

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6685 of 2012

Prahallad Tripathy

.....

Petitioner

Mr. L. Pradhan, Adv.

Vs.

State of Orissa and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

27.06.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. L. Pradhan, learned counsel for the Petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate.

3. The Petitioner has filed this writ petition seeking to quash the order of punishment imposed by the disciplinary authority vide Annexure-5 dated 28.11.1991 reducing his pay to the minimum of the scale of pay, the entire misappropriated amount of Rs.18,889.70 be recovered from him in suitable installments, 50% of the amount of loss caused to Government i.e., Rs.26,421.35/2=Rs.13,210.67 or Rs.13,211/- be recovered from him and the period of suspension be treated as such, which was confirmed in appeal vide Annexure-6 dated 04.04.2002. But the order was modified by the tribunal vide order dated 07.02.2012 in O.A. No. 1335 of 2003 to the extent of quashing of recovery of Rs.18,889.70 and also recovery of Rs.13,211/- was also modified to the extent that recovery shall be confined to Rs.3580/- in accordance with the findings of the inquiring officer, as the petitioner was found responsible for losses to the Government upto the said amount only. As regards the punishment of reduction to the lowest scale of pay and treating the period of suspension as such, the tribunal did not feel inclined to interfere with the same, as the disciplinary authority has imposed such punishment after

duly conducting inquiry and the punishment is within its competence.

4. Mr. L. Pradhan, learned counsel for the Petitioner contended that the Petitioner while continuing as forester at Dunguripali Social Forestry Section under Dunguripali Social Forestry Range limits of erstwhile Social Forestry Project Division, Bolangir, was entrusted to execute some departmental field works in Dunguripali Section. Due to some irregularity, he was placed under suspension on 26.10.1989 to 24.07.1991 and, as such, a disciplinary proceeding was initiated against him, vide order dated 08.02.1990, by the Deputy Director, Social Forestry Project Division. Consequentially, inquiry was conducted where the Petitioner was found to be guilty and accordingly charge memo was issued to him for misappropriation of government money to a tune of Rs.15,211/-, gross negligence in duty causing loss to government in respect of item nos.1, 2 and 3 of the charge sheet and technical incapability in respect of item nos.1, 2 and 3 of the charge sheet. On the basis of such memorandum of charge, the Petitioner gave reply on 12.03.1990. Thereafter, during pendency of the departmental proceeding, the Petitioner was reinstated in service in the former post, vide office order dated 09.07.1991. After the inquiry report was submitted by the Enquiring Officer, the Disciplinary Authority by affording opportunity of hearing to the Petitioner, imposed punishment on the petitioner on 03.12.1990. Aggrieved by the said order, the Petitioner preferred appeal, which was confirmed by the Appellate Authority, vide order dated 04.05.2002. Thereafter, challenging the order passed by the Disciplinary Authority as well as Appellate Authority, the Petitioner approached the tribunal by filing O.A. No. 1335 of 2003, which was disposed of, vide order dated 07.02.2012, and the

order of punishment imposed by the Disciplinary Authority, which was confirmed by the Appellate Authority, was modified by the tribunal directing the Opposite Parties to recover an amount of Rs.3580/- in accordance with the findings of the Inquiring Officer, as the Petitioner was found responsible for losses to the Government upto the said amount only. But the tribunal confirmed the punishment of reduction to the lowest scale of pay and treating the period of suspension as such, as the last charge of loss to Government was proved. It is contended that after reinstatement of the Petitioner in service, he was promoted to the post of Deputy Ranger and, as such, on attaining the age of superannuation, the Petitioner was also retired from service as a Deputy Ranger. But till date he has not been paid his retiral benefits as due and admissible to him. Therefore, he has approached this Court by filing the present Writ Petition. To substantiate his contention, he has relied upon the judgment of the apex Court in the case of ***Bhagat Ram v. State of H.P.***, AIR 1983 SC 454.

5. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-Opposite Parties contended that since the charges levelled against the Petitioner have been proved, the tribunal has not committed any illegality or irregularity in confirming the order of punishment imposed by the Disciplinary Authority. So far as reduction of lowest scale of pay and treating the period of suspension as such is concerned, on the basis of calculation of recovery of Rs.18,889.70, direction was given to recover Rs.3580/- as against the direction given for recovery of Rs.13,211/-, as the Petitioner is liable to pay that amount. Thereby, the tribunal has not committed any illegality or irregularity so as to cause interference with the same.

6. Having heard learned counsel for the parties and after going

through the records, this Court finds that the Petitioner was visited with the punishment of reduction of scale of pay imposed by the Disciplinary Authority, treating the period of suspension as such and also recovery of an amount of Rs.3580/-, as modified by the tribunal. So far as the finding of Inquiring Officer is concerned, this Court is not sitting as an Appellate Authority over the order passed by the Disciplinary Authority as well as the Appellate Authority. As such, this Court is not inclined to modify any findings arrived at by the Inquiring Officer, as the same has been confirmed by the Appellate Authority. But as regards, the order of punishment, which has been imposed, reducing to the lower scale of pay and treating the period of suspension as such, as last charge of loss to Government has been proved against the Petitioner, learned counsel for the Petitioner contended that in view of the judgment of the apex Court in the case of **Bhagat Ram** (supra), wherein it has been held that in a petition under Article 226, the High Court does not function as a Court of appeal over the findings of Disciplinary Authority. But where the finding is utterly perverse, the Court can interfere with the punishment imposed by the authority. By so saying, the apex Court held that keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty withholding his increments with future effect will meet the ends of justice. Accordingly, it was directed that two increments with future effect of the appellant was withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement. It is contended that applying the same principles to the present context, since after joining, the case of the Petitioner was considered for promotion and he was permitted to retire in the promotional post of Deputy Ranger, taking a pragmatic view the punishment of reduction to

the lowest scale of pay should be modified and it should be awarded to some punishment befitting to his misconduct which was arrived at by the Inquiring Officer. Admittedly, the punishment imposed to recover an amount of Rs.13,211/- was modified by the tribunal to the extent of recovery of Rs.3580/- only in accordance with the findings of the Inquiring Officer, as the Petitioner was found responsible for losses to the Government amount. Thereby, if the Petitioner will be punished for reduction to the lowest scale of pay, it will grossly disproportionate to the amount of misconduct done by him. Therefore, taking into consideration the fact that the Petitioner was promoted to the post of Deputy Ranger after he was reinstated in service and was retired from service in the promotional post, the order of punishment was modified to the extent that there shall be stoppage of two increments without cumulative effect and all other charges remained as it is. Needless to say that the period of suspension remained as such. The Opposite Parties are directed to compute the financial benefits as due and admissible to the Petitioner and pay his retiral dues, if the same has not yet been disbursed, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this order.

7. With the above modification of the order of the tribunal, the Writ Petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/PCD

(S.K. MISHRA)
JUDGE