

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC(OAB) No.01 of 2016**

In the matter of an application under Section 19 of the  
Administrative Tribunal's Act, 1985.

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**Pramod Kumar Dalai**

....

**Petitioner**

*-versus-*

**Secretary to Govt. of Odisha,  
Health and Family Welfare  
Dept., Odisha Secretariat,  
Bhubaneswar & Ors.**

....

**Opposite Parties**

**For Petitioner : M/s. Samarendra Mohanty(Advocate)**

**For Opp. Parties : Mr. B. Panigrahi  
Additional Standing Counsel**

**PRESENT:**

**THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY**

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**Date of Hearing: 19.10.2022 and Date of Judgment:03.11.2022**  
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***Biraja Prasanna Satapathy, J.***

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Samarendra Mohanty, learned counsel for the Petitioner and Mr. B. Panigrahi, learned ASC appearing for the Opp. Parties.
3. This writ Petition has been filed with the following prayer:-

*“i. To quash the Departmental Proceeding under Annexure-5 and direct the Respondent No. 3 to treat the suspension period of applicant as duty and pay salary to him during the suspension period.*

*ii. To direct the Respondent No. 3 to Revise and pay salary to the applicant under ORSP Rules, 1998, 2008 and further direct to pay TBA scale of pay after completion of 20 years of service and pay RACP benefits under the provisions of finance department Resolution No.3560 dtd.06.02.2013 we.f.01.01.2013.*

*iii. To grant and direct other relief(s) as deems feet in the circumstances of the case.”*

4. It is submitted that the Petitioner while working as a Junior Clerk in the establishment of O.P. No. 3, he was placed under suspension vide order dtd.16.12.1993 under Annexure-2 because of his implication in connection with Berhampur Sadar P.S. Case No. 98 dtd.19.10.1993.

5. It is submitted that the Petitioner subsequently vide order dtd.04.08.2001 was reinstated in his service pending regularization of the period of suspension and subject to finalization of some matrimonial cases filed by the wife of the Petitioner in the Court of learned JMFC, Pathapatnam, Dist. Srikakulam, State of Andhra Pradesh.

6. It is submitted that the Petitioner in the criminal proceeding arising out of Berhampur Sadar P.S. though was acquitted vide Judgment dtd.27.01.2004 under Annexure-4, but subsequent thereto the O.P. No. 3 initiated the proceeding against the Petitioner vide memorandum dtd.16.06.2004 under Annexure-5.

7. Learned counsel for the Petitioner submitted that even though the proceeding under Annexure-5 was initiated on the face of the order of acquittal passed by the learned JMFC under Annexure-4, but after initiation of the said proceeding on 16.06.2004, no further action was taken by the O.P. No. 3 in concluding the proceeding. Accordingly, the present writ Petition

was filed with a prayer to quash the said proceeding on the ground of inordinate delay in concluding the same.

8. Mr. Mohanty, learned counsel for the Petitioner in support of his aforesaid submission relied on a decision of the Hon'ble Apex Court reported in the case of ***State of Andhra Pradesh Vrs. N. Radhakishan*** reported in ***(1998) 4 SCC P-154***. In the aforesaid reported decision, Hon'ble Apex Court in Para 19 & 20 held as follows:-

*“19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules, If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as*

*per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.*

*20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularising the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years. The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at any stage tried to obstruct or delay the enquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. The Tribunal rightly did not quash these two latter memos."*

**9.** It is also submitted that during pendency of the matter before this Court the Petitioner also retired from his service on attaining the age of superannuation. But due to pendency of the disciplinary proceeding initiated in the year 2004, the Petitioner is not getting his retiral benefits. It is accordingly submitted that because of such inordinate delay in concluding the proceeding, the same is liable to be quashed.

**10.** Mr. Panigrahi, learned ASC on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that due to non-cooperation of the Petitioner, the Departmental Proceeding could not be finalized even though inquiry of the same has been completed.

**11.** It is also submitted that though the period of suspension in the meantime has been regularized, but due to pendency of the matter, the Opp. Parties are facing difficulties in extending the relief as claimed in the writ Petition.

**12.** Heard learned counsel for the Parties. Perused the materials available on record. This Court finds that even after acquittal of the Petitioner in the Criminal Proceeding though the proceeding was initiated against the Petitioner on 16.06.2004 under Annexure-5 on self same charges, but the same was kept pending.

**13.** Even though in the counter affidavit a ground has been taken that due to non co-operation of the Petitioner the proceeding could not be finalized even after submission of the inquiry report, but neither copy of the inquiry report nor any further action taken by the O.P. No. 3 in compliance of Rule 15 of the OCS (CCA) Rule has been enclosed to the counter affidavit.

**14.** Therefore, merely taking the stand that the proceeding could not be finalized due to non co-operation of the Petitioner cannot be accepted by this Court in absence of the relevant materials to that effect. The other grounds taken in the counter affidavit that due to pendency of the matter before this

Court the O.P. No. 3 is facing difficulty in extending the relief can also not be accepted as the same is not a valid ground for denying the benefit in favour of the Petitioner. In any view of the matter and taking into account the fact that the Petitioner has retired in the meantime, placing reliance on the decision as cited (supra), this Court is of the view that the proceeding initiated against the Petitioner in the year 2004 since has not been finalized till date, the said proceeding is liable to be quashed on the ground of inordinate delay in concluding the same.

**15.** Therefore, while quashing the same, this Court directs the O.P. No. 3 to extend all service and financial benefits as due and admissible to the Petitioner including the retiral benefits within a period of three (3) months from the date of receipt of this order.

**16.** The writ Petition is disposed of with the aforesaid observation and direction.

**(Biraja Prasanna Satapathy)**  
**Judge**

Orissa High Court, Cuttack  
Dated the 3<sup>rd</sup> of November, 2022/Sneha