

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 2742 of 2012

State of Odisha and another

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Petitioners

Mr. B.P. Tripathy, AGA

Vs.

*Ananta Charan Mallick and
another*

.....

Opposite Parties

Mr. S.D. Routray, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

12.04.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State-petitioners and Mr. S.D. Routray, learned counsel appearing for opposite party no.1 on caveat.

3. The State-petitioners have filed this writ petition assailing the order dated 29.04.2011 passed in O.A. No. 1493 of 2007, by which the Orissa Administrative Tribunal, Principal Bench, Bhubaneswar has disposed of the original application directing them to pay the full pension to opposite party no.1, and that any amount, if deducted from his pension, be released in his favour, so also all other retiral benefits, within a period of three months from the date of communication of the order.

4. Mr. B.P. Tripathy, learned Addl. Government Advocate appearing for the State-petitioners vehemently contended that the order impugned passed by the tribunal quashing the proceeding is without any application of mind. The article of charge itself indicates that after due investigation, the I.I.C., Town Police Station Bolangir submitted C.S. No. 102 dated 13th June, 1996 under Section 302 I.P.C. against accused Kalia@ Premaraj Rajpalia that on 13th/14th April, 1996 night while C/146 Dibakar Sahu caught the accused red handed with stolen aluminium wire,

the accused opened fired from his pistol and caused death of the constable without being opined by the Medical Officer or by Ballistic Expert. Even though this is formed part of article of charge itself, the tribunal has committed error apparent on the face of record in passing the order impugned. Thereby, the order impugned should be quashed.

5. Mr. S.D. Routray, learned counsel appearing for opposite party no.1 contended that the tribunal taking into consideration the charge/imputation, observed that the fact that opposite party no.1 submitted charge sheet without obtaining medical opinion and ballistic opinion, has not been substantiated. So the disciplinary authority imposed the penalty on the observation/finding of the enquiring officer, for which no charge was framed. The tribunal also made it clear that there was no charge, that opposite party no.1 did not obtain the opinion of professor FM & T. So the finding of the inquiring officer thereon to that effect is beyond the allegation and consequently the penalty imposed basing on such finding, is not sustainable. More so, opposite party no.1 was not given a chance by the court to have his say on the conduct/investigation which was adversely viewed and adverse remarks were made by the court. In absence of any materials in the charge itself, as has been referred to above, the tribunal is well justified in passing the order impugned, which does not warrant interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that opposite party no.1, while serving as a Deputy Superintendent of Police, was issued with a charge memo on 06.04.2002 alleging therein that while he was Inspector In-charge of Town Police Station, Bolangir in April, 1996 registered a case of murder and took up investigation

thereof. He submitted charge sheet against the accused thereof without the opinion of medical officer. The ballistic expert had also not examined the seized pistol and charge sheet was submitted without his opinion. Further, opposite party no.1 did not attend the trial court in spite of several adjournments and he submitted his written statement of defence stating therein that the dead body was sent for postmortem examination and in fact the postmortem on the dead body was conducted. He got examined the seized pistol in the District Forensic Laboratory and accordingly submitted that there was no negligence or dereliction in duty and, as such, acquittal of the accused in that case was due to other reasons. Opposite party no.1 submitted that he had not received any summons from the court, so he could not attend the court. Initially, the D.I.G. of Police was appointed as inquiring officer and as he could not submit the inquiry report in time, Satyajit Mohanty, the then D.I.G., Northern Range, Sambalpur was appointed as enquiring officer. He after careful enquiry, submitted his report, that the charged officer submitted charge sheet without taking opinion of the medical officer or the ballistic expert could not be proved, as the regional forensic science laboratory report (Exhibit IX) and post mortem report (exhibit-X) were obtained by the I.O. before placing charge sheet in the case. The charged officer, however failed to comply instructions to send the seized pistol to Prof. FM &T and seek his opinion in respect of injury found on the body of the deceased (exhibit-VII). Even after getting the replies to the queries from the M.O., who conducted autopsy, no steps were taken by the charged officer to reconcile the discrepancies. This has been adversely viewed by the trying court vide exhibit No.VI-B. The charge that the charged officer did not attend the court in spite of repeated adjournments could

not be substantiated in view of the deposition of D.W.I and D.W.II and contents of the exhibits XII and XIII.

7. The disciplinary authority supplied the copy of the inquiry report to opposite party no.1 and asked for his objection, if any, on the report. But, in the meantime, opposite party no.1 retired from service on attaining the age of superannuation. So, the Government issued notice containing a proposal for withholding of 20% of pension and he was asked to have his say thereon. Pursuant thereto, though opposite party no.1 submitted his explanation, but by impugned order dated 31.08.2007, the disciplinary authority in consultation with the OPSC and in accordance with the provisions of Rule-7(1) of OCS (Pension) Rules, 1992, imposed penalty of withholding of 20% of pension on the opposite party no.1.

8. Being aggrieved by such order, opposite party no.1 approached the tribunal by filing O.A. No. 1493 of 2007 seeking to quash the penalty so also the proceeding and in turn, the tribunal, taking into consideration all aspects observed that opposite party no.1 was not charged for not obtaining opinion from the professor FM & T nor for not taking steps to reconcile the discrepancies. The charge/imputation, that opposite party no.1 submitted charge sheet without obtaining medical opinion and ballistic opinion, was not substantiated. So, the disciplinary authority imposed the penalty on the observation/finding of the inquiring officer, for which no charge was framed. The tribunal also made it clear that there was no charge that opposite party no.1 did not obtain the opinion of professor FM & T. So the finding of the inquiring officer thereon to that effect is beyond the allegation and consequently the penalty imposed basing on such finding, is not sustainable. The tribunal, by further holding that investigation

was done in perfunctory manner and that on the basis of charge memo the charges were not established, quashed the penalty imposed on the petitioner and directed the State-petitioners to pay the full pension to opposite party no.1 and that any amount if deducted from his pension, be released in his favour so also all other retiral benefits, within a period of three months from the date of communication of the order.

9. In view of such position, this Court does not find any error apparent on the order passed by the tribunal so as to warrant interference with the same. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Puspa

