IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 326 of 2017

Budhimata Khatua **....** **Petitioner**

Mr. S.C. Sahoo, Advocate on behalf of
Mr. P.K. Mohapatra, Advocate

-Versus -

State of Odisha & Others **....** **Opposite Parties**

Mr. N.K. Praharaj,
Govt. Advocate for the State

CORAM:
JUSTICE SASHIKANTA MISHRA

ORDER
07.07.2022

Order No.
4.

1. This matter is taken up through hybrid mode.

2. Heard Mr. S.C. Sahoo, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Government Advocate for the State.

3. The petitioner is aggrieved by the order of dismissal from service passed by the Commandant, 5th IRBn., Boudh after he was held guilty of misconduct in an enquiry conducted against him.

4. The facts of the case, briefly stated, are that the petitioner was working as cook in 5th IRBn., Boudh having been appointed in regular process of selection since 14.03.2012. Because of his illness he was referred to Deogarh Hospital for treatment on 29.09.2014 and as such, availed E.L. from 26.10.2014 to 10.11.2014. However, he overstayed the period of E.L.. Even though he was recalled by issuing notices, he did not comply with the same. As such, disciplinary proceeding was initiated against him. The petitioner appears to have participated in the disciplinary proceeding/enquiry by submitting his written defence. The enquiry officer found him guilty of the charges. The Commandant being the disciplinary authority, issued 2nd show cause notice to the

petitioner proposing punishment of dismissal from service, which was received by him on 13.08.2016. He did not submit any reply to the said notice and accordingly, the impugned order was passed directing his dismissal from service

5. Challenging the impugned order, the petitioner had approached the erstwhile Odisha Administrative Tribunal in O.A. No. 326 of 2017, which has been transferred to this Court and registered as the present writ petition.

6. In course of hearing, it is submitted by learned Government Advocate that the impugned order is appealable as per the Police Manual Rules and that the Deputy Inspector General of Police of the concerned Range is the appellate authority.

7. Having regard to the fact that the petitioner approached this Court shortly after issuance of the order of dismissal and the remedy of appeal is available, it would not be proper for this Court to interfere in the matter at this stage. Since all grounds raised in the present application can also be raised before the appellate authority, the writ petition is disposed of granting liberty to the petitioner to prefer an appeal before the appellate authority within a period of two weeks from the date of receipt of certified copy of this order. If the appeal is filed within the period as above, the same shall be considered and disposed of in accordance with law as early as possible, preferably within a period of three months thereafter. It is needless to mention that the appellate authority shall afford proper opportunity of hearing to the petitioner.

8. Issue urgent certified copy as per rules.

(**Sashikanta Mishra**)
Judge

A.K. Rana