

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OA) No.3132 of 2018

Prasanta Kumar Barik Petitioner

-versus-

State of Odisha & Others Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
17.10.2022**

Order No

02. 1. This matter is taken up through Hybrid Mode.

2. Heard Mr. N. Rath, learned counsel appearing on behalf of Mr. S. N. Patnaik, learned counsel for the Petitioner and Mr. Y.S.P. Babu, learned Addl. Government for the State-Opposite Parties.

3. The Petitioner has filed the present Writ Petition with the following prayer:-

“(i) To quash the departmental proceeding dated 26.07.2018 as at Annexure-2 declaring the same to be in violation of Rule 7(2) (b) of the OCS (Pension) Rules, 1992.

(ii) To direct the respondents also to pay an amount of Rs.10,000/- as compensation and legal expenses to the applicant for causing unnecessary harassment to him.

(iii) To grant any relief / reliefs as deemed fit and proper”.

4. Learned counsel for the Petitioner submitted that the Petitioner while continuing as Chief Engineer (Civil), he was superannuated from his service w.e.f. 30.11.2010 vide notification issued on 24.11.2010 under Annexure-1.

5. Learned counsel for the Petitioner submitted that much after his retirement, the impugned proceeding was initiated against him with service of the charges vide Memorandum dated 26.07.2018 under Annexure-2.

6. Learned counsel for the Petitioner submitted that the said proceeding was initiated in respect of certain irregularity which relates to the period from 01.6.2001 to 29.02.2004 and the said fact is clearly reflected in the Article of Charges enclosed to the Memorandum dated 26.07.2018.

7. Learned counsel for the Petitioner submitted that in view of the provision contained under Rule- 7(2)(b) of the OCS (Pension) Rules, 1992, no proceeding is maintainable in respect of an incident which relates back four years prior to the date of retirement of the Petitioner.

8. Since the Petitioner retired from service in the year 2010 and the period in question relates to 01.06.2001 to 29.02.2004, in view of the provision contained under Rule- 7(2)(b), the proceeding initiated against the Petitioner is not maintainable and accordingly it should be quashed.

9. Mr. Babu, learned Addl. Government Advocate for the State on the other hand submitted that since the said factum of negligence was detected only on 29.01.2016, the period of four years is to be calculated from the date of knowledge.

It is accordingly submitted that no illegality has been committed by the Opposite Party in initiating the proceeding under Annexure-2.

10. As counter to the submission of Mr. Babu, Mr. Rath, learned counsel for the Petitioner relied on the decision of this Court in the case of **Sri P. Satyanarayan Patro vs. Orissa Power Transmission Corporation Ltd., Bhubaneswar** reported in **2009(I) OLR 989**, this Court in Para-10 of the said judgment has held as follows:-

“10. As per the above provision of the Pension Rules, departmental proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment, shall not be instituted for any event (emphasis supplied) which took place more than four years before such institution. The charge framed against the petitioner was that due to his negligence in duty and lack of proper supervision, the two towers in questions which were constructed during the period 27.3.1987 to 30.3.1987 got uprooted. By the time the departmental proceeding was instituted against the petitioner, sixteen years had already elapsed from the event which took place in that year 1987. The submission of learned counsel for the opp. party that the period of four years would be counted from 2.6.2003, when the two towers got uprooted cannot be accepted. Because the misconduct for which the departmental proceeding was initiated was with regard to lack of supervision etc, while the towers in question were erected. No doubt, the inferior quality of the work could be known only after the towers got uprooted in the year 2003 and the opp. party had no knowledge about such bad workmanship prior to that. But there is nothing to show in the Pension Rules that the period of four years as envisaged in Rule 7 can also be counted from the date of knowledge. So, we are in agreement with the view of the learned counsel for the petitioner that the very initiation of the departmental proceeding is bad in law”.

11. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the proceeding has been initiated against the Petitioner in respect of an occurrence which takes place in between the period from 01.06.2001 to 29.02.2004. Therefore, the proceeding initiated against the Petitioner is

contrary to the provision contained under Rule-7(2)(b) of the OCS (Pension), Rules, 1992.

12. Hence, in view of such clear provision contained under Rule-7(2)(b) of the OCS (Pension), Rules, 1992 and the decision governing in the field as cited (supra), this Court is inclined to quash the proceeding so initiated against the Petitioner under Annexure-2 and quash the same accordingly.

13. With the aforesaid observations and directions, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

