

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4832 of 2011

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

.....

Budhadev Dandia

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. R.N. Pattnaik(Advocate)

For Opp. Parties : Mr. Ch. S. Mishra
Additional Government Advocate

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 19.10.2022 and Date of Judgment:01.11.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. R.N. Pattnaik, learned counsel for the Petitioner and Mr. Ch. S. Mishra, learned AGA appearing for the Opp. Parties.
3. The present writ Petition has been filed by the Petitioner challenging the order of punishment passed by the O.P. No. 3 on 26.05.2006 under Annexure-

3 and upholding of the same by the Appellate Authority-O.P. No. 3 vide his order dtd.16.04.2010 under Annexure-6.

4. It is submitted that the Petitioner while continuing as a Constable under O.P. No. 4, a proceeding was initiated against him vide Rourkela Police District Proceeding No. 39 dtd.15.10.2005 under Annexure-1. It is submitted that after completion of the inquiry in the said proceeding the Inquiry Officer submitted his report under Annexure-2 by holding the Petitioner guilty of the charges.

5. It is submitted that the O.P. No. 4 without considering the grounds taken in the reply to the second show-cause, passed the impugned order of punishment by dismissing the Petitioner from his service vide order dtd.26.05.2006 under Annexure-3. It is also submitted that challenging the said order of punishment the Petitioner though preferred an appeal before the O.P. No. 3 under Annexure-5, but the Appellate Authority without proper appreciation of the grounds taken in the memo of appeal confirmed the order of punishment vide his order dtd.16.04.2010 under Annexure-6.

6. Learned counsel for the Petitioner submitted that since the Departmental Proceeding was initiated because of the implication of the Petitioner in a Criminal Case and the Petitioner was duly acquitted in the said Criminal Proceeding vide Judgment passed by the learned Asst. Sessions Judge, Bonai on 31.03.2009 under Annexure-4, the Petitioner should not have been imposed with the punishment of dismissal.

7. It is submitted that in his memo of appeal the Petitioner though brought to the notice of the O.P. No. 3 the factum of such acquittal, but the Appellate Authority without considering the same in its proper perspective confirmed the order of punishment vide order passed under Annexure-6. It is also submitted that the Appellate Authority while confirming the order of

punishment passed against the Petitioner under Annexure-3, did not assign any reason and it is accordingly submitted that in absence of any such reason the order passed by the Appellate Authority being a non-speaking order, it is liable for interference by this Court.

8. Mr. Pattnaik, learned counsel for the Petitioner in support of his aforesaid submission relied on a decision of the Hon'ble Apex Court reported in **(2015) 2 SCC 365 (S. Bhaskar Reddy & Anr. Vrs. Superintendent of Police & Anr.)**. Hon'ble Apex Court in Para 20 & 21 of the said Judgment has held as follows:-

“20. Now, we have to examine the alternative plea urged on behalf of the appellants that the orders of dismissal passed against them are liable to be set aside in view of the judgment and order passed by the Criminal Court after the trial in which proceeding the appellants were honourably acquitted, when the charges in both the proceedings are almost similar. The decisions of this Court referred to supra, upon which strong reliance is placed by the learned counsel for the appellants are aptly applicable to the case on hand.

21. It is an undisputed fact that the charges in the criminal case and the disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Our attention was drawn to the said judgment which is produced at Ext. P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the Disciplinary proceeding are similar. From perusal of the charge sheet issued in the disciplinary proceedings and the enquiry report submitted by the Enquiry Officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial judge has categorically recorded the finding of fact on proper appreciation and

evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the offences punishable under 3 (1) (x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under [Sections 307 and 302](#) read with [Section 34](#) IPC. The law declared by this Court with regard to honourable acquittal of an accused for criminal offences means that they are acquitted for want of evidence to prove the charges.”

9. Mr. Pattnaik, learned counsel for the Petitioner also relied on another decision of the Hon’ble Apex Court reported in ***AIR 2006 SC 2129 (G.M. tank Vrs. State of Gujarat & Anr.)***. Hon’ble Apex Court in Para 31 & 32 of the said Judgment has held as follows:-

“31. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and

acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

10. Mr. Pattnaik, learned counsel for the Petitioner also relied on another decision of this Court passed on 21.09.2022 in W.P.(C)(OAC) No.2657 of 2013. This Court in Para 22 of the said Judgment has held as follows:-

“Not only that this Court further finds that since both departmental and criminal proceeding were initiated on self-same charges and the petitioner has been honorably acquitted in the criminal proceeding, the Petitioner is liable to be exonerated from the charges in the disciplinary proceeding, in view of the decision relied on the learned counsel for the Petitioner in AIR 2015(2) SCC-365.”

11. Relying on the aforesaid decision, it is submitted that since the Petitioner was acquitted in the Criminal Proceeding vide Judgment under Annexure-4, the charges in the Disciplinary Proceeding being similar in nature, the order of punishment is liable to be set aside by this Court.

12. Mr. Mishra, learned AGA on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that since in the Disciplinary Proceeding the Inquiry Officer found the Petitioner guilty of the charges, the Disciplinary Authority-O.P. No. 4 by following all the formalities as provided under Rule 15 of the OCS (CCA) Rules, 1962 imposed the order of punishment vide order under Annexure-3.

13. It is also submitted that even though the Petitioner was acquitted in the Criminal Proceeding, but some of the P.Ws. since have stated against the Petitioner, the Appellate Authority taking into account such evidence of the P.Ws. more particularly P.W.-2, upheld the order of punishment passed by the disciplinary authority. Accordingly, it is submitted that no illegality or irregularity has been committed by the O.P. No. 4 while passing the impugned order of punishment under Annexure-3.

14. Mr. Mishra, learned AGA further submitted that the Appellate Authority after due consideration of the grounds taken in the appeal while confirming the order of punishment though allowed the Petitioner to file a revision before the Higher Authority, but the Petitioner instead of availing such opportunity has filed the present writ Petition.

15. It is accordingly submitted that in view of the compliance of the provision contained under Rule 15 of the OCS (CCA) Rules, 1962 the order of punishment passed against the Petitioner needs no interference. It is also submitted that the Petitioner in the meantime has also attained the age of superannuation and no order of reinstatement can be passed.

16. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner was proceeded with the Departmental Proceeding because of his implication in the Criminal Proceeding in Lahunipada P.S. Case No. 64 dtd.06.08.2005 for the

offences under Sec.420, 489/34 of the I.P.C. This Court finds that the Petitioner was acquitted from the charges in the said Criminal Proceeding vide Judgment under Annexure-4 as the prosecution failed to prove the case against the Petitioner and other co-accused person.

17. In view of such clear order of acquittal passed by the Competent Criminal Court under Annexure-4 and the decision relied on by Mr. Pattnaik as cited (supra), this Court is of the view that no order of dismissal should have been passed against the Petitioner and the appellate authority-O.P. No. 3 should have taken into consideration that aspect while dealing with the appeal.

18. This Court finds that even though the factum of acquittal in the Criminal Proceeding was brought to the notice of the Appellate Authority, but the Appellate Authority without proper appreciation of the grounds taken in the appeal and the decisions governing the field simply confirmed the order of punishment without assigning any reason whatsoever.

19. Therefore, in view of such material irregularity committed by the Appellate Authority and in view of the order of acquittal passed against the Petitioner, relying on the decisions cited by Mr. Pattnaik, this Court is inclined to quash the order of punishment passed against the Petitioner under Annexure-3 and confirmed under Annexur-6. While quashing both the orders and taking into account the fact that the Petitioner has retired in the meantime, the O.P. No. 4 is directed to regularize the period of service of the Petitioner from the date of his dismissal till his superannuation on notional basis.

20. This Court further directs O.P. No. 4 that on such regularization of the period of service, necessary steps be taken to sanction and release the retiral benefits of the Petitioner as due and admissible by treating the entire period of service of the Petitioner as pensionable service. This Court directs the O.P.

No. 4 to complete the entire exercise within a period of 3 (three) months from the date of receipt of this order.

21. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 1st of November, 2022/Sneha

