

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1025 of 2016

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

.....

Ganeswar Behera

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.B.Dash.

For Opp. Parties : Addl. Standing Counsel
Mr. D.K.Mohanty.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:15.11.2022 and Date of Order:25.11.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. B.Dash, learned counsel for the Petitioner and Mr. D.K.Mohanty, learned Addl. Standing Counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following prayer:-

“(a). The Original Application may be allowed.

(b). *The order passed by the Disciplinary Authority dt.13/14.10.2014 (Ann-4) And Appellate Authority dt.30.12.2015 (Ann-12-Series) may be quashed.*

(c). *The respondents may be directed to reinstate the applicant with all consequential benefits.*

(d). *Such other order(s) / direction (s) may be issued in giving complete relief to the applicant”.*

4. It is the submission of the learned counsel for Petitioner that on being duly selected, the Petitioner was appointed as a Sepoy and posted as such in 3rd OSAP Bn, Koraput, where he joined on 13.09.2013. Subsequently, vide order dated 17.09.2013 under Annexure-1, the Commandant OSAP, 3rd Bn, Koraput communicated the decision of the Government to appoint the Petitioner as a Sepoy subject to verification of character and antecedents. Thereafter, vide order dated 24.10.2013, the Petitioner was deputed to OSAP 4th Bn, Rourkela to undergo the basic course of training of Sepoy. The Petitioner while undergoing the said training pursuant to the order dated 24.10.2013, he has issued with a show cause notice by the Asst. Commandant (Training), on 08.10.2014 under Annexure-2 directing the Petitioner to submit his reply by 6 P.M. of the said date or else it should be held that the Petitioner has nothing to say about the matter.

5. It is contended that the Asst. Training Officer after issuance of the show cause under Annexure-2 passed an order on 13.10.2014 under Annexure-3 directing the Petitioner to report before the Commandant, OSAP, 3rd Bn, Koraput as per SAPHQ Fax/Rm No.D.26-13(II) 2916/SAP dt.13.10.2014.

6. It is contended that vide another order passed on 13.10.2014 communicated vide Memo No.3241 dated 14.10.2014 of the Opposite Party No.4, the Petitioner was discharged from Government Service in accordance with the provision contained under PMR-668(a). Challenging such order of discharge, the Petitioner preferred an appeal before Opposite Party No.3 under Annexure-5 on 24.10.2014. In the said petition, the Petitioner clearly submitted that the Petitioner has been discharged from his service without providing adequate opportunity of hearing and without following the provision contained under Rule-828 of the PMR.

7. It is also pleaded in the appeal that the order of discharge passed by the Opposite Party No.4 taking recourse to PMR-668(a) is not appropriate and the said provision is not applicable to the case of the Petitioner.

8. It is also contended that prior to consideration of the said appeal filed by the Petitioner against the order of discharge, Opposite Party No.4 with mala fide intention moved the Opposite Party No.3 on 09.12.2014 under Annexure-6 with a prayer to reject the appeal of the petitioner on the ground that the Petitioner deserves no mercy as he is having extreme aggressive attitude and his continuance in the Department will endanger the life of his colleagues as well as public. Even though the Petitioner vide his representation dated 10.02.2015 under Annexure-7 requested the appellate authority by reiterating the fact that since the order of discharge has been issued without following PMR-828, the said order of discharge is not legally sustainable, but the Appellate Authority without

proper appreciation of the grounds taken in the memo of appeal confirmed the order of discharge vide order dated 21.03.2015 under Annexure-8 communicated vide letter dated 19.06.2015 under Annexure-9. The Petitioner being aggrieved by such action of the appellate authority though moved an application before Opposite Party No.2 with a prayer to reinstate the Petitioner in his service under Annexure-11, but Opposite Party No.2 rejected the said prayer vide order dated 30.12.2015 under Annexure-12.

9. Learned counsel for the Petitioner vehemently contended that since the Petitioner was appointed as a Sepoy, the order of discharge passed under Annexure-4 and confirmed by the Appellate Authority in his order dated 21.03.2015 under Annexure-12-Series is not justified as PMR-668(a) is not applicable to the case of the Petitioner.

10. Learned counsel for the Petitioner brought to the notice of this Court, the provision contained under Rule-668(a) of PMR and the same is reproduced hereunder:-

“all officers shall in the first instance be appointed or promoted on probation where the period of probation is not otherwise provided for in the rules, it shall be period of two years in the case of Executive Officers and one year in case of Ministerial Officers. The Authority empowered to make such appointment or promotion may at any time during such probationary period and without the formalities laid down in Rule-828 remove an Executive Officer directly appointed or revert such an Officer promoted who has not fulfill the condition of his appointment or who has shown himself unfit for such appointment or promotion. No appeal shall lie in such cases.”

11. It is contended that since the Petitioner is a ministerial staff, the Petitioner should not have been

discharged taking recourse to the provision contained under PMR-668(a).

12. It is also contended that only Executive Officer, who are in probation can be discharged taking recourse to the said provision without following the provision contained under PMR-828. Accordingly, it is contended that since the Petitioner has been discharged taking recourse to PMR-668(a), the said order of discharge is not legally justified and accordingly is liable to be set aside by this Court.

13. Learned counsel for the Petitioner also contended that there is complete violation of the principle of natural justice, as the Petitioner was straight away discharged from service by issuing Annexure-2. It is also the contention that Annexure-2 cannot be treated as a show-cause.

14. Mr. D.K.Mohanty, learned Additional Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that since the Petitioner during course of undergoing the training assaulted a co-trainee, he was issued with the show cause under Annexure-2 on 08.10.2014 and discharged from his service vide order under Annexure-4 dated 13.10.2014. Since the Petitioner was under probation there was no necessity to issue him any show cause and he is discharged from service is in accordance with PMR-668(a).

15. It is also contended that the Petitioner during the period of training the behavior of the Petitioner was so unbecoming that there was no necessity to issue formal show-cause and there is no illegality on the part of the Opposite Party No.4 in issuing Annexure-6 on the appeal

petition made by the Petitioner.

16. It is also contended that since the order passed by the Appellate Authority on 21.03.2015 was not received in the Office of Opposite Party No.4, the Petitioner was intimated about the same vide letter dated 6.8.2015 under Annexure-10. But the said order was communicated to the Petitioner along with the order passed by the DG & IG of Police while rejecting the prayer of the petitioner for his reinstatement. Accordingly, it is contended that because of the conduct of the Petitioner during the course of training, he has been rightly discharged taking recourse to the provision contained under 668(a) of the PMR.

17. Heard learned counsel for the Parties.

18. Perused the materials available on record. This Court after going through the same finds that Rule-668(a) of the Police Manual, is applicable only in the case of Executive Officer directly appointed and it is not applicable to the case of Ministerial Officers. Since the Petitioner was appointed as a Sepoy, the said post comes within the definition of Ministerial Officer. Therefore, discharging the Petitioner from taking recourse to the said provision is not permissible in the eye of law. This Court further finds that for the alleged incident, the Petitioner though was issued with a show cause on 08.10.2014 under Annexure-2, but the said show cause was not enclosed with any petition indicating the alleged mis-conduct of the petitioner. The said show cause under Annexure-2 also cannot be treated as a show cause as the Petitioner is not given reasonable time to submit his reply to the same. This Court also finds

that without giving any opportunity of hearing, the Petitioner was directed to report before Opposite Party No.4 on 13.10.2014 and on the very same date he was discharged from service vide the impugned order under Annexure-4 confirmed by the Appellate Court in its order dated 21.03.2015 under Annexure-12-Series. It is the view of this Court that the Petitioner was not given due opportunity of hearing to defend his stand before the Opposite Parties and in applicability of the provision of PMR-668(a) to the case of the Petitioner. The order of discharge passed under Annexure-4 relying on the said provision cannot be sustained in the eye of law. This Court also finds that the Opposite Party No.4 without any authority submitted his para-wise comments under Annexure-6 and thereby prevailing upon the Appellate Authority in rejecting the appeal without proper appreciation of the grounds taken by the Petitioner in his appeal petition. This Court also finds that the Opposite Party No.2 without proper appreciation of the Petitioner's claim for reinstatement also rejected his prayer without assigning any reason vide his order dated 30.12.2015 under Annexure-12-Series.

19. Since the very basis on which the Petitioner was discharged from his service is not applicable to the case of the petitioner, this Court is inclined to quash the order under Annexure-4 and consequential order passed under Annexure-12-Series. While quashing both the orders, this Court directs the Opposite Party No.4 to reinstate the Petitioner in his service within a period of one month from

the date of receipt of this order. This Court however observes that since the Petitioner has undergone the training for around one year, he be deputed to undergo the balance period of training and after such completion, the Petitioner be absorbed in the post permanently.

20. With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th of November, 2022/Subrat (Sr. Steno)

