

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.2702 of 2014

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

.....

Sri Santosh Kumar Sethy

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.Manas Pati, S.Kar &
P.Das.

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

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:22.04.2022 and Date of Order: 06.05.2022

Biraja Prasanna Satapathy, J.

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

- (i) The Hon'ble Tribunal be pleased to declare and direct that under the above circumstances, it is humbly prayed that the Original Application may be allowed.
- (ii) The Hon'ble Tribunal be pleased to pass an order that since the applicant has already retired since 30.04.2013, no proceeding can be made as per provision of Rule 17 of OCS (CCA) Rules, 1962 and by which Annexure-3 should be quashed.
- (iii) And the Hon'ble Tribunal is pleased to pass such other Order / Orders as it deemed fit and proper in facts and circumstances of this case”.

4. It is the main contention of the learned counsel for the Petitioner that since the Petitioner retired from service on attaining the age of superannuation on 30.04.2013, the initiation of the proceeding against him along with other employees vide Memorandum dated 26.05.2014 under Rule-15 & 17 of the OCS (CCA) Rules, 1962 is not permissible.

5. It is further submitted that not only the proceeding under Annexure-3 was initiated in terms of the provision of Rules- 15 and 17 of the aforesaid Rules, but also it was indicated therein that the punishment as prescribed under Rule-13 of the said Rules shall be imposed on the Petitioner and other delinquent employees on conclusion of the proceeding.

6. It is accordingly submitted that since the Petitioner had already retired from service on 30.04.2013 by the time, the proceeding was initiated on 26.05.2014, the said proceeding purportedly under Rule -15 and 17 could not

have been initiated against the Petitioner with proposed punishment under Rule-13 of the said Rules.

7. Mr. Pati in support of the aforesaid stand relied on the decision of the learned State Administrative Tribunal passed on 31.10.2011 in O.A. No.46/2011. Learned Tribunal in the said decision on similar issue held that there cannot be joint enquiry for a retired employee under Rule-17 along with other employees who are still in service. Learned Tribunal in the said decision also held that after retirement of an employee, he no more remains a Government employee and accordingly no penalty under Rule-13 of the Rules can be imposed on him. Learned Tribunal accordingly in the said Original Application held that no proceeding purportedly under Rule-17 could have been initiated and accordingly quashed the same.

8. It is further submitted that the aforesaid decision of learned Tribunal was never challenged by the State- Opposite Parties and accordingly the same has attained finality in the eye of law.

9. Mr. Praharaj, learned counsel for the State-Opposite Parties on the other hand submitted that since the proceeding has been initiated within four years of the retirement of the Petitioner, the same comes within the provision contained under Rule-7(2)(b)(ii) of the aforesaid Rules, 1992.

10. It is also submitted that since the proceeding has been initiated taking recourse to the aforesaid provision, no

illegality has been committed by the Opposite Parties in initiating the same under Rule-17 of the said Rules. On being confronted with the order relied on by Mr. Pati passed in the aforesaid Original Application, Mr. Praharaj, learned counsel for the State submitted that he has no instruction as to whether the said order has been challenged in the higher forum or not.

11. Heard learned counsel for the Parties at length.

12. Taking into account the challenge made by the Petitioner, learned Tribunal while issuing notice of the matter vide order dated 27.11.2014 passed an interim order by restraining the Opposite Parties from proceeding with the proceeding initiated against the Petitioner.

13. It is submitted that in view of such order passed by learned Tribunal, the proceeding against the Petitioner has not yet commenced. In view of such admitted fact and in view of the order passed by learned Tribunal in the aforesaid decision, this Court finds sufficient force in the submission of Mr. Pati with regard to initiation of the proceeding against the Petitioner under Rule-17 of the OCS (CCA) Rules, 1962 with proposed punishment under Rule-13 of the said Rules.

14. Accordingly, this Court while interfering with the matter held that the proceeding initiated against the Petitioner vide Memorandum dated 26.03.2014 under Annexure-3 is not maintainable and liable to be quashed.

Accordingly, the same stands quashed as against the Petitioner.

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

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 6th of May, 2022/Subrat

