

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16545 of 2018

Dayanidhi Jena

.....

Petitioner

Mr. G.R. Sethi, Advocate

Vs.

***D.G. and I.G. of Police,
Odisha, Cuttack and Others***

.....

Opposite Parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

30.06.2022

Order No.

06.

This matter is taken up through hybrid mode.

2. Heard Mr. G.R. Sethi, learned Counsel appearing for the Petitioner and Mr. S.N. Nayak, learned Additional Standing Counsel for the State.

3. The Petitioner has filed this writ petition seeking to quash the order dated 21.06.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 112 (C) of 2015, by which the Tribunal did not inclined to quash the charges, the findings, the final and appellate orders passed by the Opposite Parties relating to the proceeding under Annexure-1 and dismissed that part of the prayer. However, with regard to the other prayer relating to withdrawal of RACP benefits in order dated 25.09.2013 at Annexure-3 is concerned, that part of the prayer was held as not maintainable and the Petitioner was given liberty to file a fresh Original Application, if so advised.

4. Mr. G.R. Sethi, learned Counsel for the Petitioner contended

that the Petitioner was imposed with a punishment of one Black Mark and the period of suspension from 02.02.2010 P.M. to 06.03.2010 A.M. was treated as such. By considering this into account, the number of Black marks earned by the Petitioner during his service career became two and, accordingly, the proceeding was disposed of. It is further contended that because of imposition of punishment, the RACP benefit, which the Petitioner is entitled to get, was not paid.

5. Mr. S.N. Nayak, learned Additional Standing Counsel appearing for the State, disputed such contention raised by learned Counsel for the Petitioner and contended that the imposition of punishment is different than that of the withdrawal of RACP benefit admissible to the Petitioner. As such, the punishment which has been imposed on the Petitioner, having been appealed and the same having been affirmed, against that order, the Petitioner approached the Tribunal, but the Petitioner made a prayer challenging the withdrawal of the RACP vide order dated 25.09.2013, which itself is a separate cause of action than that of the proceeding initiated against the Petitioner.

6. Having heard learned Counsel for the parties and after going through the records, as it appears, a Departmental Proceeding was drawn up against the Petitioner under Annexure-1 dated 17.05.2010 and he was charged with being absent from Sub-Treasury Guard, Kodala without any authority. He went to the Government Quarter of IIC, Kodala P.S. and talked with him in an indisciplined manner. He was directed to submit his statement of defence within 15 days, but he prayed for some more time. Nonetheless, he submitted his written statement of defence on

15.06.2010, but without considering it, the Disciplinary Authority appointed IIC, Marine P.S. as Enquiry Officer. The Enquiry was conducted by the Enquiring Officer holding the Petitioner guilty of the charges. The Petitioner's contention is that the P.Ws cited in the memo of evidence were not examined. Further some other necessary witnesses were also not called to adduce the evidence. Therefore, the Petitioner submitted a representation on the finding of the I.O. Without considering the points brought to the notice of the authority, Opposite Party No.3 issued 2nd show cause notice as to why the Petitioner will not be awarded with the punishment of one black mark on the suspension period shall not be treated as such. The Petitioner submitted the reply to the 2nd show cause notice denying the charges and prayed that the proceeding be dropped and he be exonerated from the charges. On 25.09.2013 Opposite Parties imposed a punishment on one black mark and treated the period of suspension as such. Against such order the Petitioner preferred an appeal before Opposite Party No.4 which was rejected vide order dated 14.07.2014. Against that order, the Petitioner preferred the Original Application before the Tribunal and the Tribunal after due adjudication did not accede the prayer to quash the charges, the findings, the final and appellate orders passed by the Opposite Parties relating to proceeding under Annexure-1 and dismissed that part of the prayer. However, with regard to the other prayer relating to withdrawal of RACP benefits in order dated 25.09.2013 at Annexure-3 is concerned, that part of the prayer was held as not maintainable and the Petitioner was given liberty to file a fresh Original Application, if so advised.

7. Fact remains, the Petitioner contended that neither the P.Ws

mentioned about his absence from duty nor the relevant S.D. entries were exhibited. Relevant Station Diary Entry No. 314 dated 15.01.2010 has not been exhibited during the enquiry and, as such, he contended that the same has not been analyzed properly. As a consequence thereof, the Petitioner has been imposed with the punishment finding him guilty.

8. In course of hearing, the Petitioner, in order to substantiate his contention, filed an affidavit in Court today bringing the Counter Affidavit filed by the Opposite Parties along with certain documents, to the notice of this Court and also placed certain statements made by some of the P.Ws. But, fact remains this Court is not sitting as an Appellate Authority over the order passed by the Disciplinary Authority confirmed by the Appellate Authority and also confirmed by the Tribunal. Nothing has been placed on record to indicate any procedural irregularity has been committed by the Authority while conducting such proceeding. In course of hearing learned Counsel for Petitioner contended that since one black mark has been imposed and suspension period has been treated as such, which has not been interfered by the Tribunal, even if that will be taken into consideration, the Petitioner has got two black marks in his favour, therefore, the same will not be prejudiced to him. But, the Petitioner is aggrieved by the withdrawal of the RACP benefit in letter dated 25.09.2013. However, that part of the order, was not the part of the disciplinary proceeding. That itself is a separate cause of action and the Tribunal has observed that, the said prayer is not maintainable and the Petitioner was granted liberty to file fresh original application. However, no such application is pending. The reason for non grant

of RACP benefit has been indicted in paragraph-8 of the counter filed to the following effect:

“That in reply to the averment made by the applicant in Para-6.8, it is to state that the applicant Havildar was allowed RACP w.e.f 01.01.2013 on completion of 30 years of service and fixed his pay raising his pay from Rs.11550/-+G.P.2400/- to Rs.11970/- + G.P.Rs.4200/- w.e.f. 01.02.2013 wrongly contrary to the instructions issued vide F.D. Resolution No.3560/F, dt.06.02.2013 and clarification issued vide F.D. memo No.1738/F, dt.20.01.2014 though the applicant was awarded with major punishment of One Black Mark in the year 2013. In view of the said punishment the applicant is not fulfilling the criteria to get RACP as per para 13 of F.D. No.3560/F, Dt.06.02.2013 and for that R.A.C.P. allowed to him vide D.O. No.157, Dtd 27.01.2014 has been cancelled. Copies of Para 13 of F.D. No.3560/F, Dt.06.02.2013 and copies of D.O. No. 157, Dtd.27.01.2014 & D.O.No.1702, Dtd. 26.08.2014 are annexed as Annexure-W, X & Y.”

9. In view of the above, this Court does not find any error apparent on the face of the impugned order passed by the Tribunal so as to call for interference by this Court. Accordingly, the Writ Petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun/Banita