

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1018 of 2019

Lakshmi Narayan Behera

....

Petitioner

Mr. Sabyasachi Tripathy, Advocate

-versus-

State of Odisha and Others

.... ***Opposite Parties***

Mr. B. Bharadwaj, Additional Standing Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

4.8.2022

Order No.

- 03.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. S. Tripathy, learned counsel for the Petitioner and Mr. B. Bharadwaj, learned Additional Standing Counsel for State – Opposite Party.
 3. The Petitioner has challenged the order of imposition of penalty by the disciplinary authority as well as rejection of the appeal against the same. The punishment order is dated 29th September, 2016 (Annexure-1) and the order of the Appellate Authority is dated 2nd November, 2017 (Annexure-3).
 4. The facts of the case is that, the Petitioner was serving as Junior Clerk-cum-Typist in the office of Principal, UCP Engineering School, Berhampur on deputation. He joined in service in 1987 and retired on 31st December, 2013. A disciplinary proceeding vide office memorandum No.16935 dated 14th September, 2011 was initiated against him alleging charges of misconduct and he was put under

suspension with effect from 4th May, 2011. The disciplinary proceeding ended on 29th September, 2016 and in the meantime the Petitioner retired from service on 31st December, 2013. The enquiry report dated 6th June, 2016 was submitted by the Director of Technical Education and Training, Odisha to the Disciplinary Authority with the finding that the charges were established against the delinquent (Petitioner) as he did not participate in the enquiry proceeding despite repeated notices issued to him. In other words, the enquiry proceeding was concluded establishing the charges against the Petitioner ex-parte. The same was accepted by the Disciplinary Authority and the punishment was imposed saying that the period of suspension from 4th May, 2011 to 27th December, 2013 is treated as such. Against the same the Petitioner preferred appeal and the appellate authority also confirmed the order of the Disciplinary Authority.

5. The Petitioner challenges both the orders of the disciplinary authority imposing punishment as well as the order of the appellate authority mainly on the ground of violation of principles of natural justice that he was not granted adequate opportunity of hearing to defend his case.

6. In support of his argument, learned counsel for the Petitioner submits that in fact the Petitioner was not issued with proper notice intimating the actual date of hearing before the enquiry authority. As per the submissions, though the delinquent – Petitioner was present before the enquiry officer on more than one occasion still no order was passed by the enquiry officer on the said date either showing his presence or granting further opportunity.

7. The State Opposite Parties have filed their counter and in the counter no such specific answer has been given with regard to the allegation of the Petitioner regarding violation of principles of natural justice. The imputations of charges leveled against the Petitioner were mainly emphasized in the counter affidavit.

8. As stated earlier, the main challenge of the Petitioner is that he was not granted with adequate opportunity of hearing in the disciplinary proceeding. It is seen from Annexure-2 series that a notice dated 27th March, 2015 is appended wherein the Petitioner was directed to appear before the enquiry officer on 8th April, 2015 at 11 am. Similarly, a Hazira of the Petitioner dated 9th October, 2013 has been appended to Annexure-2 series which reveals that the Petitioner was present before the enquiry officer on 9th October, 2013. But perusal of copy of the enquiry report under Annexure-5 reveals that the case was posted to 6th April, 2015 at 11 am. Therefore, the letter dated 27th March, 2015 directing the delinquent – Petitioner to appear on 8th April, 2015 appears to be a misnomer since the date was never fixed to 8th April, 2015. As mentioned by the enquiry officer under Annexure-5, the delinquent officer did not attend the enquiry and all the notices issued to him were returned un-served. The document dated 27th March, 2015 and Hazira dated 9th October, 2013 falsifies such assertions taken in the enquiry report on the face of the same. Therefore, it is established that due opportunity was not granted to the delinquent to participate in the enquiry before the enquiry officer and on this ground only, the impugned order is liable to be set aside.

9. The order of the appellate authority under Annexure-3 also does not reveal a detailed discussion of the grounds raised in the appeal and the authority simply dismissed the appeal by stating that the charges

are established ex-parte against the delinquent – Petitioner. The State Opposite Parties also fail to answer such ground raised by the Petitioner that he was not granted adequate opportunity of hearing before the enquiry officer.

10. Thus, in view of the discussions made above, the impugned order of punishment under Annexure-1 and the order of the appellate authority under Annexure-3 are set aside. As the Petitioner has admittedly been retired from service since 31st December, 2013, he is at liberty to approach the authority concerned for release of all such consequential service benefits in his favour.

11. With the above observations the writ petition stands disposed of.

12. An urgent certified copy of this order be issued as per rules.

(*B.P. Routray*)
Judge

M.K.Panda