

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4858 of 2006

Sri Pramod Kumar Bastia

....

Petitioner

Mr. B.K. Biswal, Advocate

-Versus-

Union of India and others

....

Opp. Parties

Ms. Babita Sahu, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

05.01.2022

Order No.

06.

R.K. Pattnaik, J.

1. The writ application is filed by the Petitioner challenging the impugned order dated 21st February, 2005 passed in O.A. No.1309 of 2003 by the Central Administrative Tribunal, Cuttack Bench, Cuttack (herein after referred to as, 'the CAT') and also the action of the OPs in dismissing him from service by order dated 8th November, 2001 under Annexure-12 on the grounds stated therein.

2. As per the contention, the Petitioner passed out HSC Examination in the year 1992 and got himself registered at Employment Exchange, Khurda (EEK) on 10th November, 1993 and in the meantime, OP No.3 vide Notification dated 1st November, 1993 (Annexure-1) moved the EEK to sponsor names of the candidates to fill up the vacancies of adhoc Peon having minimum educational qualification of ME (Class-VII), in response to which, he along with other candidates were sponsored, who,

thereafter, faced interview before the Selection Board (SB) and accordingly, after having been selected, the Deputy Regional Director issued appointment order dated 28th February, 1994 (Annexure-2). It is contended by the Petitioner that after joining in the Corporation, by order dated 24th June, 1998 of the Regional Office, Orissa, he was placed under suspension in contemplation of a disciplinary proceeding against him and subsequently, OP No.3 filed the charge sheet in terms of Regulation 14 of the ESIC (Staff & Conditions of Service) Regulation, 1959 (in short, 'Regulation, 1959') with the allegation that he managed to secure employment by getting himself registered with EEK as a non-matriculate to facilitate sponsoring of his candidature to the office of OP No.3 by suppressing the fact that he had already passed the HSC Examination under the Board of Secondary Education, Orissa in the year 1992 and thereafter, manipulated the records of the EEK as well as the Regional Office, ESIC, Bhubaneswar with an ulterior motive to cover up his own misdeeds and also with a view to avail promotion to the post of LDC in future for being a matriculate.

3. As is made to appear from the record, with such allegations, the Petitioner was asked to submit a written statement of defence by 13th January, 1999, where after, he submitted a representation (Annexure-6) with a request to supply relevant documents to defend the enquiry. In course of enquiry, as is made to suggest, the Petitioner was asked to nominate a Defence Assistant (DA), who was, accordingly, engaged but since was indisposed of, the enquiry was concluded without his participation. Further made to reveal that the enquiry report was submitted and thereafter, OP No.3

supplied a copy of the same to the Petitioner to show cause which was responded but then the defence was not accepted and finally, a punishment of dismissal from service was imposed vide Annexure-12. As against the order of dismissal, the Petitioner preferred an appeal before OP No.2 but it was in vein, as the dismissal was upheld under Annexure-14 and being aggrieved, a further appeal was carried before OP No.1 but it again yielded no result, as was rejected vide Annexure-15.

4. It is contended that the authorities concerned could not have directed dismissal which was finally challenged before the CAT in OA No.1309 of 2003 for a direction to reinstate the Petitioner in service with all consequential benefits on the ground that the misconduct could not be substantiated but it too declined to intervene for the reason that there was an elaborate enquiry held and ample opportunity was provided to him ignoring the fact that relevant documents were not supplied and examination of witnesses was held in his absence which amounted to denial of reasonable opportunity of hearing. In other words, the Petitioner claims that the CAT disposed of the OA without touching upon the merits of the case.

5. Learned counsel for the Petitioner contended that the enquiry was accomplished ex-parte even in absence of the DA, who was indisposed of and had requested the IO to adjourn the enquiry but then, the Petitioner was left with an option to change the DA, however, in absence of any defence, the enquiry was proceeded and concluded without examination of material witnesses, such as, the Headmaster of the concerned school and Chairman of the Selection

Board and hence, the entire proceeding was vitiated. It is further contended that the CAT did not examine the materials on record in order to find out the legality of the dismissal order with the conclusion that an elaborate process of enquiry was followed with ample opportunity to defend was provided to the Petitioner. It is lastly contended that the impugned order under Annexure-16 should, therefore, be set aside with a direction to the OPs to reinstate the Petitioner in service with all consequential benefits.

6. Heard learned counsel for the OPs.

7. Perused the final order (Annexure-12) dated 8th November, 2001 passed by OP No.3. A detailed enquiry was held with regard to the charges leveled against the Petitioner. In fact, specific charges were framed which consisted of two parts, firstly, the Petitioner got himself registered with EEK as a Class-IX passed candidate to facilitate sponsoring for recruitment to the post of Peon suppressing the fact that he had already passed the HSC Examination; and secondly, he manipulated the records maintained at the RO, ESIC, Bhubaneswar and also EEK and altered his educational qualification with an oblique motive to put in place the certificate regarding HSC Examination so as to avail service benefits in future. It is made to understand that a preliminary investigation was conducted on the basis of anonymous complaints received by the Vigilance Department, during and in course of which, the relevant records of the EEK were verified, which revealed that the Petitioner stated to have shown his qualification as non-matriculate, which according to the OPs was with an intention to get himself sponsored by the EEK. In fact, Annexure-12 does

reveal that in course of enquiry, material witnesses were examined and also the documents exhibited in support of the charges framed against the Petitioner and ultimately, the findings of the enquiry were held as proved. The Petitioner was provided an opportunity to defend the charges. Even a DA was engaged by the Petitioner himself though he subsequently did not participate for the reasons claimed. But then, the Petitioner was provided an opportunity to take assistance of an official of the establishment as DA but the same was not availed. In course of enquiry, the material witnesses were examined so also all the necessary documents relating to the records maintained at the EEK and the RO, ESIC, Bhubaneswar exhibited during the enquiry. Even a copy of the enquiry report was furnished to the Petitioner to which a representation was submitted. Thereafter, OP No.3 considered the representation but confirmed the findings of the enquiry. The details of the witnesses examined and documents exhibited stand reflected in Annexure-12. The fact of anonymous complaints and related enquiry by the Vigilance Department and revelation regarding the alleged mischief has been taken cognizance of by the authorities concerned, while upholding the charges proved in enquiry and confirmed in appeals. The CAT though independently did not examine the materials on record but then, upheld the decision of dismissal from service since an elaborate process of enquiry was followed with adequate opportunity being provided to the Petitioner with an observation that he was unnecessarily placed under suspension as per the provisions of the Regulation, 1959, as if a regular employee against the fact that his appointment was purely on temporary/ adhoc basis.

8. Notwithstanding the fact that the enquiry was held ex- parte but since, the Petitioner had the opportunity to defend before OP No.3 after being supplied with a copy of enquiry report and since all the material witnesses and relevant documents were gone through and meticulously examined during enquiry and keeping in view the fact that even the authority concerned did take notice of the fact that an investigation was conducted by the Vigilance Department pursuant to anonymous complaints received by them and considering the fact that the charges to be grievous in nature as the Petitioner suppressed his education qualification for being sponsored and not only that, manipulated the records maintained at EEK as well as ESIC, Bhubaneswar, which stood proved during enquiry, the Court is of the view that no interference is called for vis-a-vis the impugned order under Annexure-16 which confirmed the final order of dismissal passed by OP No.3 vide Annexure-12.

9. Hence, it is ordered.

10. In the result, the writ application filed by the Petitioner stands dismissed for the reasons discussed herein above.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice