

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 3139 of 2016

State of Odisha and others

.....

Petitioners

Mr. S. Rath, ASC

Vs.

A. Trinath Rao and another

.....

Opposite Parties

*Mr. M. Basu, Advocate
(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

**ORDER
13.10.2022**

**Order No.
15.**

This matter is taken up through hybrid mode.

2. Heard Mr. S. Rath, learned Additional Standing Counsel for the State-Petitioners and Mr. M. Basu, learned counsel for the opposite party No.1.

3. The State and its functionaries being the petitioners have filed this writ petition seeking to quash the order dated 20.08.2015 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 454 (C) of 2008 under Annexure-5, so far as setting aside the punishment of dismissal and directing for reconsideration of the quantum of punishment.

4. Mr. S. Rath, learned Additional Standing Counsel appearing for the petitioners contended that the opposite party no.1 caused an injury by way of knife to one C.B. Singh, the co-employee. For that purpose a criminal case was instituted on the basis of the report of Ex-Major Chhabi Garanaik, under Sections 341, 325, 506 and 294 IPC. He further contended that since opposite party no.1 belongs to a discipline department and his conduct was quite unbecoming on the part of

employee of a discipline department, therefore, the tribunal did not interfere with the administrative order passed by the authority observing that no irregularity has been committed in conducting the proceeding. But while observing the same, the tribunal held that so far as quantum of punishment is concerned, the petitioners while imposing punishment on opposite party no.1 have not taken into consideration the factor as enumerated in the case of **Deputy Commissioner, KVS & Ors v. J. Hussain**, AIR 2014 SC 766. Accordingly tribunal held that the punishment of dismissal appears to be shockingly disproportionate and need to be modified. As a consequence thereof, the tribunal remitted the matter to the disciplinary authority to reconsider the quantum of punishment following the principle as laid down in the decision referred to above and impose any punishment other than dismissal from service proportionate to the quantum of delinquency. He further contended that if the petitioner has been charged in attacking one C.B. Singh by knife and as a result thereof he sustained injury on the neck, the punishment of dismissal is well justified punishment imposed by the authority. As such, the tribunal has committed an error by remitting the matter back for reconsideration with regard to the quantum of punishment. Therefore, he prayed that the order of the tribunal should be quashed so far as remitting the matter for reconsideration with regard to the quantum of punishment.

5. Mr. M. Basu, learned counsel appearing for opposite party no.1 contended that there is no eye witness to the occurrence and as such none has deposed against opposite party no.1 before the disciplinary authority that he has attacked C.B. Singh causing bodily injury at the neck. But fact remains the witnesses those who have been examined, they have only carried C.B. Singh to the hospital looking at the bleedings at the neck. Nothing has been proved as to how such injury has been sustained by the victim and who has caused the injury. More so, in absence of any material available on record that the injury has

been caused by opposite party no.1, the imposition of penalty of dismissal of service is shockingly disproportionate. Therefore, the tribunal is well justified by remitting the matter back to the authority for reconsideration of the penalty imposed by it. It is however stated that even though the material witness namely C.B. Singh, who has sustained the injury, in spite of several opportunity, he did not turn up to depose. He has already retired from service and left for his own house at Madhya Pradesh. Thereby, if there is no material available with regard to the injury caused by opposite party no.1, the direction of the tribunal is well justified, which does not require interference by this court at this stage.

6. Having heard learned counsel for the parties and after going through the record, it appears that bodily injury has been sustained to one C.B. Singh at the neck, who carried to the hospital with his friends including one of the witnesses, namely Ex-Major Chhabhi Garanaik. The said Garanaik has also lodged the FIR, basing on which the criminal case was registered for the offences under Sections 341, 325, 506 and 294 IPC against opposite party no.1. When he himself was examined he has also deposed that he carried the victim C.B. Singh to the hospital as he has not seen who has caused injury and how he sustained such injury. More so, there are 2 to 3 other persons who also carried the victim to the hospital. They have also not seen the occurrence and who has caused injury on the victim person. Therefore, in absence of any material witnesses so far as injury is concerned, the tribunal has created doubt with regard to imposition of penalty of dismissal from service. Though there is specific finding in the order itself that there is no procedural lapses in conducting the inquiry. Therefore, the tribunal did not inclined to interfere with the proceeding of the inquiry, but the tribunal only wanted to interfere with the quantum of punishment because for the injury sustained by the victim near at the neck in absence of any material witness to substantiate the same, dismissal of

service of opposite party no.1 is grossly disproportionate to the alleged offence. More so, the criminal case, which has been instituted on the basis of the FIR lodged by Chhabi Garanaik is still pending as has been informed by the bar. More so, in the meantime, the victim has already left for his home state at Madhya Pradesh after retirement and even after several communications made by the petitioners, he has not appeared nor he deposed against opposite party no.1 that injury was sustained due to attack by opposite party no.1. In absence of these materials the tribunal is well justified creating a doubt with regard to imposition of penalty of dismissal. Consequentially the direction was given to the disciplinary authority to reconsider the quantum of punishment following the principle as laid down in the case of *Deputy Commissioner, KVS* (supra).

7. In view of the above, this Court is of the opinion that there is no error apparent on the face of the record to interfere with the order of the tribunal. Consequentially the writ petition stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Arun/ Kishore