

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.279 of 2015

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

.....

Gajendra Kumar Behera

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.Biswabihari Mohanty,
M.Harichandan & B.Tripathy.

For Opp. Parties : Standing Counsel
Mr. N.K.Praharaj.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 05.05.2022 and Date of Order:30.06.2022

Biraja Prasanna Satapathy, J.

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

“(i) The Original Application be allowed.

(ii) This Hon’ble Tribunal may be pleased to quash the impugned order of punishment dated 10.10.2014.

(iii) This Hon’ble Tribunal may further be pleased to quash the proceeding and exonerate the applicant from all the charges in the disciplinary proceeding No.6036 dated 28.09.1992.

(iv) This Hon’ble Tribunal further be pleased to direct the Respondents to release all retiral benefits of the applicant from the date of retirement dated 31.03.2001 with interest forthwith or within a time to be stipulated by this Hon’ble Tribunal.

(v) Or pass any other order / orders as this Hon’ble Tribunal may deem fit and proper”.

4. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that the Petitioner while continuing as a Sub-Inspector of Excise under the Superintendent of Excise, Balasore, a proceeding was initiated against him on 28.09.1992 under Annexure-1.

5. It is submitted that in the said proceeding, the Disciplinary Authority-Opposite Party No.2 when passed the order of punishment vide office order dated 26.11.2001, the Petitioner challenging the said order approached learned Tribunal in OA No.2956 (C) of 2003.

6. It is submitted that learned Tribunal vide order dated 09.12.2009 under Annexure-6, while quashing the said order, remitted the matter to the Opposite Party No.2 to act

in accordance with Rule-7 of the Pension Rules. Learned Tribunal issued such a direction on the Opposite Party No.2 to act in accordance with Rule-7 of the Pension Rules as prior to imposition of order of punishment on 26.11.2001, the Petitioner had already retired from service on 31.03.2001.

7. It is submitted that after receipt of the order passed by the learned Tribunal in OA No.2956(C) of 2003, though the Petitioner along with the 1st show cause was provided with the copy of the enquiry report and the Petitioner on receipt of the same under Annexure-7 submitted his reply under Annexure-8 on 27.10.2010, but the Opposite Party No.2 once again without following the direction of learned Tribunal to act in terms of Rule-7 of the Orissa Pension Rule, passed similar order of punishment vide the impugned order dated 10.10.2014 under Annexure-9.

8. Mr. Mohanty accordingly submitted that since on remand of the matter, the Opposite Party No.2 once again imposed similar punishment which was earlier quashed by the learned Tribunal in its order under Annexure-6, the impugned order dated 10.10.2014 is liable to be quashed.

9. Mr. Praharaj, learned counsel for the Opposite Parties made his submission relying on the stand taken in the counter affidavit that after remand of the matter the Petitioner was not only issued with the show cause by enclosing the copy of the enquiry report, but also the matter was referred to the Government to take a final decision vide letter dated 09.11.2010 under Annexure-N.

10. It is further submitted that pursuant to the direction issued by the Government vide letter dated 08.07.2014,

the required information was provided vide letter dated 23.07.2014 under Annexure-O to the counter. It is accordingly submitted that the Government after receipt of the relevant papers so forwarded under Annexure-O to the counter passed the impugned order of punishment under Annexure-9.

11. Mr. Praharaj accordingly submitted that the impugned order dated 10.10.2014 has been passed following the direction of the learned Tribunal in its order under Annexure-6. Accordingly, it is submitted that no interference is called for by this Court in the impugned order.

12. Heard learned counsel for the Parties at length.

13. Perused the materials available on record. It is not disputed that the proceeding was initiated vide Proceeding No.6036 dated 28.09.1992. It is also not disputed that even though the proceeding was initiated on 28.09.1992, but the order of punishment was initially passed only on 26.11.2001 under Annexure-3. The said order was set aside by the learned Tribunal in its order dated 09.12.2009 under Annexure-6 and the matter was remitted to the Opposite Party No.2 to act in accordance with Rule-7 of the Pension Rules. But as reflected in the impugned order, the Opposite Party No.1 has passed similar order of punishment as has been passed by the Opposite Party No.2 in his order under Annexure-3, which was set aside by the learned Tribunal in its order under Annexure-6. The order of punishment passed under Annexure-9 is also not in accordance with the provision contained under Rule-7 of the OCS (Pension) Rules.

14. Therefore, it is to be held that the Opposite Party No.1 while passing the impugned order under Annexure-9 has not followed the provisions contained under Rule-7 of the OCS (Pension) Rules, 1992 as well as the observation / direction contained in order dated 09.12.2009.

15. Accordingly, this Court has got no hesitation in quashing the impugned order dated 10.10.2014 passed by the Opposite Party No.1 under Annexure-9 and the same is hereby quashed. While quashing the same, the Opposite Parties are directed to release all service and financial benefits as due and admissible to the Petitioner within a period of three months from the date of receipt of this order.

16. With the aforesaid observations and directions, the WPC(OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 30th of June, 2022/Subrat