

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OA) No.1433 of 2014

Jagabandhu Barik *Petitioner*
Mr. Tapan Kumar Biswal, Adv.
-versus-
State of Odisha & Ors. *Opposite Parties*
Mr. H.K. Panigrahi, ASC.

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
10.

ORDER
23.12.2022

1. The petitioner has challenged the order of termination passed by the opposite party No.2/Commandant, Orissa Special Armed Police, 1st Battalion, Dhenkanal.

I. FACTS OF THE CASE:

2. The petitioner was appointed as an Attendant in the year 1983; vide B.O. No.1324 dated 02.08.1983. While the matter stood thus, it was alleged that an unauthorized water connection has been made, by fixing a motor pump to the PHD pipe connection, depriving the nearby consumers of getting sufficient water. However, this arrangement came to the knowledge of opposite party No.2 and the connection was severed. Aggrieved by it, the wife of the petitioner verbally abused the PHD authority and

Opposite party No.2 in an indecent manner. Thereafter, the opposite parties initiated Departmental Proceeding No.1 of 2005, wherein the petitioner was sentenced termination. The said punishment order was challenged by the petitioner in O.A. No.1014 of 2008 on the ground of non-issuance of 2nd show cause notice as per Rule-15(10)(b) of O.C.S.(C.C.&A) Rules, 1962, wherein the learned Tribunal set aside the punishment order and directed reconsideration for a proportionate punishment. However, pursuant to the order dated 08.01.2010, passed in O.A. No.1014 of 2008, the punishment of termination was changed to compulsory retirement.

3. Afterwards, this punishment of compulsory retirement was challenged by the petitioner by way of O.A. No.923 of 2011 which was set aside by the Tribunal with the directions to comply with Rule 15(10)(b) of O.C.S.(C.C.&A) rules, 1962 and to take appropriate action as per law within five months from the date of receipt of the order. It was also pronounced that the period of absence of the petitioner till the date of reinstatement be treated as suspension period as per Rule-91 of the Orissa Service Code, and he shall be paid subsistence allowance for the said period as per Rule-90 of the Orissa Service Code.

4. When the petitioner was reinstated and placed under suspension as per the aforementioned order, the punishment was changed by awarding forfeiture of increment for a period of one year.

II. SUBMISSION OF THE PETITIONER

5. Learned counsel for the petitioner submits that the O.A. No.923 of 2011 was disposed of on 04.09.2013 quashing punishment of compulsory retirement and remitted back with the direction to give an opportunity to the petitioner being heard. The opposite party has admitted that the petitioner has not been given the opportunity. Because of their premonition attitude, the Opposite Parties served a second show-cause to the petitioner on 13.11.2013 without giving him an opportunity being heard; they did not supply any relevant documents to defend his case; they did not give him a chance to bring defence witnesses or cross-examine the prosecution witnesses.
6. The petitioner gave a representation on 19.12.2013, in response to showcause dated 13.12.2013, in which he requested a copy of the enquiry report and relevant documents. Further, he requested permission to adduce defence evidence and cross-examine the prosecution witnesses to defend his case. Unfortunately, the authority

refused to respond to his requests. The petitioner filed representation on 18.02.2014 against the 2nd show-cause notice dated 21.12.2013 but the authority treated it as a showcause reply and rejected the same and imposed such unreasonable punishment.

7. Learned counsel for the petitioner submits that the departmental proceeding was initiated due to quarrel between petitioner's wife and opposite party No.2. The petitioner was absent from the spot during the quarrel. Following, one criminal case has been initiated against the higher authority by the wife of the petitioner. After the criminal complaint, the authority has acted in vengeance by imposing excessive punishment on the petitioner which was given effect to by initiating a departmental proceeding. Punishment like forfeiture of increment is not within the purview of Rule 13 of OCS (CCA) Rules.
8. Meanwhile, the petitioner has retired from service on 31.01.2019 but the pendency of this case is acting as a stumbling block to get his pension and other retirement benefits, etc.
9. The petitioner has relied on decisions in *V.P. Ahuja vs. State of Punjab & Others*,¹ and *Shridhar son of Ram Dular*

¹ (2000)1 ATT (SC) 416

vs. Nagar Palika Jajunpur and others to buttress their contention that the impugned order should be quashed.

III. COUNTER SUBMISSIONS OF OPPOSITE PARTY NO.2

10. Per contra, learned counsel for the opposite party submits that the petitioner has earned 11 black marks for his indiscipline, misconduct, and dereliction of duties. The petitioner was using one motor pump set without due authorization, tampering the state pipe line, causing serious inconvenience to other inhabitants of D.M.T.I. colony due to scarcity water. For this reason, the motor pump was disconnected by PHD worker in presence of retired Asst. Commandant Shri P.C. Mishra on 30.10.2004. At that time, the wife of petitioner verbally abused the P.H.D. operator and Assistant Commandant Shri P.C. Mishra. The petitioner too lined up with his wife and abused the personnel. For the above conduct, departmental proceeding was initiated against the petitioner against which the petitioner filed original application before the Tribunal. Pursuant to the remission order of the Tribunal, dated 04.09.2013, the petitioner was reinstated, on 08.11.2013, by the authority but placed under suspension till disposal of his proceeding No.1/2005. After finalization of his proceeding, he has been released from his

suspension with effect from 21.03.2014 and performing his normal duty. He has also been paid the suspension allowance Rs.3,96,646/-

11.It was submitted that the petitioner was given ample opportunity to submit the 2nd show-cause explanation by 30.11.2013. However, instead of submitting 2nd show cause reply in time, he adopted dilatory procedures with unnecessary pleas showing various reasons; he submitted his 2nd show cause reply on 18.02.2014.

12.Accordingly, after careful perusal of his 2nd show-cause, the final order in proceeding No.1 of 2005 has been passed as per law and direction of the OAT and the petitioner has been awarded a forfeiture of increment for a period of one year. The action of the opposite party No.2 is not at all arbitrary and malafide but as per law and as per direction of the Learned Tribunal. Hence, the petition should be rejected as it lacks merit.

IV. COURT'S REASONING AND ANALYSIS

13.Perusal of the above submissions, it is clear that reason of dismissal of the delinquent is attributed to him and the petitioner has not been exonerated from all the charges held against him. The opposite party submits that the petitioner has earned 11 black marks for his indiscipline,

misconduct, and dereliction of duties. The petitioner was using one motor pump set without due authorization, tampering the state pipe line, causing serious inconvenience to other inhabitants of D.M.T.I. colony due to scarcity water. For this reason, the motor pump was disconnected by PHD worker. From the submissions it is clear that the petitioner was provided with sufficient chances and the principle of natural justice has not been violated. Therefore, this Court does not deem it appropriate to interfere with the proceedings.

14. Such kind of non-interference without any cogent reasons has been clearly enunciated by the apex Court in plethora of its pronouncements. In the case of *B.C. Chaturvedi v. Union of India*², the Supreme Court observed and held as under:

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty

² (1995) 6 SCC 749

and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

15.In the case of *Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh*³, the Supreme Court held as under:

"19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

³ (2013) 12 SCC 372

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case."

16. In the case of **J.K. Synthetics Ltd. v. K.P. Agrawal and Anr⁴**, the Supreme Court observed that:

"There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed.

But the cases referred to above, where back- wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was

⁴ (2007) 2 SCC 433

motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee.

Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc."

17. Considering the facts and circumstances of the case and for the reasons stated above and considering the charge and gravity of misconduct levelled against the Petitioner, this Court is of the view that it would not be justified in

interfering with the order imposed by the Disciplinary Authority. In the present case, the misconduct on the part of the Petitioner was held to be proved. Moreover, this Court cannot get into the merits of the disciplinary proceedings.

18. It is the settled position of law that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary proceedings. However, in the instant case, it is matter of record that the Petitioner was not exonerated from the charges levelled against him.
19. In view of the facts as mentioned above, the present writ petition sans merit is dismissed. There shall be no order as to costs.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar