

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4420 of 2015

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

.....

Umakanta Mohanty

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. Jateswar Nayak(Advocate)
Mr. G. Sinha (Advocate)

For Opp. Parties : Mr. R.N. Mishra
Addl. Govt. Advocate

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 21.07.2022 and Date of Order: 04.08.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical)
Mode.

2. Heard Mr. Jateswar Nayak, learned counsel for the Petitioner and Mr. R.N.
Mishra, learned AGA appearing for the Opp. Parties.

3. The Petitioner is aggrieved by the order dtd.16.07.2015 passed by O.P. No. 2 under Annexure-3 in terminating the Petitioner from his services and with a further direction to allow him to join in his service.

4. It is submitted that the Petitioner being an Ex-Army Personnel, he was duly selected and appointed as Special Striking Force in the rank of Sub G.D. vide order dtd.25.01.2013 of the Commandant, SOG, Bhubaneswar under Annexure-1.

5. It is submitted that while continuing in terms of order under Annexure-1, the Petitioner vide order dtd.02.02.2015 was transferred and posted as such in Nuapada district under O.P. No. 4. It is further submitted that subsequently as per the direction of the Assistant Commandant, SOG, Bhubaneswar dtd.10.07.2015, the Petitioner was directed to work in Nandpur Police station in the district of Koraput vide Annexure-2.

6. It is submitted that the Petitioner on being relieved when went to join in terms of Annexure-2, he was not allowed to join on the ground that the Petitioner has been terminated from his service vide order dtd.16.07.2015 i.e. w.e.f.14.07.2015 on the ground of gross in discipline and basing on the report of O.P. No. 4. The Petitioner accordingly challenging the said order of termination has filed the present writ Petition.

7. Mr. Nayak, learned counsel for the Petitioner submitted that prior to issuing such order of termination under Annexure-3, the Petitioner was never issued with any show cause nor any opportunity of hearing was given. It is also submitted that the alleged report of O.P. No. 4 basing on which the Petitioner was terminated was never provided to the Petitioner prior to taking the action in terminating the Petitioner vide Annexure-3. Mr. Nayak accordingly submitted that since principle of natural justice has not been followed, the order of termination is illegal and liable to be interfered by this Court.

8. Mr. Nayak, learned counsel for the Petitioner also relied on a decision of the learned Tribunal passed on 06.01.2017 in O.A. No. 2327 of 2014, wherein learned Tribunal relying on a decision of the Hon'ble Apex Court held that even in case of contractual employee, principle of natural justice is to be followed while taking any step for termination of such employee.

9. It is also submitted that the said order of the learned Tribunal was confirmed by this Court in its order dtd.30.01.2018 passed in W.P.(C) No. 27128 of 2017. Mr. Nayak accordingly submitted that since principle of natural justice has not at all been followed while issuing the impugned order under Annexure-3, the said order is liable to be set aside by this Court with a direction to allow the Petitioner to resume his work.

10. Mr. Mishra, learned AGA made his submission basing on the stand taken in the counter affidavit filed by O.P. Nos. 1 & 2 and O.P. Nos. 3 & 4. It is submitted that the Petitioner basing on the guideline governing the field under Annexure-H, was appointed vide Order under Annexure-1. It is submitted that while continuing as such vide order dtd.23.02.2015 under Annexure-A, the Petitioner was directed to report before R-I to R-O of Nuapada district.

11. It is submitted that while continuing in Nuapada district, the Petitioner and another employee namely Havildar M.I. Ahmed were relieved from Nuapada district to SOG Headquarters, Chandaka vide order dtd.28.05.2015 under Annexure-B. It is submitted that pursuant to the said order under Annexure-B, the Petitioner joined in SOG, Chandaka on 27.05.2015. But subsequently when a report was called for by O.P. No.2 from O.P. NO.4 to indicate the ground for returning the Petitioner on administrative ground, the Petitioner was commanded to perform his duty in OSSF, Platoon No. 11, station at Nandpur P.S. under Koraput district vide Order dtd.10.07.2015 under Annexure-E.

12. It is submitted that pursuant to the said order the Petitioner did not report to his duty at Nandpur till 20.07.2015 and in the meantime on receipt of a report from O.P. No. 4, the Petitioner was terminated from his contractual service vide the impugned order under Annexure-3. It is submitted that since the Petitioner was involved himself in illegal activities, the Petitioner was terminated from his service on the report of O.P. No. 4. It is further submitted that since the Petitioner was continuing as a contractual employee, in view of the report from O.P. No. 2, no show cause was required to be issued prior to terminating the Petitioner.

13. Mr. Mishra, learned AGA also brought to the notice of this Court the report submitted by the in-charge SOG at Dharambandh against the Petitioner and Havildar M.I. Ahmed for their illegal activities during their continuance in the said camp at Dharambandh vide Annexure-K and basing on his report, the Petitioner was sent back from Nuapada district with a direction to report at SOG, Chandaka vide Order dtd.28.05.2015 under Annexure-B. It is accordingly submitted that since the in-charge SOG, Dharambandh reported against the Petitioner and Havildar M.I. Ahemad, the Petitioner has been rightly terminated by O.P. No. 2 and no illegality has been committed.

14. Mr. Nayak brought to the notice of this Court the allegation Petition made by the villagers of Dharambandh to the Commandant, SOG, Bhubaneswar under Annexure-4. In the said public Petition dtd.23.07.2015, the villagers have made specific allegation against the in-charge Dharambandh camp and Havildar M.I. Ahemad. It is submitted that no allegation of any nature was ever made against the Petitioner by the villagers and no report by O.P. No. 4 was ever made basing on which the impugned order of termination was issued under Annexure-3.

15. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that no

report of O.P. No. 4 was ever produced by the learned State counsel basing on which O.P. No. 2 passed the impugned order of termination under Annexure-3. This Court finds that the report under Annexure-K was submitted by the in-charge of Dharambandh camp to O.P. No. 4 on 26.05.2015 alleging against the Petitioner and Havildar M.I. Ahemad. This Court further finds that on receipt of the said report the Petitioner was sent back to SOG, Chandaka vide Order dtd.28.06.2015 under Annexure-2. Subsequently, when O.P. No. 4 was requested to intimate the ground for sending back the Petitioner to SOG, Chandaka, the Petitioner was directed to work under Nandpur P.S. in the district of Koraput vide command certificate issued on 10.07.2015 under Annexure-2.

16. Since from the records, it is found that the alleged report of the S.P. basing on which the Petitioner was terminated from his service was never filed by the State counsel while filing the counter through O.P. Nos. 1 & 2 and another counter through O.P. Nos. 3 & 4, this Court finds that the Petitioner has been terminated without any such report of O.P. No. 4. The allegation made by the villagers under Annexure-4 clearly reveals the illegal action of the in-charge, SOG, Dharambandh and Havildar M.I. Ahemad. The said in-charge as per the view of this Court in order to save himself, submitted the report under Annexure-K to S.P., Nuapada-O.P. No. 4 alleging illegality committed by the Petitioner and basing on the said report the Petitioner was sent back to SOG, Chandaka vide order dtd.28.06.2015 under Annexure-B. Subsequently, when O.P. No. 3 sought for a report from O.P. No. 4 with regard to the ground for sending back the Petitioner to SOG, Chandaka, the Petitioner vide Annexure-2 was directed to report at Nandpur P.S. in the district of Koraput.

17. Therefore, this Court finds that O.P. No. 2 without having any material passed the impugned order of termination under Annexure-3. Not only that,

this Court also finds that prior to taking such steps against the Petitioner, which is of civil consequence, opportunity of hearing should have been given to the Petitioner.

18. Since no report of the O.P. No. 4 is produced by the State counsel basing on which the Petitioner was terminated nor the principle of nature justice has been followed while taking such drastic action against the Petitioner, this Court has got no hesitation in quashing the said order dtd.16.07.2015 under Annexure-3. While quashing the same, this Court directs O.P. No. 2 to reinstate the Petitioner forthwith.

19. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 4th of August, 2022/Sneha

