

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.800 of 2016

Manoj Kumar Bal

....

Petitioner

Mr. P.K. Bhuyan, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. S.K. Saml, AGA

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.05.2023

Order No

- 20.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. P.K. Bhuyan, learned counsel for the Petitioner and Mr. S.K. Samal, learned Addl. Govt. Advocate appearing for the Opp. Parties.
3. The present writ petition has been filed challenging the order of punishment of removal from service passed by the O.P. No. 4 under Annexure-6 and confirmation of the same by the Appellate Authority vide order under Annexure-8, by the Revisional Authority vide order under Annexure-10 as well as the order rejecting the mercy petition of the Petitioner by O.P. No. 1 vide order under Annexure-11 & 13. The Petitioner has further made a

prayer to direct the Opp. Parties to reinstate him in service with full back wages.

4. It is the case of the Petitioner that the Petitioner was appointed as a Sepoy in the establishment of Commandant, OSAP 1st Bn., Charbatia vide No. S/7 - Coy. It is contended that while continuing in the establishment of O.P. No. 4 the Petitioner because of his suffering from rheumatic arthritis since remained on leave on different occasion by submitting leave applications before the O.P. No. 4, but on the ground of unauthorized absence and overstay of leave, a no. of proceedings were initiated against the Petitioner. It is also contended that all those proceedings were conducted ex-parte and orders of punishment were passed without providing copies of those orders to the Petitioner. Because of such action of the O.P. No. 4 the Petitioner also could not get an opportunity to challenge all those orders passed in different disciplinary proceedings so initiated against the him vide Proceeding No. 25 dtd.10.07.1996, Proceeding No. 22 dtd.23.11.1999, Proceeding No. 25 dtd.01.07.2000, Proceeding No. 5 dtd.24.01.2001, Proceeding No. 8 dtd.04.03.2002 and Proceeding No. 15 dtd.06.12.2005.

4.1. It is contended that since the punishments so imposed in different proceedings, the Petitioner was awarded with 10 Black

marks, O.P. No. 4 initiated Proceeding No. 10 dtd.29.01.2007 against the Petitioner with the charges of gross unsatisfactory service and gross misconduct. On initiation of such a proceeding the Petitioner was issued with a show-cause on 29.11.2007 under Annexure-2 by proposing therein that since the Petitioner has earned 10 Black marks in his service book for his serious delinquencies in service career, as per PMR 836 the Petitioner is liable for removal from his service. On receipt of show-cause issued under Annexure-2, the Petitioner submitted his preliminary show-cause on 6.10.2008 under Annexure-3.

4.2. Even though the Petitioner filed a detailed reply to the show-cause, but O.P. No. 4 instead of accepting the same proceeded with the matter with appointment of Enquiry Officer. But the said Enquiry Officer also proceeded ex parte and submitted the enquiry report on 29.01.2009 by holding the Petitioner guilty of the charges. On receipt of the enquiry report the Petitioner straight away was issued with the 2nd show-cause on 21.03.2009 under Annexure-4 by proposing removal of service in terms of the provisions contained under PMR-836. Even though the Petitioner submitted his explanation to the 2nd show-cause on 20.06.2009 under Annexure-5, but O.P. No. 4 without proper appreciation of the grounds taken in

the reply to the 2nd show-cause under Annexure-5 removed the Petitioner from his service w.e.f.10.07.2009 vide order dtd.10.07.2009 under Annexure-6.

4.3. It is contended that challenging such order of removal the Petitioner though preferred an appeal before the Appellate Authority under Annexure-7, but the Appellate Authority vide order under Annexure-8 while rejecting the appeal confirmed the order of punishment so passed against the Petitioner. The revision filed by the Petitioner against such order of punishment was also rejected vide order under Annexure-10. Even though mercy petition was filed by the Petitioner before the Government-O.P. No. 1 to reconsider the order of punishment, but the same was also rejected by the Govt. under Anneure-11 & 13.

4.4. Learned counsel for the Petitioner contended that even though in the proceedings so initiated against the Petitioner, the Petitioner earned 10 Black marks, but in some of the order of punishment passed in different proceedings vide orders under Annexure-A to the counter, the Petitioner along with the award of Black mark was also imposed with the punishment of forfeiture of increment. It is contended that since along with the award of Black mark the Petitioner was also imposed with the punishment of forfeiture of

increment, in view of the provisions contained under PMR-835 r.w. PMR-837(1), the Black marks so earned ceases after expiry of the period of reduction, forfeiture or withholding of increments. Accordingly, it is contended that the proceeding initiated vide Proceeding No. 10 dtd.29.01.2007 under PMR 836 is not sustainable in the eye of law.

4.5. In support of his aforesaid submission Mr. Bhuyan, learned counsel for the Petitioner relied on a decision of the Tribunal so passed on 18.05.2012 in O.A. No. 2723(C) of 2008. It is also contended that the order passed by the Tribunal in O.A. No. 2723(C) of 2008 was confirmed by this Court in its order dtd.01.03.2017 in W.P.(C) No. 13624 of 2014. The order passed by this Court on 01.03.2017 is reproduced hereunder:-

“Heard Mr. M. Sahoo learned Additional Government Advocate for the petitioners and Mr. J.K. Rath learned Senior Advocate for the opposite party.

The Petitioners in this writ petition challenge the order dated 18.05.2012 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in CA No. 2723 (C) of 2008.

Pursuant to the divergent of orders passed in two different Original Applications, the matter was referred to the larger bench in O.A. No. 2723 (C) of 2008 to answer the reference “as to whether in case of penalty of reduction, forfeiture or withholding of increments having value of

Blackmark as prescribed in Rule-835 of Orissa Police Rules shall remain permanently in accordance with Rule 837 (1) or shall cease after expiry of period of reduction, forfeiture or withholding of increments"

The Tribunal after going through the different relevant rules contained in Orissa Police Rules held that Black mark value contained in Rule 835 (1) does not have effect expiry of period for which the reduction, forfeiture or withholding has been imposed. In such cases, the "Black mark" shall not remain permanently under Rule-837 (1). Further the 'Black mark' shall remain permanently under Rule 837 if it is awarded separately as a punishment prescribed in clause (f) of Rule 824.

This Court also went through the different provisions of the Orissa Police Rules vis-à-vis the impugned order passed by the Tribunal.

Considering the submission made by learned counsel for the parties and on going through the records, this Court does not find any infirmity or illegality in the impugned order to be interfered with by this Court.

The writ petition stands dismissed. In view of dismissal of the writ petition, the misc. case for condonation of delay is deposed of."

4.6. It is also contended that the order passed by this Court in W.P.(C) No. 13624 of 2014 was also confirmed by the Hon'ble Apex Court while dismissing the Special Leave Petition so filed by the Govt. vide order dtd.13.09.2019 in SLP(C) Diary No. 23651 of 2018. It is accordingly contended that since the order of punishment imposing Black mark was passed along with forfeiture of

increment, in view of the decision of the Tribunal so passed in O.A. No. 2723(C) of 2008 and confirmed by this Court as well as by the Hon'ble Apex Court, the order of removal passed on the ground that the Petitioner has earned 10 Black marks is not sustainable in the eye of law. Mr. Bhuyan also relied on a decision of this Court so passed on 21.10.2022 in W.P.C.(OAC) No. 3467 of 2014. This Court in a case of similar nature relying on the decision as cited supra interfered with the order of punishment of removal. Order dtd.21.10.2022 of this Court is reproduced hereunder:-

“3. The present writ Petition has been filed challenging the order of punishment passed on 10.05.2007 under Annexure-6 and confirmed by the appellate authority vide its order dtd.18.05.2012 under Annexure-7 and with a further direction on the Opp. Parties to reinstate the Petitioner with all financial and service benefits.

4. It is submitted that the Petitioner was dismissed from service vide order under Annexure-6 on the ground that the Petitioner was imposed with nine (9) black marks in different proceeding initiated against the Petitioner.

5. Learned counsel for the Petitioner submitted that in the order of punishment passed against the Petitioner, the order of black mark was passed along with the order of punishment of withholding of increments. It is submitted that since in terms of the said orders passed in the Proceedings in question, the increments of the Petitioner was withheld as directed, in view of the order passed by the learned Tribunal on 18.05.2012 in O.A. No.2723(C) of 2008, the order of dismissal passed

against the Petitioner on the ground that the Petitioner has been inflicted with 9 (nine) black mark cannot be held to be just and proper.

6. Mr. Sethi, learned counsel for the Petitioner also brought to the notice of this Court the order passed by the learned Tribunal and the said order was also provided to the learned AGA. It is also fairly submitted that the order passed by the learned Tribunal in O.A. No.2723(C) of 2008 is squarely applicable to the facts of the present case.

7. In view of such submission made by the learned counsel for the Parties, this Court is inclined to quash the order of dismissal passed against the Petitioner under Annexure-6 and the consequential order passed by the appellate authority under Annexure-7. While quashing the same, this Court directs the O.P. No. 1 to reinstate the Petitioner in his service, if he has not crossed the upper age limit in the meantime.

8. It is however observed that if the Petitioner has attained the age of superannuation in the meantime, then the period of dismissal till his superannuation be regularized, but that will be on notional basis. After regularizing such period of service steps be taken to sanction the retiral benefits as due and admissible in favour of the Petitioner within a period of three (3) months from the date of receipt of this order.”

5. Mr. S.K. Samal, learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that since in the proceedings so initiated against the Petitioner the order of punishment awarding Black marks exceeded 10, the Petitioner was initiated with the proceeding

under Annexure-2 by proposing therein to take action as provided under PMR-836. Since in all those proceedings initiated against the Petitioner the Black mark so earned exceeded 10, the proceeding under Annexure-2 was not only initiated but also after following due procedure of law, the Petitioner was rightly removed from his service vide order under Annexure-6. It is also contended that the order of punishment so passed under Annexure-6 by O.P. No. 4 was confirmed by the Appellate Authority as well as by the Revisional Authority under Annexure-8 and 10. The mercy Petition filed by the petitioner before the Govt. was also rejected vide order under Annexure-11 & 13.

5.1. It is accordingly contended that in view of such order of dismissal passed under Annexure-6 so confirmed by the Appellate Authority as well as by the Revisional Authority and by the Govt., no illegality can be found with the order of punishment so passed against the Petitioner under Annexure-6. It is also contended that since in all those proceedings punishment of Black mark was imposed along with punishment of forfeiture of increment, the provisions contained under PMR-835 and the decision rendered in that light by the Tribunal is not applicable to the facts of the present case. Since the Petitioner has earned 10 Black marks, he was rightly

removed from his service vide order under Annxure-6 and it requires no interference of this Court.

6. Having heard learned counsel appearing for the Parties and after going through the materials available on record, it is found that in the proceeding initiated against the Petitioner vide order issued under Annexure-A to the counter, he was imposed with one Black mark in respect of the proceeding dtd.09.10.1996. Similarly with regard to the proceeding initiated on 23.11.1999 the Petitioner was awarded with one Black mark without pecuniary loss. But in the proceeding initiated against the Petitioner on 17.08.2000 the Petitioner was awarded with 3 Black marks with forfeiture of increment for a period of one year with cumulative effect. Similarly in the proceeding initiated on 24.01.2001 the Petitioner was awarded with 2 (two) Black marks and in the proceeding initiated on 04.03.2002 the Petitioner was awarded with one Black mark.

6.1. From the orders enclosed vide Annexure-A to the counter it is found that in the proceeding initiated on 17.08.2000 vide Proceeding No. 25/2000 the Petitioner was awarded with 3 Black marks with forfeiture of increment for a period of one year with cumulative effect. Similarly in the proceeding initiated on

23.11.1999 vide Proceeding No. 22 the Petitioner was awarded with one Black mark without pecuniary loss.

Since the Petitioner was removed from his service on his earning 10 Black marks, in view of the nature of orders passed in the proceeding dtd.17.08.2000 wherein the Petitioner was awarded with 3 Black marks with forfeiture of increment for period of one year with cumulative effect, in view of the decision of the Tribunal so passed in O.A. No. 2723(C) of 2008, it cannot be held that the Petitioner earned 10 Black marks and thereby became liable for removal from his service under PMR 836.

6.2. In view of the order passed by the Tribunal and so confirmed by this Court as well as by the Hon'ble Apex Court, the award of 3 Black marks with forfeiture of increment so passed in support of Proceeding No. 25 of 2000 cannot be taken into account while calculating the total Black marks earned by the Petitioner. If the said 3 Black marks will not be taken into account, then the total Black marks earned by the Petitioner will come down to 7 and accordingly the Petitioner will not be liable for removal taking recourse to the provision contained under PMR 836.

6.3. In view of such position and taking into account the decision passed in O.A. No. 2723(C) of 2008 so confirmed by this Court as well as by the Hon'ble Apex Court, it is the view of this Court that the initiation of the proceeding under Annexure-2 on the ground that the Petitioner earned 10 Black marks is not just and proper. Therefore, this Court while interfering with the order of punishment is inclined to quash the order of punishment passed under Annexure-6 and so confirmed under Annexure-8, 10, 11 & 13. While quashing all those orders, this Court directs for reinstatement of the Petitioner in his service and directs O.P. No. 4 to reinstate the Petitioner in his service within a period of one month from the date of receipt of this order. However, it is observed that from the date of dismissal till the Petitioner is reinstated, the period of service shall be counted only on notional basis and the Petitioner will not be entitled to get any financial benefit save and except any service benefit as due and admissible.

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

Signature Not Verified

Digitally Signed
Signed by: SNEHANJALI PARIDA
Designation: Jr. Stenographer
Reason: Authentication
Location: Cuttack
Date: 18-May-2023 18:32:48


Sneha

(Biraja Prasanna Satapathy)
Judge