

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 4367 of 2015

Pradipta Kumar Das **Petitioner**

-versus-

State of Odisha & Ors. **Opposite Parties**

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
20.12.2022**

Order No

08. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Additional affidavit filed in Court today be kept on record.

3. Heard Mr. J.K. Khuntia, learned counsel for the Petitioner and Mr. D.K. Mohanty, learned Addl. Standing Counsel appearing for the Opp. Parties.

4. The present writ petition has been filed challenging the order of punishment passed in a disciplinary proceeding initiated against the Petitioner vide order under Annexure-2 and subsequent order passed by the Appellate Authority under Annexure-7. It is contended that because of his implication in a Vigilance Case the proceeding was initiated against the Petitioner on self same charges on 05.08.2000.

5. Mr. Khuntia, learned counsel for the Petitioner submitted that while in the Vigilance Proceeding the Petitioner along with the co-accused Sri Prafulla Kumar Patnaik were acquitted vide Judgment dtd.18.06.2000 and Sri Prafulla Kumar Patnaik was also exonerated in the disciplinary proceeding, but the Petitioner was punished vide

order under Annexure-2 dtd.21.03.2011. The Petitioner though brought to the knowledge of the appellate authority the factum of his acquittal in the vigilance case and the exoneration of the co-accused in the Departmental Proceeding, but the appellate authority without considering the same confirmed the order of punishment vide order at Annexure-7.

6. It is contended that since the charges are similar in both the proceedings and the Petitioner was acquitted in the vigilance proceeding, the disciplinary authority should have dropped the Departmental Proceeding instead of imposing the order of punishment under Annexure-2. In support of his aforesaid submission Mr. Khuntia, learned counsel for the Petitioner relied a decision of the Hon'ble Apex Court reported in the case of **G.M. Tank Vs. State of Gujarat & Anr. ((2006) SC 2129)**. Hon'ble Apex Court in Para 32 of the said Judgment has held as follows:-

"32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

7. Mr. Khuntia also relied on another decision of this Court reported in the case of ***Manoj Kumar Kar Vs. Board of Directors, Kalinga Gramya Bank & Anr. (2012 (II) ILR-CUT-300)***. This Court in Para 12 of the said Judgment has held as follows:-

“12. As held earlier in respect of the first charge, the petitioner has been treated differently and, therefore, is squarely covered by the judgment of the Apex Court in the case of State of Uttar Pradesh (supra). Action of the management in treating the petitioner differently amounts to discrimination so far as departmental proceeding is concerned. Admittedly the proceeding had been fixed to three dates i.e. 29.4.2003, 2.5.2003 and 5.5.2003. Though notice of the said date had been issued to the petitioner in Annexures 17, 18 and 19, the same were received by the petitioner after the aforesaid date on which the inquiry had been fixed for hearing. Therefore, no fault can be found with the petitioner for not being in a position to attend the inquiry on the above three dates. Without giving any further opportunity, the inquiry officer concluded the above proceeding and submitted his report on 10.5.2003. Therefore, it is clear from the record that the petitioner had not been given an opportunity to defend himself in the departmental proceeding. As held earlier, the inquiry officer also did not assign any reason whatsoever for finding the petitioner guilty of the charges and only with reference to some documents findings have been rendered without assigning any reason. The disciplinary authority as well as the appellate authority also took into consideration the past conduct of the petitioner and no opportunity had been given to the petitioner to make his submission in respect of his past conduct. All these deficiencies and irregularities found in the inquiry make the order of punishment passed by the disciplinary authority as well as the order passed by the appellate authority are not sustainable in law.”

8. Making all such submissions learned counsel for the Petitioner contended that since the Petitioner has been exonerated in the vigilance proceeding and the co-accused Prafulla Kumar Pattnaik has been exonerated from the charges in the Departmental Proceeding, the Petitioner having been in a similar footing, he should not have been punished vide the impugned order at

Annexure-2 and subsequent order passed by the appellate authority under Annexure-7.

9. Mr. D.K. Mohanty, learned ASC on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that the parameter with regard to conduct of disciplinary proceeding and criminal proceeding since is different, even if the Petitioner has been acquitted in the vigilance proceeding that is not a ground to quash the order of punishment passed in a disciplinary proceeding.

10. Having heard learned counsel for the Parties and taking into account the materials available on record as well as the decisions relied on by Mr. Khuntia, learned counsel for the Petitioner, this Court finds that the departmental proceeding was initiated against the Petitioner on self same charges as like the Criminal Proceeding. Not only the Petitioner but also the co-accused Sri Prafulla Kumar Patnaik have been acquitted from the criminal charges. This Court further finds that co-accused Prafulla Kumar Patnaik was exonerated from the charges in the Departmental Proceeding initiated against him on similar ground. Therefore, placing reliance on the decision cited by Mr. Khuntia, learned counsel for the Petitioner, this Court is of the view that since the charges in both the proceedings are same and the Petitioner has been acquitted in the Criminal Proceeding, the Petitioner on the face of the same as well as the exoneration of co-accused Prafulla Kumar Patnaik in the Departmental Proceeding, inclined to quash the order of punishment under Annexure-2 and the confirmation of the same by the appellate authority under Annexure-7. While quashing both the orders, Opp. Parties are directed to take follow up action in the matter.

11. The writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

