

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 22615 of 2013

And

W.P.(C) No. 29317 of 2013

W.P (C) No. 22615 of 2013

Prasanta Kumar Pradhan

.....

Petitioner

Mr. S.B. Mohaty, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Mr. B.P. Tripathy, AGA

W.P.(C) No. 29317 of 2013

Sangram Keshari Nayak

.....

Petitioner

Mr. B. Routray, Sr. Adv. along with

Mr. S.D. Routray, Adv.

Vs.

State of Odisha and others

.....

Opposite parties

Mr. B.P. Tripathy, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

20.04.2022

Order No.

26.

This matter is taken up through hybrid mode.

2. Heard Mr. S.B. Mohanty, learned counsel for the petitioner in W.P.(C) No. 22615 of 2013; Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner in W.P.(C) No. 29317 of 2013; and Mr. B.P. Tripathy, learned Addl. Government Advocate.

3. These two writ petitions have been filed challenging the common order dated 15.03.2013 passed in O.A. No. 1151 of 2010 and O.A. No. 1048 of 2010, by which the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar dismissed the original applications filed by the petitioners.

4. As it appears, in a similar circumstances, one of the co-

accused namely, Jagdish Prasad Singh had filed O.A. No. 3476 of 2010 and the Division Bench of the tribunal, vide order dated 28.02.2017, allowed the original application. A copy of the said order has been placed on record at Annexure-7, by way of additional affidavit, in W.P.(C) No. 29137 of 2013. As such, in the said case the tribunal taking note of the order passed by the Division Bench of the tribunal in O.A. No. 1151 of 2010 and O.A. No. 1048 of 2010 observed that that Division Bench decision in O.A. No. 1151 of 2010 and O.A. No. 1048 of 2010, which had been decided analogously, is a cryptic order where only the judgment of the apex court in Union Territory, Chandigarh v. Mahendra Singh, AIR 1997 SC 1201 had been cited and, thus, the Division Bench, which was hearing the matter in Jagdish Prasad Singh case, could not appreciate the said order, as the facts of those original applications and the decision cited above were not with them. The tribunal, by holding further that the disciplinary authority has wrongly applied Article 311 (2) (b) of the Constitution of India so also 828(a) PMR and that there was gross violation principles of natural justice and the petition Jagdish Prasad Singh has already been acquitted honorably on no evidence, quashed the order of dismissal.

5. At the outset, Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the opposite parties contended that there is gross judicial indiscipline in the Odisha Administrative Tribunal, where one coordinate Bench has passed a different order than that of the other one. It is contended that even though the subsequent coordinate Bench has taken note of the order of the earlier Division Bench, but instead of examining the records and sending the matter to a larger bench, decided the same in favour of the petitioner therein. Thereby, on the basis of such gross impropriety, the order so passed by the earlier Division Bench of the tribunal, which

has been referred in paragraph -12 of the order dated 28.02.2017 passed in O.A. No. 3476 of 2010, should be quashed.

6. Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner in W.P.(C) No. 29317 of 2013 and Mr. S.B. Mohanty, learned counsel for the petitioner in W.P.(C) No. 22615 of 2013 unequivocally contended that three petitioners, namely, Prasant Kumar Pradhan, Sangram Keshari Nayak and Jagadish Prasad Singh were accused in a criminal case, i.e., G.R. Case No. 622 of 2010 (Trial No. 953 of 2011), from which they got acquitted honorably, vide order dated 05.08.2011. Against those three accused persons, departmental proceedings were initiated and they challenged such departmental proceedings by filing separate original applications. In two original applications, by hearing analogously, a different view was taken, whereas in other case, the departmental proceeding was quashed and such order of the tribunal has been implemented by the authority, vide order dated 28.10.2017, a copy of which has been placed on record by way of additional affidavit by the petitioner in W.P.(C) No. 22615 of 2013. Thereby, the contention raised by learned Addl. Government Advocate cannot have any justification, in view of the fact that the petitioners in two writ petitions, i.e. W.P.(C) No.22615 of 2013 and W.P.(C) No. 29317 of 2013 stand on the same footing with that of petitioner in O.A. No. 3476 of 2010. Thus, it is contended that the benefit, which was given to Jagadish Prasad Singh, the petitioner in O.A. No. 3476 of 2010, should have been given to the petitioners by reinstating them.

7. Having heard Mr. S.B. Mohanty, learned counsel for the petitioner in W.P.(C) No. 22615 of 2013; Mr. B. Routray, learned Senior Counsel appearing along with Mr. S.D. Routray, learned counsel for the petitioner in W.P.(C) No. 29317 of 2013; and Mr.

B.P. Tripathy, learned Addl. Government Advocate and after going through the records, this Court finds that three persons, namely, Prasant Kumar Pradhan, Sangram Keshari Nayak and Jagadish Prasad Singh were accused in a criminal case, i.e., G.R. Case No. 622 of 2010 (Trial No. 953 of 2011) and they have been acquitted honorably, vide order dated 05.08.2011, of offence under Sections 392/120(b) IPC and Section 27 of Arms Act. As such, against the three accused persons, departmental proceedings were initiated by the authorities and the same were challenged by them by filing separate original applications before the tribunal, i.e., O.A. No.1151 of 2010 by Prasant Kumar Pradhan, O.A. No. 1048 of 2010 by Sangram Keshari Nayak and O.A. No. 3476 of 2010 by Jagadish Prasad Singh. So far as O.A. No.1151 of 2010 and O.A. No. 1048 of 2010 are concerned, the same are the subject matter of challenge in these writ petitions, as because the tribunal, vide order dated 15.03.2013, has passed the following orders:-

“In view of the settled position of law in the case of Union Territory, Chandigarh and others – Vrs. Mohinder Singh, reported in AIR 1997 SC 1201, justifying recourse to Article 311, clause 2(b) of the Indian Constitution and as the applicants are similarly placed being Police Officers against whom members of the public would not be willing to depose fearing harassment, we see no reason to interfere with order no.425/CP-Personnel dt 8.5.2010 dismissing the applicants as per Article 311(2) (b) of the Indian Constitution without recourse to any disciplinary proceeding inquiry against them.”

But, in O.A. No. 3476 of 2010, the tribunal vide order dated 28.02.2017 passed following orders:-

“12. Even though the respondent in their respondents in their reply to the rejoinder of the applicant has mentioned the case of Union Territory, Chandigarh and others- Vrs - Mahendra Singh reported in AIR,1997 S.C 1201,but the said judgment has not been cited by the respondents and the copy of thereof not produced before us. The Division bench decision of O.A.1448/10 and 1151/10 which has been

decided analogously is a cryptic order, where only Mahendra Singh case has been cited and therefore, we are unable to appreciate the said order as the facts of those O.A.s and the above cited decision are not before us.

13. In the instant case under consideration the Disciplinary authority has wrongly applied Art.311 (2) (b) of the Constitution of India and so also 828(a) of PMR. There is gross violation of the principle of natural justice as no show cause notice was given to the applicant before his dismissal. The applicant has been honorably acquitted as the acquittal order is passed on no evidence. Hence, the dismissal order as at Annexure-3 cannot stand to the scrutiny of law and liable to quashed and accordingly quashed.

14. The applicant be reinstated in service within two months from the date of receipt of a copy of this order provided he is no more involved in any other criminal case after the said dismissal order dtd 22.6.10. The applicant will not be entitled to financial benefits from the date of dismissal till his reinstatement, but he will be entitled for pay fixation notionally with all consequential service benefits."

8. In view of the aforesaid order passed by the tribunal in O.A. No. 1151 of 2010 and O.A. No. 1048 of 2010, the present writ petitions have been filed by the respective petitioners, whereas in O.A. No. 3476 of 2010 the tribunal, vide order dated 28.02.2017, quashed the order of dismissal passed by the authority and, as such, the said order has been given effect to by the authority by passing the order of reinstatement of the petitioner therein on 28.10.2017, a copy of which has been placed on record by way of additional affidavit filed in W.P.(C) No. 22615 of 2013.

9. Mr. B.P. Tripathy, learned Addl. Government Advocate argued with vehemence contending that if one wrong was committed by the tribunal by quashing the order of dismissal, the same should not be allowed to commit again by passing similar order in favour the petitioners. But fact remains, if three persons were accused in one G.R. case and all of them having been acquitted of the charges, challenged the penalty imposed by the disciplinary authority by

filing separate original applications, but the tribunal having allowed O.A. No. 3476 of 2010 filed by Jagadish Prasad Singh, vide order dated 28.02.2017 should not have taken a different view in respect of the original applications filed by the petitioners. It is of relevance to note that the State has not challenged the order dated 28.02.2017 passed by the tribunal before appropriate forum. Thereby, it appears that the State has accepted the said order passed by the tribunal. More so, against the acquittal order dated 05.08.2011 passed by the court below in G.R. Case No.622 of 2010 (Trial No.953 of 2011), State has not preferred any appeal, which indicates that State has accepted the order of acquittal passed by the court below and, as such, on the other hand, implemented the order passed by the tribunal in the case of Jagadish Prasad Singh, without any hesitation, without any rumour or without any objection. Furthermore, the records of giving appointment to Jagadish Prasad Singh are placed before this Court at the time of hearing and on perusal of the same, it appears that though State Counsel had given opinion against the order of the tribunal in the case of Jagadish Prasad Singh to prefer appeal, but the same was foregone by the authority and, as such, giving appointment to him vide order dated 28.10.2017. Thereby, once the order has been implemented by giving appointment to a co-accused who was succeeded in O.A. No. 3476 of 2010, this Court is of the considered opinion that a different view cannot be taken in the present writ petitions. More so, the action of the State-authority is absolutely tell-tale and in the event an inquiry is conducted, then truth will definitely reveal. But since it is a matter of the year 2017, though this Court refrains from passing such order, but cautioning the State-authorities to act in accordance with law in future.

10. In the above view of the matter, the common order dated 15.03.2013 passed by the tribunal in both the original applications,

i.e., O.A. No. 1151 of 2010 and O.A. No. 1048 of 2010 cannot sustain in the eye of law and the same is liable to be quashed and hereby quashed. The opposite parties are directed to extend the benefit in favour of the petitioners, as was granted by the tribunal to the petitioner in O.A. No. 3476 of 2010 pursuant to the order dated 28.02.2017, as expeditiously as possible, preferably within a period of four months from the date of receipt of this order.

11. Accordingly, the writ petitions are allowed.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta

