

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26283 of 2022

Saroj Kumar Swain

....

Petitioner

*Mr.Sankaracharya Choudhury,
Advocate*

-versus-

State of Odisha & others

....

Opposite Parties

Mr. P.K.Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

02.11.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Government Advocate.
3. The present writ application has been filed with a prayer to quash the order of rejection dated 05.09.2022 under Annexure-4. He has further prayed for a direction to the Opposite Parties to reappoint the Petitioner as Home Guard in Cuttack district Home Guard organization within a stipulated period of time.
4. It is submitted by the learned counsel for the Petitioner that by virtue of the order under Annexure-4 the Petitioner challenges the order dated 30.05.2020 discharging the Petitioner from the duty of Home Guard on the ground that the Petitioner was involved in Salipur P.S. Case No.145 dated 17.04.2020 under section 392 IPC., Salipur P.S.Case No.250 dated 27.09.2019 converting to section 279/304-A of IPC read with section 185 of M.V.Act
5. Learned counsel for the Petitioner further submits that after passing of the discharge order under Annexure-3, the Petitioner

submitted a representation before the authority. He further contends that the Director General of Home Guard, Odisha, Cuttack vide order dated 05.09.0222 under Annexure-4 rejected the representation of the Petitioner.

6. Learned counsel for the Petitioner assails the discharge order as well as rejection order on the ground that there is no valid provision in Orissa Home Guards Act, 1961. Sub-Section (3) of Section 8 of the Orissa Home Guards At,1961 reads as follows:

“When the Commandant General or the Commandant passes an order suspending, reducing in rank, fining or dismissing any member of the Home Guards under Sub-Section (1), he shall record such order with the reasons therefore and a note of enquiry in writing and no such order shall be passed by the said Commandant or Commandant General unless the person concerned has been given an opportunity of being heard in his defence.”

7 On a close scrutiny of Section 8 of the Orissa Home Guards Act, 1961, it appears that the Commandant General before passing any order suspending, reducing in rank fining or dismissing any member of the Home Guard under sub-section 1 record reasons after conducting an enquiry in writing and further it is mandatory that the Commandant General must give an opportunity in his defence. On a perusal of the order under Annexures-3 & 4, it appears that no opportunity of hearing was provided to the Petitioner. Further, on perusal of the order under Annexure-4 that the representation of the Petitioner was considered and therefore upholding the order under Annexure-3.

8. Learned Additional Government Advocate other hand submits that principle of natural justice has sufficiently complied and the representation of the Petitioner has been considered by the authority. Therefore, this Court should not interfere with the order passed by

the competent authority under Annexures-3 & 4. Further the order passed by the authority is in consonance with the statutory provisions.

9. Having heard the learned counsel for the respective parties and after careful consideration of the materials placed before this Court, this court is of the considered view that a bare perusal of the impugned order under Annexures-3 & 4, it does not appear that the principle of natural justice has been followed as mandated under sub section (3) of Section 8 of Orissa Home Guards Act, 1961. Therefore, the order of the authority is bad for the mandatory statutory provisions. Considering such fact this Court sets aside the order under Annexures-3 & 4 and remand the matter to the Commandant General, Home Guards to reconsider the matter and pass necessary order after providing an opportunity of hearing as has been prescribed under sub-Section 3 of Section 8 of Orissa Home Guards Act, 1961. Let the Petitioner approach the Commandant General Home Guards within a period of two weeks along with certified copy of this order. In the event he approaches the competent authority, the competent authority shall do well to consider after providing due opportunity and thereafter pass a speaking and reasoned order and conclude the proceeding within a period of three months from the date of production of certified copy of this order.

10. With the aforesaid observation, the writ application stands disposed of.

11. Issue urgent certified copy of this order as per Rules.