

HIGH COURT OF ORISSA: CUTTACK

WPC (OAC) NO.4116 OF 2015

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

Pratap Kumar Sahoo

...

Petitioner

- Versus -

D.G. and I.G. of Police and Others ...

Opposite parties

For Petitioner

...

M/s. M.K. Khuntia, G.R. Sethi,
J.K. Digal, Miss. B. Pattnaik &
S. Nanda.

For Opposite Parties ...

Mr. Baibaswata Panigrahi
Additional Standing Counsel

CORAM:

THE HONOURABLE SHRI JUSTICE BIRAJA PRASANNA SATAPATHY

Date of hearing: 13.09.2022

Date of judgment : 20.10.2022

Biraja Prasanna Satapathy, J.

1. I have heard Mr. G.R. Sethi, learned counsel appearing for the Petitioner and Mr. Baibaswata Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties.

2. The present writ petition has been filed by the Petitioner challenging the order of punishment dated 31.03.2010 passed by

the Opposite Party No.3-Deputy Commissioner of Police, Cuttack (Disciplinary Authority) under Annexure-6 and confirmation of the same by the Opposite Party No.2-Commissioner of Police, Bhubaneswar-Cuttack Commissionerate, Bhubaneswar (Appellate Authority) vide his order dated 25.11.2010 under Annexure-8 and by the Revisional Authority - Opposite Party No.1-Director General and Inspector General of Police, Odisha, Cuttack vide his order dated 2.11.2015 under Annexure-12.

3. It is submitted by Mr. G.R. Sethi, learned counsel for the Petitioner that the Petitioner while continuing as a Constable under Opposite Party No.3, a departmental proceeding was initiated against him vide proceeding No.33 dated 17.10.2004 under Annexure-1. It is further submitted that the said proceeding was initiated against the Petitioner and two other employees working under the department because of their implication in Cantonment P.S. Case No.57 dated 22.06.2004. It is also submitted that charge framed against the Petitioner in the proceeding under Annexure-1 is similar to the nature of allegation made in the F.I.R. by the victim under Annexure-2. It is also submitted that the proceeding initiated in Cantonment P.S. No.57 dated 22.06.2004, corresponding to G.R. Case No.967 of 2004 was

tried by the learned 1st Additional Sessions Judge, Cuttack in Sessions Trial No.866 of 2004. It is also submitted that the learned trial court vide its judgment dated 5.12.2007 under Annexure-14 was pleased to acquit the present Petitioner along with two other accused persons. Accordingly, it is submitted that in view of such acquittal in the criminal proceeding, the Petitioner should not have been imposed with the punishment of dismissal from service by the Disciplinary Authority in the proceeding initiated under Annexure-1 as the charges in both the proceedings are similar in nature. It is further submitted that challenging the order of punishment passed by the Disciplinary Authority in his order dated 31.03.2010 under Annexure-6, the Petitioner though preferred an appeal, but the Appellate Authority without proper appreciation of the grounds taken in the memo of appeal rejected the same vide his order dated 25.11.2010 under Annexure-8. It is also submitted that the Petitioner challenging the order passed by the Appellate Authority preferred a revision before the Revisional Authority. But the said Revisional Authority as like the Disciplinary Authority as well as the Appellate Authority, confirmed the order of punishment passed against the Petitioner vide his order under Annexure-12.

4. It is further submitted by Mr. Sethi, learned counsel appearing for the Petitioner that since the Petitioner was acquitted in the criminal proceeding by the competent court after examining the evidence made by the prosecution, more particularly the evidence of the victim, Disciplinary Authority in view of such clear acquittal passed against him should not have imposed the order of punishment by dismissing the Petitioner from his service. It is also submitted that the Petitioner along with the other two employees faced the criminal proceeding as well as disciplinary proceeding and all the three were acquitted in the criminal proceeding. Even though the Petitioner and co-employee/accused were imposed with the punishment of dismissal from service, but the Revisional Authority while considering the revision filed by the co-accused Kailash Chandra Kandi modified the order of dismissal to one of compulsory retirement vide his order dated 3.4.2012 under Annexure-13 Series, the prayer of the Petitioner was rejected by the Revisional authority vide order under Annexure-12.

5. Mr. Sethi, learned counsel appearing for the Petitioner in support of his aforesaid submission relied on a decision of this Court in the case of ***Jaya Prakash Mohanty v. State of Odisha represented by its Secretary, Home Department & Ors.,***

reported in 2017 (II) ILR – CUT-317. It is submitted that this Court in the said reported decision held that doctrine of equality must apply to all those persons who are equally placed. It is also submitted that this Court in the said decision also held that equal treatment should be maintained while imposing punishment and any discrimination would violate Article 14 of the Constitution of India. This Court at Paragraphs-15 to 17 in the said judgment have held as follows:

15. *It is reported in the case of **Rajendra Yadav –V- State of M.P. & others (Supra)** where Their Lordships, at paragraphs-12 and 13, have observed as follows:*

“12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

*13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of*

misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In **Anand Regional Coop. Oil Seedsgrowers' Union Limited -V- Shailesh Kumar Harshadbhai Shah (2006) 6 SCC 548**, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.”

With due regard to the above decision, it appears that the doctrine of equality must apply to all those who are equally placed; even who are found guilty for similar charges. The equality of treatment would also be maintained while imposing punishment and there cannot be discrimination as the same would violate Article 14 of the Constitution of India. Applying the said principle in the instant case, it appears that when Manoj Kumar Behera in D.P. No.15/2005 was let off with caution as revealed from the counter of the opposite parties, the order of punishment of compulsory retirement passed against the petitioner is discriminatory being violative of Article 14 of the Constitution of India. On the other hand, the doctrine of equality must be applied in the present case.

16. Apart from this, we are of the considered opinion that neither the Disciplinary Authority nor the Appeal Committee could examine proportionality of the punishment to the charges leveled against the petitioner. When there are only charges of non-reporting about non-payment of road tax and damage to the RC Book of the vehicle proved, award of punishment like compulsory retirement, in our considered

opinion, is disproportionate to the charges proved against him in terms of the discussions made above. Hence, the order of passing compulsory retirement against the petitioner is illegal and improper. The point for discussion is answered accordingly.

17. **CONCLUSION**

From the foregoing discussions, it is made clear that the punishment awarded to the petitioner is not in consonance with the principles of law vis-à-vis the charges proved against him for which the same cannot be sustained in law. We, therefore, are of the view that the said order of compulsory retirement passed by the Disciplinary Authority vide Annexure-9 and the order passed by the Appeal Committee vide Annexure-10 are liable to be quashed and the Court do so. On the other hand, considering the gravity of Charge Nos.1 and 2 proved against the petitioner, he may be awarded with the punishment of stoppage of four annual increments without cumulative effect. Accordingly, it is directed that the petitioner be reinstated in service and the consequential service benefits including the financial benefits be extended to him. It is made clear that the petitioner would be extended the financial benefits notionally and the entire exercise must be completed within a month from the date of this order. The Writ Petition is disposed of accordingly.”

6. It is also submitted by the learned counsel for the Petitioner that since the Petitioner was acquitted in the criminal proceeding, the order of dismissal passed against the Petitioner vide order under Annexure-6 and confirmed under Annexures-8 and 12 are harsh in nature, as the Petitioner was honorably acquitted in the criminal proceeding. In support of his submission, he relied on a decision of the Hon’ble Apex Court in the case of **Rajendra Yadav v. State of Madhya Pradesh and Others, reported in (2013) 3 SCC 73**. It is submitted that since the Petitioner was honorably

acquitted in the criminal proceeding, the Petitioner is entitled for his reinstatement in service. The Hon'ble Apex Court at Paragraphs-8 to 12 of the said judgment have held as follows:-

“8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, the appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in a few judgments of this Court. The earliest one is DG of Police v. G. Dasayan² wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of

compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In Shaileshkumar Harshadbhai Shah case¹, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.”

7. Mr. Sethi, learned counsel appearing for the Petitioner making all such submissions prayed for interference of this Court in the impugned order of punishment passed under Annexure-6 and confirmed by the Appellate Authority under Annexure-8 and by the Revisioinal Authority under Annexure-12.

8. Mr. Baibaswata Panigrahi, learned Additional Standing Counsel appearing for the State-Opposite Parties, on the other

hand, made submission basing on the stand taken in the counter affidavit. It is submitted that even though the learned 1st Additional Sessions Judge, Cuttack vide his judgment dated 5.12.2007 acquitted the Petitioner from the charges, but the said court never turned the case as a false case. It is also submitted that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceeding initiated against that employee. In support of the same, Mr. Panigrahi relied on a decision of Hon'ble the Apex Court in the case of ***Deputy Inspector General of Police and Anr. V. S. Samuthiram, reported in AIR 2013 SC 14***. It is accordingly submitted that even though the Petitioner was acquitted in the criminal proceeding, but in view of the nature of proof to be undertaken in a disciplinary proceeding, the Petitioner has been rightly imposed with the order of punishment by dismissing him from his service. It is also submitted that in view of the nature of allegation made against the Petitioner, not only the Disciplinary Authority, but also the Appellate Authority as well as Revisional Authority concurred with the same and in view of such concurrence by all the forums below, this Court need not interference with the said order of punishment, which has been rightly passed as against the Petitioner.

9. Heard learned counsel for the parties. Perused the materials available on record. This Court after going through the same finds that charges in both the criminal proceeding and departmental proceeding are one and similar.

10. This Court, after going through the judgment passed by the learned 1st Additional Sessions Judge, Cuttack in his judgment under Annexure-14, finds that the victim (P.W.14) in her testimony before the said court denied of having raped by any of the accused persons in the night of the date of occurrence. In view of such statement of the victim, the Petitioner along with two other co-accused persons were acquitted from the charges. Therefore, in view of such statement of the victim which has been relied on by the learned 1st Additional Sessions Judge, Cuttack in his judgment under Annexure-14, this Court is of the view that the order of punishment passed against the Petitioner dismissing him from his service vide order under Annexure-6 is on the higher side.

11. Taking into account the order of punishment finally imposed on the co-accused vide order dated 3.4.2012 under Annexure-13 Series and relying the decision of this Court in the case of *Jaya Prakash Mohanty* (supra), this Court is inclined to quash the order of dismissal passed against the Petitioner under Annexure-6 and

consequential orders passed by the Appellate Authority and by the Revisional Authority under Annexures-8 and 12 respectively. While quashing the same, this Court directs the Opposite Party No.3-Deputy Commissioner of Police, Cuttack to modify the order of punishment so passed against the Petitioner to an order of compulsory retirement. While directing so, this Court directs the Opposite Party No.3-Deputy Commissioner of Police, Cuttack to pass appropriate order in that regard within a period of two months from the date of receipt of this order. After modifying the order of dismissal to an order of compulsory retirement, necessary steps be taken to extend the benefit as due and admissible in favour of the Petitioner within a period of three months. The Petitioner is directed to provide a copy of this order before Opposite Party No.3-Deputy Commissioner of Police, Cuttack within seven days from the date of receipt of this order.

12. With the aforesaid observations and directions, this writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
The 20th October, 2022/D. Aech, PA.