

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) (OAC) No.997 of 2017

Md. Mumtaz Khan

....

Petitioner

Mr. R. Sarangi, Advocate

-versus-

State of Odisha & Others

Opposite Parties

Mr. M.K. Balabantaray, AGA

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

21.03.2024

Order No.

- 02.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel appearing for the Parties.
3. Petitioner has filed the present writ petition *inter alia* challenging the order of punishment passed by the disciplinary authority-Opposite Party No.2 vide order dtd.08.12.2015 under Annexure-3 and further order passed by the appellate authority- Opposite Party No.1 on 01.03.2017 vide Annexure-5.
4. Learned counsel for the Petitioner contended that in the proceeding against the Petitioner vide Memorandum dtd.05.11.2014, Petitioner was imposed with the punishment of stoppage of three annual increments without cumulative effect and to treat the period of suspension as such.

4.1. It is contended that against such order of punishment passed by Opposite Party No.2, Petitioner filed an appeal before the appellate authority-Opposite Party No.1. The appellate authority though modified the order dtd.08.12.2015 by imposing the punishment of stoppage of three annual increments without cumulative effect but held the suspension period as leave due and admissible.

4.2. It is contended that since the disciplinary authority as well as appellate authority imposed the punishment of stoppage of three annual increments without cumulative effect, which is in the nature of a minor punishment, the period of suspension cannot be treated as such so modified as leave due and admissible, in view of the decision of this Court in the case of ***Bani Bhusan Dash vs. State of Odisha & Ors. (W.P.(C) No.7635 of 2019)*** decided on 28.10.2021.

4.3. This Court in ***Para-10*** of the case in ***Bani Bhusan Dash*** has held as follows:-

“10. Coming to the 3rd punishment, as imposed in the impugned order dated 15.09.2018 under Annexure-8, i.e. treating the period of suspension as leave due and admissible, no doubt the authorities are empowered to place an employee under suspension in contemplation or pending drawal of a proceeding exercising their power under Rule-12 of the OCS (CCA) Rules, 1962. Accordingly, they have to give a conclusion the manner to treat the period of suspension at the time of passing final order in the departmental proceeding. The authorities are to keep the suspension as such or to revoke the said suspension order by revising the period

of suspension as duty, as because honouring non-engagement certificate for the relevant period, the authorities have sanctioned subsistence allowance to the delinquent during the period of suspension. In the instant case, the authority, after taking a decision not to treat the period of suspension as such, is not empowered to take a decision to treat the period of suspension as leave due and admissible, when the petitioner did not ask for any leave during the said period of suspension. Regularization of a particular period treating as leave period of different kinds of leave, as provided under Orissa Leave Rules, can be considered only when the petitioner/employee concerned seeks leave from the competent authority for certain period under certain circumstances. The authority cannot initiate a proposal from its side in assumption of leave application from the delinquent or employee concerned to treat the period as leave due and admissible affecting the delinquent by way of consuming accrued leave in favour of the employee concerned without any fault on his part. As the authority has come to a conclusion to punish the petitioner only with a minor penalty, the decision of the competent authority to place the petitioner under suspension on the allegation of grave misconduct does not appear to be satisfactory, rather it seems that the order of suspension was issued without application of mind or in a routine or mechanical manner. As such, no review of suspension was held, as per the guidelines. Under such circumstances, after concluding the departmental proceeding by imposing minor penalty of stoppage of one increment without cumulative effect, the authority should not have treated the period of suspension in any manner other than the duty affecting the service condition of the petitioner.”

4.3. It is accordingly contented that in view of the decision in the case of **Bani Bhusan Dash**, while imposing the punishment of stoppage of three annual increments without cumulative effect, the period of suspension cannot be treated as leave due and admissible and it should be treated as duty for all practical purposes.

5. Learned Addl. Government Advocate for the State on the other hand made his submissions basing on the stand taken in the counter affidavit so filed by Opposite Party No.2. It is contended that in the proceeding initiated against the Petitioner on 05.11.2014 under Annexure-3 by following due procedure of law and by giving opportunity of hearing to the Petitioner, Opposite Party No.2 as the disciplinary authority imposed the punishment of stoppage of three annual increments without cumulative effect and suspension period was treated as such vide order dtd.08.12.2015 under Annexure-3-Series. Petitioner when preferred an appeal, appellate authority while upholding the order of punishment so far as it relates to stoppage of annual increment modified the other part of the order by treating the period of suspension as leave due and admissible.

5.1. It is accordingly contended that since on due appraisal of the grounds taken in the appeal, order of punishment has been modified and period of suspension has been treated as leave due and admissible, no illegality or irregularity can be found with the order passed by Opposite Party No.1 on 01.03.2017 under Annexure-5-Series.

6. Having heard learned counsel appearing for the Parties and after going through the materials available on record, this Court finds that in the proceeding initiated against the Petitioner on 05.11.2014 vide Annexure-3,

Opposite Party No.2 as the disciplinary authority imposed the punishment of stoppage of three annual increments without cumulative effect and to treat the period of suspension as such vide order dtd.08.12.2015. The appellate authority-Opposite Party No.1 while upholding the order with regard to stoppage of annual increment held the period of suspension as leave due and admissible. Since the order of punishment, so far as it relates to stoppage of three annual increment without cumulative effect is a minor punishment, in view of the decision of this Court in the case of **Bani Bhusan Das** as cited (supra), the period of suspension cannot be treated as leave due and admissible. Instead the period of suspension is to be treated as duty for all practical purposes.

6.1. In view of the aforesaid analysis, this Court while upholding the order of punishment so far as it relates to stoppage of three annual increments without cumulative effect is inclined to quash the order to treat the period of suspension as leave due and admissible so passed by Opposite Party No.1 on 01.03.2017 under Annexure-5-Series. While quashing the order in that regard, this Court directs Opposite Party No.2 to treat the period of suspension as duty for all practical purposes. A fresh order in that regard be issued by Opposite Party No.2 within a period of three (3) months from the date of receipt of this order. Consequential extension of financial

benefit as due and admissible be also released within the aforesaid time period.

7. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat



Signature Not Verified

Digitally Signed
Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 08-Apr-2024 11:22:26

