angul C.K.L Division to Boudh Division by order dtd.06.01.2006 (Annexure-3). It is contended by the learned counsel for the petitioner that taking into account his physical disability he ought not to have been transferred.

3. Be that as it may, the petitioner made a representation to the Authority on 19.01.2006 (Annexure-5) for cancellation of his order of transfer. As ill luck would have it pending such consideration the petitioner's mother passed away and the petitioner applied for leave and thereafter on account of his personal illness, the petitioner extended his leave and when the petitioner was undergoing treatment, by order dtd. 20.02.2006 at Annexure-10, he was unilaterally relieved from Angul and directed to join at his new place of posting i.e., Boudh.

4. It is submitted by the learned counsel for the petitioner, because of the compelling circumstances though he could not join his new place of posting. Yet, the Departmental Proceeding was initiated against him on 27.10.2006 for the following dereliction of duties;

(i) Disobedience of Order.

(ii) Unauthorized absence of duties.
(iii) Negligence in duties.
(iv) Gross misconduct by the petitioner.

5. It is submitted by the learned counsel for the petitioner that he is governed by the Service Rules of the Orissa Forest Corporation and Rule 124 thereof deals with the procedure for imposing major penalty which is attracted in the case at hand.

6. It is the contention of the learned counsel for the petitioner that no opportunity was given to the petitioner and acting in a high handed manner throwing all norms to the wind, the petitioner was dismissed from service and the appellate Authority without any application of mind confirmed that order as such the same warrants interference by this court.

7. Learned Senior Counsel Mr. Rao relying on the assertions in the Counter Affidavit and documents annexed thereto submits that adequate opportunity as envisaged under the Rules were given and it is because of the persistent attempt by the petitioner not to receive the notices, there was no alternative left with the Disciplinary Authority but to pass the impugned order.

8. It is further submitted that the Appellate Authority has dealt with each of the contentions raised by the petitioner as such there was no infirmity as alleged.

9. It is also the stand of the Opposite Party-corporation that that the inquiry being in the nature of fact finding one, it is not open for this Court to make a microscopic examination of the materials on record and the same being in the realm of factual dispute is beyond the scrutiny of the Court. More so, when at the

appellate stage, admittedly, opportunity was given to the petitioner including personal hearing and therefore the Writ Petition does not merits consideration of this Court.

To substantiate their stand the Opposite Party-Corporation relied on the following judgments:-

(a) Judgment of the Apex Court reported in **AIR 2000 SC 22, The High Court of Judicature at Bombay v. Shashikant S. Patil and another;**

> *"The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted . The settled legal position is that if there is some segal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for*

canvassing before the High Court in a writ petition filed under Article-226 of the Constitution. ”

(b) AIR 2011 Supreme Court 1931 State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya,

“6. *It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will whenever interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”*

(C) 2006 (Supp-I) OLR-288 Choudhury Niranjan Mohapatra vrs Andhra Bank and Others.

“14. *It is the settled principle of law that disciplinary authority is the sole judge of facts and where appeal is presented, the appellate authority has co-extensive power to appreciate the evidence or the nature of punishment. It is also the settled principle that normally the High Court and the Apex*

Court do not interfere with the finding of fact recorded at the domestic inquiry, but if the finding of guilt is based on no evidence, it would be a perverse finding that would be amenable to judicial scrutiny. A broad distinction has therefore to be maintained between the decision which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonble person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied on, however compendious it may be, the conclusion would not be treated as perverse and the finding would not be interfered with."

10. It is on record that, vide Annexure-3, dtd. 06.01.2006 an Office Order was passed by the Opposite Party –Corporation through the Chairman-cum-M.D. transferring Field Assistant from one Division to another. It is a composite transfer order relating to numbers of Field Assistant including the petitioner.

11. The name of the petitioner appears at Serial No. 11 and it is indicated that he is transferred from Angul to Boudh in such transfer order.

12. It is on record that, on account of sad demise of the mother of the petitioner, he had sought for leave and was initially granted such leave and later on he extended the leave under Letter dtd. 18.02.2006 at Annexure-8.

13. It is worth noting that the letter dtd. 18.02.2006 was addressed to the Sub-Divisional Manager, OFDC, Ltd., Panchamahala, Sub-Division, Angul. It was sent by Registered Post but for reasons best known the same was not accepted by the

addressee and such letter is at page-21 of the writ petition with the following endorsement;

"Addressee refused so return"

14. It is apt to state that by order dtd. 20.02.2006 at Annexure-10 referring to the order of transfer herein before adverted to the petitioner was unilaterally relieved and directed to join his new place of posting at Sub-Division, Boudh. For alleged, violation of such transfer order to Boudh as Field Assistant, the Disciplinary Proceeding in question was initiated.

15. At this stage, learned counsel for the petitioner places reliance on a communication issued by the General Manager, (A& B) at the level Head Office to Divisional Manager (CKL), OFDC, Ltd. Boudh Division relating to the Proceeding against the present petitioner.

16. In order to appreciate the tenor of the said letter the same is extracted hereunder;

"ORISSA Forest Development Corporation Limited
(A Government of Orissa Undertaking)
A/84, Kharvelnagar, Bhubaneswar-751 001
No.2625, Estt (F)/2/2007

Dated, Bhubaneswar the Feb, 2007.

To.
The Divisional Manager (CKL),
OFDC, Ltd, Boudh Division,

Sub: P.C. of Sri Prafulla Kumar Samal, Field Asst- un-authorized absence from duty.

Ref: Your letter No. 5254, dt. 28.10.2006 and this Office letter No. 2082 dt. 27.01.2007.

Dear Sir,

Enclosed, find herewith a copy of revised notice published in News Paper "PRAGATIBADI" at this level, which is self explanatory, you are directed to take follow-up action for termination on long absence of above named Field Assistant with disposal of Departmental Proceedings drawn-up against him and report compliance.

Yours Faithfully,
Sd/-
General Manager (A & P)

Encl:- As above"

On a bare perusal of the said letter , it can be seen that the Divisional Manager, OFDC Ltd, Boudh Division who admittedly is the Disciplinary Authority was mandated to take "follow up action for termination on long absence of above mentioned Field Assistant with disposal of Departmental Proceeding drawn up against him and report compliance".

17. Such action of the General Manager has been sought to be justified in the Counter in Paragraph-14 that the same is nothing but an administrative instruction.

18. There is no reply to the ex-facie direction issued to the Disciplinary Authority to take action for termination and disposal of Departmental Proceeding and report compliance as noted.

The silence of Corporation speaks volumes about the arbitrary manner in which the power has been exercised.

19. On going through the communication at Annexure-15 directing termination of petitioner even when the Departmental Proceeding is pending, this Court has no hesitation to hold that the authorities have signally failed in their duty to act fairly prejudging the issue even before the Disciplinary Proceeding has culminated and as a Subordinating Authority the Disciplinary Authority only went through the motion to comply with the direction as issued in Annexure-15.

20. It is also curious to note that in Paragraph-3 of the Counter, the authorities have tried to justify their stand stating that a notice was published in the Odia Daily **Prajatantra** dtd. 23.04.2009 intimating about the drawal of the Departmental Proceeding for convenience of ready reference, the same is extracted hereunder;

> *"Finally the opposite party was bound to publish a notice in the daily Odia news paper,* ***"The Prajatantra"*** *dtd. 23.04.2009 intimating about drawal of Departmental Proceeding as well as asking him to resume his duty and also to Co-operate with the Departmental Proceeding. But as petitioner did not respond either by joining at Boudh (C-KL) Division or by filing defence statement against the disciplinary proceeding, finding no other way the Disciplinary Authority had to finalize the Departmental proceeding ex-parte as per the documentary evidence available before him. "*

And it is submitted that since the petitioner did not resume his duty in spite of such notice, there was no option left with the Disciplinary Authority but to pass the impugned order.

21. This court had occasion to examine the paper publication which is annexed at Annexure-E at Page-56. On a bare perusal of the said notice it can been seen that the same is a post facto intimation of conclusion the Departmental Proceeding and in fact it is mentioned therein that the petitioner has been dismissed from OFDC services with effect from the date of issuance of the order and period of un-authorised absence from duty till the date of his dismissal treated as "no work no pay". Notice so published is extracted hereunder;

> *" NOTICE*
>
> *Sri Prafulla Kumar Samal earlier working as F.A. of Orissa Forest Dev. Corpn. Ltd. With present address At/Po: Arahat, Dist: Dhenkanal in Boudh (C-KL)Division and been unauthorisedly absent without joining duties with effect from 21.02.06 is hereby informed that on disposal of Departmental Proceeding by the Divisional manager, Boudh (C-KL) Division vide o.o. No.55 dt. 13.02.2009 that "he is dismissed from O.F.D.C. services with effect from the date of issuance of order" and " the period of unauthorized absence from duty till the date of his dismissal is treated as " No work no pay". He is also informed to received his orders from the office of Divisional Manager, OFDC Ltd., Boudh (C-KL) Division on any working day.*
>
> *Sd/- MANAGING DIRECTOR "*

22. The recitals in the counter coupled with the annexure is a testimony of the lackadaisical approach of the authorities to try and justify the unjustified.

23. Regarding notice to the petitioner in compliance with the Provision contained in Rule- 124 of the Service Rule, nothing is placed on record that the notices were ever served on the

petitioner. It is vaguely justified by the Corporation that since the petitioner refused to accept the notices, there was no other option left with the corporation but to proceed with the inquiry ex-parte and it is submitted that since the petitioner was given post decisional hearing at the appellate stage, he cannot complain of any prejudice.

24. The order of the Appellate Authority is at Annexure-19. The facts relating to delinquency of the petitioner under the heading "facts" has been noted as under by the Appellate Authority;

"The appellant was informed through paper publication in Daily Odia News Paper "Pragatibadi" dtd. 18.01.2007 to resume duty immediately failing which follow up action will be taken against him as deemed proper.

In spite of all the above efforts taken by the Disciplinary authority, D.M., OFDC Ltd., Boudh (C-kl) Division & D.M., OFDC Ltd., Angul Division, the appellant has neither joined in his duty nor cooperated in the enquiry. Hence the Disciplinary Authority has taken Ex-Parte decision on the basis of documentary and circumstantial evidence to meet the ends of justice vide O.O. No. 55 Dt. 13.02.2009 with the following punishment.

(1) The delinquent Sri Prafulla Kumar Samal, F.A. is dismissed from OFDC Service with effect from the date of issue of this order.

(2) The period of unauthorized absence from duty till the date of his dismissal from OFDC Service is treated as "No work no Pay". "

25. The paper publication in Odia daily newspaper "Pragatibadi" dtd. 18.01.2007 adverted to by the Appellate Authority under the heading the facts above is not on record nor any explanation could be submitted by the learned Senior Counsel appearing for the Corporation as to why the same was not placed on record, though the same has a great bearing on the point at issue regarding violation of natural justice. And, because of such non-submission of the paper publication as referred to above, no option is left with this Court but to draw adverse inference and negate the contention of the Opposite Party-Corporation that the petitioner was informed by paper publication.

26. The finding of the Appellate Authority hence was clouded by erroneous assertions regarding following of principle of natural justice which is ex-facie contrary to the materials on record.

27. One of the specific grounds of appeal was that no opportunity was given to the delinquent-petitioner to defend his charges before issuance of the ex-parte order and in the comments of the Disciplinary Authority, Paragraph-8 thereof, it has been stated as under;

> "He did not even submit his defence statement even though D.P. drawal was published in the News paper"

The Appellate Authority taking note of the finding of the Disciplinary Authority in their response in Para-8 as quoted above reiterated that,

"The appellant was also informed through Odia News Paper 'Pragatibadi' dt. 18.01.2007 (copy of letter no. 2625 dt. 05.02.2007 of Head office enclosed as Annexure-H & H1) that the Disciplinary Authority shall dispose the Disciplinary Proceeding ex-parte for unauthorized long absence beyond 11 months after 15 days of publication on failure of the appellant to resume in his duty with OFDC Ltd. at Boudh (C-KL) Division.

In spite of the above News paper publication also, the appellant did not join in his duty"

28. As already stated the paper publication in Odia daily newspaper 'Pragatibadi' dtd. 18.01.2007 is not on record and the Head Office Letter No. 2625 dtd. 05.02.2007 as referred to by the Appellate Authority quoted hereinbefore, clearly in no uncertain terms establishes that Disciplinary Authority was directed **"to take follow up action for termination on long absence of the above named Field Assistant with disposal of the Departmental Proceeding drawn on against him and report compliance. "**

29. In fact, the only paper publication which is on record and quoted above falsifies the assertion of the authorities that the petitioner was ever intimated regarding the drawal of D.P.

30. It is apt to note that the Corporation has taken prevaricating stand before this Court in the Counter Affidavit regarding the paper publication in as much as while in Pargraph-3,

while replying to Paragraph-1 of the Writ Application it is stated thus.

> "Finally the opposite party was hound to publish a notice in the daily Odia news paper, "The Prajatantra' dt. 23.04.2009 intimating about drawal of Departmental Proceeding as well as asking him to resume his duty and also to Co-operate with the Departmental proceeding. But the petitioner did not respond either by joining at Boudh (C-KL) Division or by filing defence statement against the disciplinary proceeding. Finding no other way the Disciplinary Authority had finalized the Departmental proceeding on ex-parte basis as per the documentary evidence available before him."

Whereas in Paragraph-17, it is stated that the paper publication is an intimation of dismissal.

31. Learned Senior Counsel Mr. Rao for the Corporation submitted that because of the post decisional hearing at the appellate stage including personal hearing the stand of the petitioner that he did not have adequate opportunity to defend himself is thoroughly misconceived in as much as it cannot be said that any prejudice has been caused to the petitioner.

32. Such submission of the learned counsel for the Corporation does not stand to reason in as much as it is the settled position of law that post decisional hearing at the Appellate stage in a case at this nature can never subserve the principles of natural justice.

In this context this Court relies on the judgments of the Apex Court in the case of (1989) 1 SCC 764 (H.L. Trehan and

Others Vs. Union of India and Others), (1987) 4 SCC 431 (K.I. Shephard & Others Vs. Union of India) and (2007) 1 SCC 331 (Shekhar Ghosh Union of India).

In the case of H.L. Tehran & others v. Union of India (1989) 1 SCC 764 in para-12 & 13 therein, the Apex Court observed as follows;

> **x x x x x "12**. *It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard v. Union of India. What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose service were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows: (SCC pp. 448-49, para 16)*

We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action.

It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

13. *The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular***." x x x x x**

In the case of K.I. Shephard & Others Vs. Union of India (1987) 4 SCC 431 in para-16, the Apex Court has held as under;

> x x x x x ***"16.*** *We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.***"x x x x x**

In Shekhar Ghosh v. Union of India reported in (2007) 1 SCC 331 the Apex Court held as follows;

> **x x x x x** ***"14.*** *A post decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not*

contemplated in law. The result of such hearing was a foregone conclusion.

15. *In K.I. Shephard v. Union of India this Court opined:(SCC p.449, para 16)*

"It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

23. *In this case, the respondents accept that the appellant was entitled to a hearing. All the necessary ingredients of principles of natural justice were thus required to be complied with. The appellant as noticed hereinbefore had not been given adequate opportunity of hearing inasmuch as: (i) the hearing was sought to be given was a post-decisional one, which is bad in law; (ii) a copy of the complaint was not supplied to the appellant at furtherance if not proposed that a mistake was sought to be rectified; (iii) no charges were framed; (iv) no witness was examined; and (v) no inquiry officer arrived at any finding that the appellant was guilty of the charges levelled against him."* **x x x x x**

Evaluated on the scale of the judgments referred to hereinabove this Court is of the considered view that the judgment cited by the corporation in the cases of ***Shashikant S. Patil, Nemi Chand Nalwaya and Andhra Bank (Supra)***, have no application in the present case since in none of those cases there has been gross violation of principles of natural justice as in the case at hand.

33. Law relating to power of this Court to interfere with a order passed by the Disciplinary Authority has been well set out in the following judgments.

B.C. Chaturvedi Vs. Union of India (1995) 6 SCC 749, *Union of India Vrs. Ex-Constable Ram Karan (2022) 1 SCC 373*, *Pravin Kumar Vrs. Union of India and Others (2020)9 SCC 471* and in the case of *Union of India and Others vrs. Mangobinda Samantary 2022 SCC OnLine SC 284,*

The Apex Court in the case of Union of India v. Managobinda Samantaray 2022 SCC online SC 284 in Para-9 has observed as under;

> **x x x x x "Para-9.** *Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of quantum of punishment these*

aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate
B.C. Chaturvedi v. Union of india, (1995) 6 SCC 749
Pravin Kumar v. Union of India, (2020) 9 SCC 471
Chairman-cum-Managing Director, Coal india Ltd. & Another v. Mukul Kumar Choudhuri & Others, (2009) 15 SCC 620.” ***x x x x x***

34. There is no cavil that the Courts “will not act as an Appellate Court and re-assess the evidence laid in domestic inquiry.”. But at the same time it has to be borne in mind that the Courts are not supposed to close their eyes where violation of principle of natural justice is tell tale and the decision making process as in the present case is tainted with prejudice resulting in the impugned orders of the Disciplinary Authority as well as the Appellate Authority dismissing the petitioner from service. For which, this Court is persuaded to quash the orders of Disciplinary Authority and Appellate Authority at Annexures-17 & 19 respectively.

35. The next question which confronts this Court is to whether to direct for denovo inquiry as is the norm as submitted by the learned senior counsel for the Corporation or treat the case at hand as an exceptional one and pass consequential orders.

36. The manner in which the Disciplinary Authority was directed to ensure for termination of the delinquent petitioner in pending departmental enquiry and report compliance thereof and coupled with the prevaricating stand of the authorities relating to intimation regarding the departmental proceeding to the petitioner which resulted in the exparte order shocks the conscience of this Court for which this Court is impelled to depart from the normal course of directing for denovo inquiry.

37. The petitioner has joined the organization in 1987. learned counsel for the petitioner has filed a memo indicating that his date of birth is 01.04.1958 would have retired on completion of the age of superannuation in the year 2018 (30.04.2018). The Departmental Proceeding was initiated after about 19 years and for alleged non-joining at the new place of posting. The petitioner was placed under suspension and ultimately the order of dismissal at Annexure-17 was passed on 13.02.2009 and affirmed by the Appellate Authority (Annexre-19).

38. The period of unauthorized absence from duty till the date of dismissal treated as 'no work no pay' is shockingly dis-proportionate. And, on this aspect the Court respectfully relies on the judgment of the Apex Court in the Case of ***India and Others vrs. Mangobinda Samantary (Supra).***

39. Keeping in view the arbitrary nature in which the power was exercised by the authority in terminating the petitioner in a prejudged manner and taking into account the normal age of superannuation of the petitioner i.e., 30.04.2018, this Court directs that the petitioner shall be entitled to 50% of the back wages for such

period he could not work because of the impugned order of dismissal affirmed by the Appellate Authority.

40. And, the entirety of the period of unauthorized absence which culminated in the order of dismissal shall count towards grant of terminal benefits, as due and admissible.

41. The petitioner be paid his emoluments as per his entitlement within a period of six months from the date of production/receipt of copy of this judgment.

In the result, the Writ Petition is allowed and there shall be no order as to cost.

(V.Narasingh)

Judge

Orissa High Court, Cuttack,
Dated the 20th of July, 2022/Balaram

HIGH COURT
ORISSA