

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3712 of 2016

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

.....

Gangadhar Routray

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.L.K.Mohanty & B.K.Jena.

For Opp. Parties : Standing Counsel
Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 23.08.2022 and Date of Order:06.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. L.K. Mohanty, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned Standing counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with the following relief:-

“ (i) The Original Application be allowed.

(ii) The second show cause notice dated 03.10.2016 under Annexure-12 be quashed.

(iii) The entire proceeding initiated against the applicant dated 19.09.2001 under Annexure-1 and enquiry report dated 12.12.2014 under Annexure-10 be quashed / set aside by this Hon'ble Tribunal.

(iv) The Respondents be directed to release all pensionary benefits in favour of the applicant with 18 % interest thereon within a date to be fixed by this Hon'ble Tribunal.

(v) Pass any other order / orders or direction / directions be issued so as to give complete relief to the applicant".

4. Mr. Mohanty, learned counsel for the Petitioner submitted that in the incident which occurred during the period 16.10.1989 to 20.07.1990, the proceeding under Rule-15 of O.C.S (CC&A) Rules, 1962 was initiated vide Memorandum served on the Petitioner on 19.09.2001 under Annexure-1.

5. It is submitted that on receipt of the Memorandum along with Article of Charges, even though the Petitioner vide Annexure-2 moved an application before the Tahasildar, Pipili with a request to supply him the document in order to enable him to file written statement of defence, but those documents were never provided to the Petitioner.

6. It is submitted that instead of providing the documents as prayed for by the Petitioner in Annexure-2, the Opposite Party No.1 appointed the enquiry officer vide

order dated 31.12.2001 under Annexure-3 and in the said order it was wrongly indicated that the Petitioner has failed to submit his written statement of defence within the stipulated period of time.

7. It is further submitted that taking into account the fact that the proceeding was initiated with regard to some irregularity committed by the petitioner while disposing the Mutation Case No.147/1990, when the Petitioner made an application to allow him go through the said record it was indicated vide Annexure-4 that the said record is not traceable as it is ransacked on 03.10.1996.

8. It is submitted that while the matter stood thus, the Petitioner was also allowed to superannuate from his service w.e.f. 31.05.2002 vide order under Annexure-5.

9. Mr. Mohanty submitted that because of the pendency of the proceeding initiated under Annexure-1, even though the Petitioner retired from his service w.e.f. 31.05.2002, but he was only sanctioned with the provisional pension vide order under Annexure-6 and all other retirement benefits save and except release of 75% of the leave salary was kept withheld.

10. Mr. Mohanty further submitted that much after his retirement w.e.f. 31.05.2002, the Government –Opposite Party No.1 vide order dated 22.05.2004 under Annexure-7 appointed the Commissioner for Departmental Enquiries to enquire into the charges framed against the Petitioner.

11. It is submitted that subsequently when the Petitioner was issued a summon on 04.11.2004 under Annexure-8 to

appear before the said Commissioner, the Petitioner not only appeared before him but also submitted a detailed application on 21.08.02013 under Annexure-9 with a prayer to exonerate him from the charges.

12. Mr. Mohanty, further submitted that even though the enquiry of the proceeding was handed over to the Commissioner for Departmental Enquiries vide order dated 22.05.2004 under Annexure-4, but the inquiry of the proceeding never proceeded till the Petitioner was issued with the first show cause vide letter dated 12.12.2014 under Annexure-10.

13. Mr. Mohanty submitted that on receipt of the said show cause, the Petitioner submitted his reply under Annexure-11 on 29.12.2014 with a prayer to exonerate him from the proceeding so initiated against him.

14. It is further submitted that after receipt of the reply no further progress was made till the Petitioner was issued with the 2nd show cause on 03.10.2016 under Annexure-12, wherein it was proposed to reduce 20% of the pension of the Petitioner for a period of ten years.

15. Mr. Mohanty submitted that being aggrieved by such action of the Opposite Party No.1 in keeping the matter pending from 2001 and issuing the 2nd show cause after more than 15 years, the Petitioner filed the present writ petition challenging the said notice.

16. It is submitted that this Court while issuing notice of the matter on 21.10.2016 passed an interim order by

restraining the Opposite Party No.1 from passing the final order in the said proceeding.

17. Mr. Mohanty, learned counsel for the Petitioner submitted that the proceeding under Annexure-1 was initiated against the Petitioner on 19.09.2001 for the alleged irregularities committed during the period 16.10.1989 to 20.07.1990.

18. It is submitted that even though the Petitioner vide Annexure-2 prayed for supplying of various documents in order to enable him to file his written statement of defence, but the said documents were also never supplied and the Opposite Party No.1 proceeded with the enquiry by appointing Enquiry Officer vide order under Annexure-3 on 31.12.2001.

19. It is further submitted that subsequently and after retirement of the Petitioner w.e.f. 31.05.2002, the enquiry of the matter was handed over to the Commissioner for Departmental Enquiries, Odisha, Bhubaneswar vide order dated 22.05.2004. But even thereafter the proceeding never proceeded till the Petitioner was issued with the first show cause on 12.12.2014. The Petitioner though filed his reply to the 1st show cause, but once again the matter was kept pending till the Petitioner was issued with the impugned 2nd show cause on 03.10.2016 under Annexure-12.

20. Mr. Mohanty, learned counsel for the Petitioner submitted that in view of the aforesaid action of the Opposite Party No.1 with regard to non-finalization of the disciplinary proceeding for petty long period the proceeding

is liable to be quashed. In support of such submission, Mr. Mohanty relied on the decision of the Hon'ble Apex Court in the case of **State of Andhra Pradesh vrs. N. Radhakishan, reported in AIR 1998 SC 1833**. The Hon'ble Apex Court in Para-19 & 20 has held as follows:-

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration”.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no

witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed on after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos".

21. Mr. Balabantaray, learned Standing Counsel for the State-Opposite Parties on the other hand submitted that since this Court while issuing notice of the matter has restrained the Opposite Party No.1 from passing the final order in the proceeding, the matter has been kept pending and if this Court will direct the Opposite Party No.1 to conclude the proceeding, the same will be disposed of within the time to be stipulated by this Court.

22. Heard learned counsel for the Parties.

23. Perused the materials available on record. This Court after going through the same finds that even though the notice of the writ petition was issued on 21.10.2016, but no counter affidavit has been filed by the State disputing the stand taken by the Petitioner with regard to his prayer for quashing of the proceeding on the ground of inordinate delay in concluding the same. This Court finds that for the alleged irregularity which took place during the year 1989-90, the proceeding was initiated after 11 years i.e. on 19.09.2001 under Annexure-1. In the said proceeding, though the Petitioner moved an application on 12.10.2001 under Annexure-2 with a prayer to provide the documents, but the said documents were never provided and the Opposite Party No.1 proceeded with the enquiry by

appointing enquiry officer vide order dated 31.12.2001 under Annexure-3. This Court further finds that in spite of such appointment of the enquiry officer no progress was made to the proceeding and the Petitioner in the meantime also retired from his service w.e.f. 31.05.2002. Even though vide order dated 22.05.2004 the enquiry was handed over to the Commissioner for Departmental Enquiries and the Petitioner was summoned vide letter dated 04.11.2004 under Annexure-8, but the proceeding once again was kept pending till issuance of the 1st show cause on 12.12.2014 under Annexure-10. Even though the Petitioner submitted his reply to the said 1st show cause on 29.12.2014, but once again the matter was kept pending till issuance of the impugned 2nd show cause on 03.10.2016 under Annexure-12.

24. Therefore, from the aforesaid conduct, this Court is of the view that the Opposite Parties have caused inordinate delay in concluding the proceeding initiated against the Petitioner, even though the Petitioner is a retired employee since 31.05.2002. This Court is also of the view that even though the proceeding was initiated under Rule 15 of the OCS (CC&A) Rules, 1962, but the Petitioner was never provided with the document nor the concerned mutation record, which is subject matter of the charge, was allowed to be verified by the Petitioner on the ground that the said record is not traceable.

25. Therefore, this Court is of the view that not only there is inordinate delay in concluding the proceeding allowed to

continue against a retired employee, but also the Opposite Parties more particularly Opposite Party No.1 has not followed the provisions contained under Rule 15 of OCS (CC&A) Rules, 1962. The Petitioner because of the pendency of the proceeding save and except sanction of provisional pension has been deprived from getting all retirement benefits save and except release of the 75% of the leave salary.

26. Therefore, in view of the decision relied by Mr. Mohanty and the materials available on record, this Court is of the prima-facie view that the Opposite Parties have failed to conclude the proceeding within a reasonable time. Therefore, this Court has got no hesitation in quashing the proceeding initiated against the Petitioner under Annexure-1. While quashing the same, this Court directs the Opposite Parties to sanction and disburse all retirement benefits as due and admissible in favour of the Petitioner within a period of three months from the date of receipt of this order.

27. Since because of the admitted latches of the Opposite Parties, the Petitioner has suffered for the last 20 years, this Court also held that the retirement benefits of the Petitioner will carry interest @ 6 % per annum all through.

28. 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 6th of September, 2022/Subrat