

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1840 of 2018

Dasarathi Nayak

....

Petitioner

Mr. R.K. Bisoi, Advocate

-versus-

State of Odisha and Another

.... ***Opposite Parties***

Mr. B. Bharadwaj, Additional Standing Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

11.8.2022

Order No.

01.

1. The matter is taken up through hybrid mode.

2. Heard Mr. R.K. Bisoi, learned counsel for the Petitioner and Mr. B. Bharadwaj, learned Additional Standing Counsel for State – Opposite Party.

3. The Petitioner while serving as Senior Clerk in the office of Tahasildar, Kakatpur, was trapped by vigilance team on 11th August, 2010. Resultantly Bhubaneswar Vigilance P.S. Case No.40 dated 11th August, 2010 was registered for commission of offence under Section 7 of the Prevention of Corruption Act and criminal prosecution was launched. It is stated that the same is pending till date.

4. In the meantime, on 28th May, 2011 a departmental proceeding was initiated against the Petitioner in Departmental Proceeding No.4 of 2011 under the Collector, Puri, who is the Disciplinary Authority, and the charge was with regard to gross misconduct in failing to maintain absolute integrity and devotion to duty. The Inquiry Officer was appointed. Upon completion of inquiry, the report dated 12th

January, 2016 was submitted to the Disciplinary Authority recommending for exoneration of the Petitioner from the charge pending finalization of the vigilance case. The relevant observation of the Inquiry Officer is reproduced below:-

“XXXXX

Perused the officer order No.1637 dt.07.03.09 of the Tahasildar, Kakatpur in which Sri Dasarathi Nayak, Sr. Clerk has been ordered to remain in-charge of Mutation Cases of Revenue Inspector circle Kakatpur, Kantapada, Jangalbori and Agar Kothabada. Marshalling Officer has not furnished any copy of office order on keeping in-charge of Sairat Section of Sri Dasarathi Nayak, Sr. Clerk. In view of the facts mentioned above and in absence of any office order, the delinquent Sri Dasarathi Nayak, Sr. Clerk may not be considered as culprit.

As regards trapping of vigilance case on spot for receiving Rs.500/-, the enquiry is under progress by the vigilance Department, Bhubaneswar. As such I do not agree to pass any comments in this regard. The delinquent Sri Nayak will be punished by the Vigilance Department as per Rule.

As such the delinquent Sri Dasarathi Nayak, Sr. Clerk may be exonerated from the charge No.I pending finalization of vigilance Department case.

The case record is submitted to the Disciplinary Authority and Collector, Puri for favour of consideration.”

5. Then the Disciplinary Authority by order No.2510 dated 17th September, 2018 closed the departmental proceeding by passing the order treating period of suspension as such. The said order dated 17th September, 2018 of the Disciplinary Authority is reproduced below:-

“After careful consideration of the Inquiry Report submitted by the Supdt. Of Land Records, Puri & Inquiring Officer, Puri along with all relevant papers / records on the charges drawn up vide Memorandum No.1599/BBE dated 28.05.2011 & D.P. No.4/2011 against Sri Dasarathi Nayak, Ex-Sr. Clerk, Kakatpur Tahasil, the Delinquent Officer is contemplated with the following punishment as follows:-

1. The Suspension period of delinquent from 12.08.2010 to 24.06.2011 be treated as such.
2. The Suspension period 12.08.2010 to 24.06.2011 will not be taken into account towards sanction of Annual Increment.
3. The retiral benefit like unutilized Leave Salary, Gratuity, Commutation value of Pension & Final Pension be held-up till final result / order of the Vigilance Court.

But this order will not be a bar for his Annual Increment excepting suspension period, GPF & Provisional Pension as per Odisha Civil Service Pension Rules.

Sd/-
Disciplinary Authority
& Collector, Puri”

6. It is submitted on behalf of the Petitioner that neither any notice upon submission of the Inquiry Report nor any opportunity of hearing was granted to him before passing the final order dated 17th September, 2018 by the Disciplinary Authority. It is also submitted that no reason of disagreement of the Disciplinary Authority has been communicated to the Petitioner nor any copy of the Inquiry Report was supplied to the Petitioner prior to receipt of the proposed punishment order issued on 18th July, 2018.

7. Mr. Bharadwaj, learned Additional Standing Counsel submits that after passing of the interim order dated 31st July, 2018 by the Tribunal the present order of punishment dated 17th September, 2018 was passed contemplating all such punishment and no such punishment has been effected as on date since the vigilance case is still pending and the Petitioner has retired in the meantime on 28th February, 2017.

8. Rule 15(10) of the OCS (CCA) Rule prescribes the procedure that where the Inquiring Officer is not the Disciplinary Authority, the statements of findings together with reasons for disagreement, if any, with the findings of the Inquiring Authority shall be supplied to the delinquent before imposition of the punishment. Admittedly, here in the present case as per the report of the Inquiring Officer, the delinquent – Petitioner has been exonerated from the charges leveled against him. But without any express reason of disagreement, the Disciplinary Authority has imposed the punishment treating the period of suspension as such. It is true that the Vigilance case pending against the Petitioner will proceed in its own way with consequences followed thereto. However, for the glaring defect in the disciplinary proceeding against the Petitioner, in my considered opinion, the

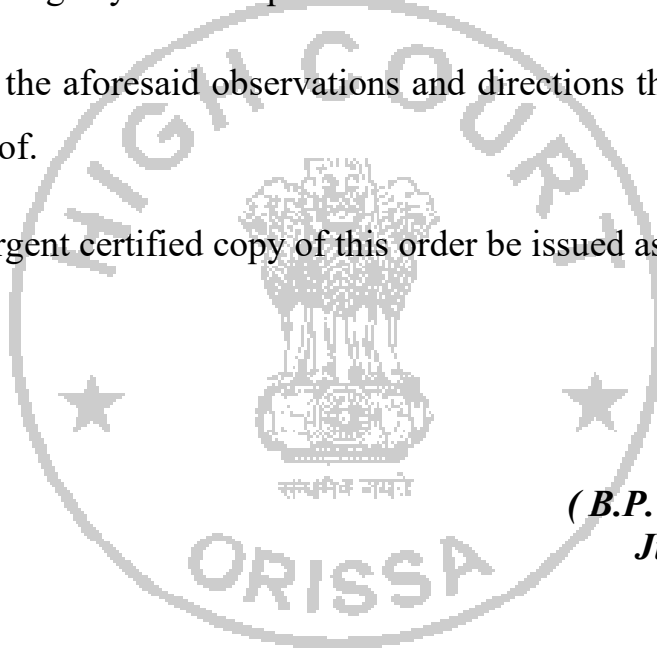
disciplinary proceeding and the proposed punishment would not sustain.

9. Resultantly, the punishment order which is stated to be contemplated with such punishments as per Annexure-C of the counter (Order No.2510 dated 17th September, 2018) is quashed.

10. It is submitted at bar that the Petitioner has already retired from service on 28th February, 2017. Nevertheless, keeping in view the submission that the vigilance case is still pending, this court refrains from expressing any further opinion.

11. With the aforesaid observations and directions the writ petition is disposed of.

12. An urgent certified copy of this order be issued as per rules.



(B.P. Routray)
Judge