

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 11449 of 2018

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Manoranjan Samantaray Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. S.K. Mishra
J. Pradhan, S. Rout,
P.S.Mohanty and S.K. Biswal,
Advocates

For Opp. Parties : Mr. A.K. Mishra,
Addl. Govt. Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MISS JUSTICE SAVITRI RATHO**

Date of hearing and Judgment: 05.04.2022

DR. B.R. SARANGI, J. By means of this writ petition, the petitioner seeks to quash the order dated 26.09.2016 passed in O.A. No. 992 of 2011, by which the Odisha

Administrative Tribunal, Cuttack Bench, Cuttack has dismissed the original application filed by the petitioner both on merit as well as on limitation.

2. The factual matrix of the case, in brief, is that the petitioner was initially working as an Assistant Driver under the Commandant, O.S.A.P. 3rd Battalion, Koraput. Subsequently, while working as Sepoy in O.S.A.P. 1st Battalion, Charbatia in 2000, he availed three days C.L. and two days Special C.L. from 15.02.2000 to 20.02.2000. But, thereafter, he did not join in duty, as he suffered from illness and undergone medical treatment at Government Hospital, Khurda. Even though he submitted a medical certificate to the authority, vide letter dated 22.05.2000, a disciplinary proceeding was initiated against him on the charges that he willfully and unauthorizedly remained absent and did not attend the medical board on being requisitioned by the C.D.M.O., Cuttack. Thereafter, the inquiring officer concluded the enquiry ex parte without giving reasonable opportunity to the petitioner to defend himself and recorded findings holding him

guilty. Opposite party no.3, as the disciplinary authority, vide order dated 15.05.2001, inflicted penalty of two “black marks” with forfeiture of increment for a period of one year. As all types of leave were exhausted, it was directed that “the period of absence w.e.f. 15.02.2000 P.M. till the date and till the date of joining in future treated as extra-ordinary leave with loss of pay and break of service”. Thereafter, the petitioner submitted his joining report before opposite party no.3 on 21.08.2001 and also intimated that he was suffering from Asthama and was under the treatment of Doctors at Khurda and after the treating doctors declared him fit, he submitted his joining report on 21.08.2001.

2.1 Aggrieved by the order of punishment, the petitioner filed an appeal before the D.G. and I.G. (SAP) on 26.11.2001. The appellate authority, without considering the prayer of the petitioner, passed order rejecting his appeal. Consequentially, though the petitioner filed revision before the D.G. and I.G.-opposite party no.1, the same was not responded to and, as such, he was informed that the said revision

petition could not be traced out. Therefore, the petitioner filed another revision petition on 09.06.2010 and after filing of the second revision petition, he was informed by opposite party no.3 on 07.01.2011 that the earlier revision petition filed by him has been rejected by opposite party no.1, vide order dated 31.03.2003, and returned the later revision petition to the petitioner. It is stated that though the order of punishment imposed against the petitioner was confirmed by the D.G. and I.G. of Police, vide order dated 03.04.2003, but the same was not communicated to the petitioner, for which he had filed second revision petition. Thereby, both the appellate and revisional authorities have not passed the orders with due application of mind, for which the petitioner has approached this Court by filing the present writ petition.

3. Mr. S.K. Mishra, learned counsel appearing for the petitioner vehemently contended that while passing the orders impugned, the appellate authority as well as the revisional authority have not

applied their mind in proper perspective. He relied upon Rule-834 (a) of Orissa Police Manual, which deals with imposition of black marks, and contended that two black marks cannot be awarded in favour of the petitioner as because PMR-834 (a) prescribes that black marks may be awarded alone or in addition to other punishments enumerated in Rule-824 except dismissal or removal, to all officers of and below the rank of Inspector, and no more than one black mark shall be awarded for any one offence except when moral turpitude can reasonably be inferred. Thus, it is contended that for awarding two black marks, particularly when no moral turpitude can reasonably be inferred, the action taken by the authorities against the petitioner is arbitrary, unreasonable and contrary to the provisions of law and, as such, the same cannot sustain in the eye of law.

4. Mr. A.K. Mishra, learned Addl. Government Advocate contended that the penalty has been imposed by the disciplinary authority by following due procedure of law and, as such, by giving due

opportunity of hearing to the petitioner. More so, the tribunal has come to a conclusion that there was no procedural infirmity in the conduct of disciplinary proceeding, and that though the enquiry was conducted ex parte and the punishment order was passed ex parte, but all reasonable opportunities were provided to the petitioner to defend himself which he did not avail. The tribunal further held that, since the penalty order was passed on 02.05.2001, the appellate order was passed on 10.04.2002 and the prayer for revision was rejected on 28.03.2003, there was long delay in filing the original application, which has not been satisfactorily explained, and by so holding the tribunal dismissed the original application. Thereby, the tribunal is well justified in passing the order impugned, which need not warrant interference of this Court.

5. This Court heard Mr. S.K. Mishra, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties by hybrid mode. Pleadings having been exchanged between the parties, with the

consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. On the basis of factual matrix, as delineated above, it is made clear that admittedly the petitioner remained absent unauthorizedly and for that departmental proceeding was initiated against him and charges were framed. As it appears, the petitioner availed 3 days C.L. and 2 days Special C.L. w.e.f. 15.02.2000 to 20.02.2000, but he did not join in duty after 20.02.2000 and submitted medical certificate to the authority about his sickness. Thereafter, he did not respond to the direction of the disciplinary authority to report before the medical board conducted by the CDMO, Cuttack. After enquiry was concluded, the inquiring officer came up with a finding that all steps were taken and sufficient opportunity was given to the petitioner to defend himself. The order sheet relating to examination of prosecution witnesses calling upon the petitioner to submit defence witnesses and written defence etc. sending them through registered post as

well as special messenger at his home address, some of which have been acknowledged by the petitioner and others returned with endorsement that the petitioner was found absent at his place of residence, indicate that due opportunity was given to the petitioner to defend himself. The penalty order was also awarded by the disciplinary authority, after giving him due opportunity to make submission. The submission of the petitioner in the rejoinder affidavit, is that he attended the medical board and the copy of the treasury challan submitted by him is sufficient to disprove the charges as established in the enquiry report. In any case, the tribunal came to a conclusion that due procedure was followed by the authority and, as such, Mr. S.K. Mishra, learned counsel for the petitioner does not dispute such position. He, however, contended that he does not dispute the procedural infirmity conducted by the authority, but the penalty, which has been imposed on the petitioner, is contrary to the PMR-834(a).

7. It is of relevance to mention that Chapter-XXV of Orissa Police Manual deals with Departmental Punishment. For just and proper adjudication of the case, PMR-824 and 834 (a), which are relevant for the purpose of this case, are extracted hereunder:-

“824. Description of departmental punishments:

- The following punishments may be inflicted departmentally on a police officer below the rank of Deputy Superintendent –

- (a) Dismissal,*
- (b) Removal ,*
- ¹[b-1]- Compulsory retirement ; and]*
- (c) Reduction in rank,*
- (d) Reduction in time – scale.*
- (e) Withholding of the next increment for a specific offence, with or without corresponding postponement of subsequent increments,*
- (f) Black mark of marks.*
- (g) Removal from any office of distinction or specific emolument,*
- (h) Censure,*
- (i) Warning*
- (j) Confinements to quarters for a period not exceeding 15 days,*
- (k) Punishment drill, and*
- (l) Extra guard or other duty;*

Provided that the punishments mentioned in Clauses (i) to (m) shall not be imposed on any officer of or above the rank of Sub-Inspector nor the punishment mentioned in (I) on any Assistant sub-inspector, Constable of Ordinary reserve and Havildar of Armed Reserve.

Punishments mentioned in Clauses (a) to (h) are classed as major and the rest are minor.

All major punishments and censure shall be entered in the service book other minor punishments may be so entered if the officer awarding the punishment so directs.

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“Black Marks

834. (a) Imposition of black marks :- *Black marks may be awarded alone or in addition to other punishments enumerated in Rule 824 except dismissal or removal, to all officers of and below the rank of inspector.*

No more than one black mark shall be awarded for any one offence except when moral turpitude can reasonably be inferred.

(b) Three black marks shall ordinarily entail reduction or forfeiture or withholding of an increment, the period of which shall be specified in the order and, after the period is over the officer will be restored to his former position. Such reduction or forfeiture or withholding of increment shall not carry any black mark value.

(c) It shall be left to the discretion of the officer awarding the third black mark to waive the penalty noted in clause (b). In exercising this option, he shall consider-

- (i) the officers for which the previous black mark were awarded;*
- (ii) the length of time that has elapsed since they were awarded;*
- (iii) any good service the defaulter may have to his credit.”.*

8. On perusal of the provisions contained in sub-clause-(a) of PMR-834, it is made clear that no more than one black mark shall be awarded for any one offence except when moral turpitude can reasonably be inferred. Therefore, the contention raised

that the punishment of two black marks cannot be awarded in consonance with the provisions contained under PMR-834, cannot be sustained in view of the fact that admittedly the petitioner remained unauthorizedly absent from duty and consequentially did not carry out the order passed by the authority in joining the post in due time. Thereby, merely because this is not a case of moral turpitude, the contention that the petitioner cannot be imposed with the punishment of two black marks, cannot have any justification. Rather, for different cause of action, punishment can also be imposed by the authority in terms of PMR-834.

9. In the above view of the matter, this Court is of the considered view, that the contention raised that inquiry was conducted ex parte and the order of punishment was also passed by the authority without affording opportunity of hearing, has no leg to stand, as the petitioner was evidently given opportunity to participate in the proceeding and, as such, he had acknowledged the receipt of documents but did not choose to participate in the proceeding. As such, it

cannot be said that principles of natural justice was not followed in the case of the petitioner.

10. In the above view of the matter, this Court does not find any error apparent in the order impugned passed by the tribunal so as to cause interference with the same.

11. In the result, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO,J.

I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 5th April, 2022, Ashok/GDS