

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 2281 of 2015

An application under Articles 226 & 227 of Constitution of India.

AFR

Manoranjan Pattnaik

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Petitioner

-Versus-

State of Odisha & others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Sashi Bhusan Jena,
S. Behera & C.K. Sahoo,
Advocates

For Opp. Parties : Mr. N.K. Praharaj,
Addl. Govt. Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

28th July, 2022

SASHIKANTA MISHRA, J.

The petitioner was directly recruited as Forest Ranger being appointed as such on 07.01.1987 and was working as Range Officer, Tarava KL Range under the administrative control of the DFO, Bolangir KL Division.

While working as such, certain charges were framed against the petitioner by letter dated 08.03.1994 by the opposite party no.2 and he was called upon to submit his explanation. The charges related to misappropriation of welfare fund amounting to Rs.37,198/-, manipulation of public money by keeping huge CB more than Rs.2 lakhs for personal benefit, serious financial irregularities by incurring unauthorized expenditure and disobedience of orders. The petitioner submitted a representation for supply of copies of certain documents to enable him to submit his effective explanation but the same were not supplied. He was also not permitted to inspect the documents or to take extracts thereof. As such, he submitted his explanation on 22.07.1996 denying the charges framed against him. His explanation being found to be not satisfactory, an enquiry officer was appointed and enquiry was conducted in which he participated. The enquiry officer recorded the statement of the petitioner and submitted his enquiry report on 21.07.2002 to the opposite party no.1 holding that the charges had been

established and recommended punishment of recovery of certain amounts from the petitioner along with stoppage of five annual increments with cumulative effect. Despite submission of enquiry report, the disciplinary proceeding was not finalized and after lapse of about 12 years, the opposite party no.2, vide letter dated 06.06.2013 issued the first show cause notice to the petitioner asking him to submit his reply within 10 days. The petitioner submitted his reply on 05.07.2013. Since no action was taken in the matter, the petitioner submitted a representation on 31.03.2014 requesting to finalize the proceeding at an early date. While the matter should thus, the petitioner approached the erstwhile Odisha Administrative Tribunal in O.A. No. 3507(C) of 2014 with prayer to quash the charge and the disciplinary proceeding initiated on 08.03.1994. During pendency of the said O.A., the opposite party no.1, as per his office order dated 26.05.2015, finalized the disciplinary proceeding inflicting penalty of recovery of Rs. 2,05,329.90 and withholding of five annual increments with cumulative effect. Since the

disciplinary proceeding was finalized after about 21 years of its initiation, the petitioner approached the Odisha Administrative Tribunal again by filing O.A. No. 2281 (C) of 2015, which has since been transferred to this Court and registered as the instant writ petition. The petitioner originally claimed the following relief:

*“Under the circumstances it is humbly prayed that this Hon’ble Tribunal may graciously be pleased to direct the respondents to quash the Departmental proceedings under **Annexure-1** and the final order passed in **Annexure-7**.*

***And/or** pass any other orders/orders as this Hon’ble Tribunal deems fit and proper in the case;
And allow this original application with cost.”*

During pendency of the O.A./writ petition, citing several developments the petitioner amended the writ application to incorporate all such facts. It was brought on record that during pendency of the writ application the petitioner had submitted a representation before the Promotion Adalat as he had been deprived of promotion to the post of ACF and after receipt of the same, the opposite party no.1 by letter dated 21.05.2020 intimated the opposite party no.3 to inform regarding the completion of the punishment period of the petitioner and the status of recovery of the amount

imposed upon him on finalization of the D.P. Pursuant to such letter, the opposite party no.3 vide letter dated 06.08.2020 intimated the Deputy Director of Nandankanan Zoological Park, Bhubaneswar with request to recover the amount imposed by way of punishment in the D.P. as per order dated 26.05.2015. Pursuant to such order, the petitioner claims to have been compelled to deposit the recovery amount of Rs.2,05,329/- on 18.08.2020. It is stated that the said deposit was made under compulsion as it was given out to the petitioner that unless he deposits the amount no promotion would be given to him. Thus incorporating such facts the petitioner has also amended relief sought for in the writ application, which now reads as under:

“Under the circumstances it is humbly prayed that this Hon’ble Tribunal may graciously be pleased to direct the respondents to quash the Departmental proceedings under Annexure -1 and the final order passed in Annexure – 7;

And further be pleased to quash the letter dated 06.08.2020 in Annexure-9 and letter dated 21.08.2020 under Annexure-10 Series.

And further be pleased to direct the Opposite Parties to refund the amount of Rs. 2,05,329/- to the petitioner forthwith as inspite of stay order the Opposite Party No.1 directed to Opposite Party No.2 to recover the amount which is illegal and not in accordance with law.

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xxx”

2. A counter affidavit has been filed by the opposite parties. It has been basically contended in the counter affidavit that the petitioner has not availed the appropriate forum by filing appeal against the order of finalization of the disciplinary proceeding as per Rule-24 of OCS (CCA) Rules, 1962. It is further stated that the petitioner was given ample opportunity to defend his case at every stage of the enquiry and that the charges levelled against him have been proved and accordingly, he was found guilty. It is further stated that on 29.02.2020 the petitioner appeared before the Promotion Adalat putting forth his grievance for promotion to the rank of ACF and agreed to deposit the sum of Rs.2,05,329.90 imposed as punishment vide order dated 26.05.2015 (Annexure-7) as per his representation dated 19.08.2020. Accepting the same, the petitioner was given promotion to the rank of ACF vide office order dated 28.9.2026. The petitioner has on his own volition accepted the punishment and therefore, the principle of acquiescence and waiver applies and he cannot challenge the same at this stage. On

merits, it is stated that the petitioner had never submitted any representation for supply of documents and he has also not mentioned about non-supply of documents in his written statement of defence. The first show cause notice along with a copy of enquiry report was issued to the petitioner vide memo dated 31.07.2007. The enquiry report was once again sent to him vide memo dated 6.6.2013. The petitioner submitted his representation only on 04.07.2013. Therefore, the delay caused in finalization of the departmental proceeding is entirely attributable to the petitioner himself. Since all the charges leveled against him were duly proved in the enquiry in which he was given full opportunity to defend himself and further since he has acquiesced to the order of punishment imposed on him, he is estopped from challenging the order of punishment subsequently.

3. The petitioner has filed a rejoinder to the counter filed by the opposite parties. It is stated that the petitioner had deposited the amount under compulsion as there was a threat of denial of promotion in case he did

not make such deposit. Secondly, the order of punishment having been passed by order of the Governor, no further appeal lies as per rules. Since the proceeding admittedly initiated in the year 1994, was finalized only in the year 2015, it proves that the opposite party authorities had intentionally dragged the same only to harass the petitioner. The proceeding therefore needs to be quashed only on the ground of delay. It is also stated that the order asking him to deposit the recovery amount was issued during the continuance of the stay order passed by the learner Tribunal and hence, is not valid in the eye of law.

4. The opposite parties have filed a reply to the rejoinder filed by the petitioner. The allegation that the petitioner had deposited the recovery amount under compulsion has been denied as false. It is stated that the petitioner himself approached the Promotion Adalat and accepted the imposed recovery amount. He even volunteered to pay the recovery amount initially in installments which was allowed and accordingly installments were fixed but subsequently, he represented

and was allowed to deposit the total amount at one go. It is further stated that the order for recovery of the amount having been passed by the Deputy Director, Nandankanan Zoological Park, he is a necessary party to this writ petition, but has not been impleaded as such.

5. Heard Mr. Satyajit Behera, learned counsel for the petitioner and Mr.N.K. Praharaj, learned Additional Government Advocate for the state.

6. It has been argued at length by Mr. Behera that the petitioner was not supplied with the necessary documents for which he could not submit an effective explanation to the charges levelled against him. Though he participated in the enquiry yet the same was dragged for a long period deliberately by the opposite parties. Moreover there being a stay order with regard to the order of punishment passed by the disciplinary authority, it was not open to the authorities to recover the amount from him without obtaining leave of the Court. It is further contended that the deposit being made under compulsion

cannot be treated as an act of acquiescence so as to deprive the petitioner from challenging the order of recovery.

7. Per contra, Mr. Praharaj would argue that firstly, the writ petition is no longer maintainable on the ground of waiver, acquiescence and estoppel. The stay order was passed by learned Tribunal on 11.1.2016 but only till filing of the counter. Moreover, the petitioner had himself approached the Promotion Adalat seeking promotion on his own volition. In view of the non-finalization of the disciplinary proceedings obviously no promotion could have been granted. Keeping this in view the petitioner himself volunteered to deposit the recovery amount for which initially installments were fixed. He went a step further by volunteering to pay the recovery amount at one go. Therefore, according to Sri Praharaj, there is absolutely no compulsion involved in the process. Even assuming that the petitioner was compelled to pay the amount, he could have specifically stated that the same was without prejudice to his claims in the instant

writ application pending before this Court at the time of depositing the recovery amount or even immediately or shortly thereafter. The petitioner not having done so is therefore, estopped to challenge the finalization of the disciplinary proceeding or the penalty imposed therein at this stage. On merits, it is contended that the petitioner had never complained about non-supply of documents and in fact had fully participated in the enquiry. As per the chronological date of events mentioned in the counter affidavit, it is the petitioner who caused the delay by not submitting reply to the first show cause notice in time. He further argues that the principles of natural justice were fully adhered to by giving full opportunity to the petitioner to defend himself at all stages. The disciplinary authority having agreed with the findings of the enquiry officer, rightly imposed the punishment after considering the representation submitted by the petitioner.

8. Since a question of maintainability of the writ petition has been raised, it would be proper to deal with the same at the first instance, since it goes to the root of

the matter. There is no dispute that the petitioner was imposed punishment of recovery of Rs. 2,05,329/- as per order under Annexure-7. It is also not disputed that the Promotion Adalat was held on 29.2.2020. It is also borne out from the record that the petitioner submitted a representation dated 19.8.2020, enclosed as Annexure-B to the counter, wherein he stated that he had appeared before the Promotion Adalat on 29.02.2020 chaired by Hon'ble Chief Secretary and had put forth his grievance for his next promotion as ACF and that the Government finalized his case with imposition of fine of Rs. 2,05,329/-. He further stated in the said letter that he had approached the Government to pay on installment basis but again on 06.08.2020, the Joint Secretary, F & E Department had given direction to recover the amount from his salary on installment basis and accordingly installment was fixed. Further, due to some administrative problems the petitioner stated that he wants to deposit the amount at one go and therefore he deposited the amount by bank draft dated 18.08.2020 and requested

the Deputy Director of Nandankanan Zoological Park to intimate the same to the Joint Secretary, F & E Department.

9. Whether the above conduct of the petitioner in depositing the penalty amount during pendency of the writ application amounts to waiver, acquiescence or estoppels is the issue to be decided.

In the case of ***Sha Mulchand & Co. Ltd. v. Jawahar Mills Ltd.***, reported in **1953 SCR 351 : AIR 1953 SC 98**, the Apex Court held as under:

“Unilateral act or conduct of a person that is to say act or conduct of one person which is not relied upon by another person to his detriment, is nothing more than mere waiver, acquiescence or laches, while act or conduct of a person amounting to an abandonment of his right and inducing another person to change his position to his detriment certainly raises the bar of estoppel..”

10. This is a case where the opposite parties essentially wish to contend that the petitioner, having complied with the order of punishment by depositing the recovery amount during pendency of the writ application without even a semblance of protest, must be deemed to have abandoned his right to challenge the said order

anymore. It has been argued forcefully by Mr. Behera that the petitioner was compelled to pay the amount as otherwise he would have been deprived of his rightful promotion to the post of ACF and therefore such deposit cannot be treated as an abandonment of right. Mr. Praharaj, on the other hand, has argued that there is no question of any compulsion as it being a promotion on the recommendation of the Promotion Adalat and not usual promotion, the petitioner was free to refuse such promotion and challenge the requirement of deposit of the recovery amount in the present application.

11. What exactly had transpired in the Promotion Adalat in which the petitioner had appeared before the Chief Secretary is not forthcoming from the materials on record save and except that his case for promotion to the post of ACF was apparently recommended. Obviously such promotion could not have been granted unless the DP pending against him was finalized. Here, by finalization of the DP, it is meant that the penalty imposed by the disciplinary authority was carried to its logical

conclusion. In his representation dated 19.08.2020 addressed to the Deputy Director of Nandankana Zoological Park, the petitioner has not stated anything nor whispered a word regarding the so-called deposit being made under compulsion. Assuming that the petitioner would not have been granted promotion had he raised any protest at that time, even then it was open to him to say so in writing immediately or shortly thereafter. Significantly while the promotion was granted on 28.09.2020 the petitioner not only did not raise any objection immediately thereafter but also filed a petition for amendment incorporating such facts only on 01.08.2021 before this court after nearly 11 months of passing of the order of promotion. Such conduct of the petitioner assumes great importance in the context of the present writ application inasmuch as if the petitioner accepted the order of punishment and thereby deposited the recovery amount, which he had challenged in the present application during its pendency, can any cause of action be said to have survived? In view of the facts

narrated hereinbefore, this Court is constrained to observe and hold that by depositing the recovery amount without any objection or protest either at the relevant time or within a reasonable time thereafter, the petitioner must be deemed to have abandoned his right to challenge the same.

12. Even on merits it is seen that the charges were drawn up against the petitioner on 08.03.1994. The petitioner submitted his written statement of defence on 22.07.1996 whereupon the enquiry officer was appointed on 30.08.1996. The enquiry appears to have remained pending without any progress till 02.07.2007 when it was completed and report was submitted. The petitioner does not say as to what had transpired in between. But there is no denying the fact that the petitioner had participated in the enquiry and his statement had been duly recorded by the enquiry officer. The petitioner was issued with the first show cause notice along with the enquiry report on 31.07.2007. He submitted his reply to the show cause notice five years later, i.e., on 05.07.2013. Thereafter the

petitioner approached the Administrative Tribunal in O.A. No. 3507(C) of 2014 with prayer for early conclusion of the disciplinary proceeding. The petitioner was issued with the second show cause notice on 24.01.2014 to which he submitted his reply on 13.02.2014. The final order of punishment was passed by the disciplinary authority on 26.05.2015. As it appears from the above narration the proceeding which was initiated way back in 1994 was finalized only in 2015, which is 21 years after. But then the petitioner has not been able to satisfy this Court that the delay had occurred entirely due to the laches of the opposite parties. This Court therefore finds no merit in the contention that the proceeding warrants interference only on the ground of delay. The charges having been duly proved in enquiry, the disciplinary authority accepted the findings of the enquiry officer. It is not stated as to how the findings of the enquiry officer are erroneous or incorrect to warrant any interference.

13. From the foregoing discussion therefore, it is clear that the petitioner has not been able to make out

any case for interference by this court. As has already been held hereinbefore, the petitioner must be deemed to have abandoned his right to challenge the final order passed by the disciplinary authority under Annexure-7 by complying with the same during pendency of the writ application without raising any protest or objection whatsoever. Even on merits, this Court has found no reason to interfere with the findings of the disciplinary authority.

14. In the result, the writ petition fails and is therefore, dismissed. There shall be no order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 28th July, 2022/ A.K. Rana