

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.247 of 2019

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

.....

Moallim Khan

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. Ajit Rath & S.Sahu

For Opp. Parties : M/s.M.K.Balabantaray,
Standing Counsel.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:21.12.2022 and Date of Order:03.01.2023

Biraja Prasanna Satapathy, J.

1. The present Writ Petition has been filed by the Petitioner challenging the initiation of the Departmental Proceeding vide Memorandum No.1443 dated 26.07.2018 under Annexure-5 basing on the order passed by the Government-Opposite Party No.1 on the self-same date under Annexure-4.

2. It is the main contention of the learned counsel

appearing for the Petitioner that the Petitioner joined as a Junior Engineer under the then Irrigation and Power Department on 05.10.1978. While continuing as an Executive Engineer in Quality Control Division (Water Recourses), Jobra, Cuttack, the Petitioner retired from service w.e.f. 31.01.2012 vide notification dated 17.01.2012 under Annexure-2. The Petitioner after his retirement from service on 31.01.2012 was allowed provisional pension w.e.f.01.02.2012 vide Office Order dated 29.02.2012 under Annexure-3. Subsequently, while the matter stood thus, basing on the impugned order passed on 26.07.2018 under Annexure-4, a proceeding was initiated vide Memorandum dated 1443 dated 26.07.2018 under Annexure-5. In the said proceeding, the following charges were framed against the Petitioner:-

'1. Irregular execution of work worth Rs.3,93,85,910/- by splitting up particular works without approval of competent authority (Sri R.K.Sethy, EE-RS.3,06,31,172/- + Md. M.Khan, EE-Rs.87,54,738/-):-

According to provisions contained in appendix VII of OPWD code Vol-II, all the works costing more than Rs.50000/- should be executed by inviting tender. Only the urgent and emergent nature of work (for which there is no sufficient time to go for tender process), award work can be made without inviting tender.

Para-3.5.24 of OPWD code regarding ban on splitting up works categorically stipulates that splitting up works under Plan Scheme and such as repair to damaged

roads and buildings can be splited up to Rs.5.00 Lakhs on approval from the concerned SE.

But, he has executed the work under the Plan scheme AIBP, worth of Rs.87,54,738/- during in incumbency in Potteru Canal Division, MV.79 through 849 Nos. of F2 Agt. Limiting the amount of each agreement below Rs.50,000/- by splitting up estimates into number of parts with approval of CE, PIP, Balimela by inviting short tender just within schedule rates, which was original in nature, but not urgent. The rates offered by the lowest one and acceptance by the EE on works were not at all competitive to the best financial benefit of the Govt. Moreover, the works executed in piece meal manner by him failed to avail competitive rates, which resulted irregularity and dis-obedience of Govt. Order.

3. Irregular diversion of AIBP funds Rs.25,96,520/-
(Md.M.Khan-Rs.22,13,503/-+ Sri R.K.Sethy-
Rs.3,83,017/-):-

Govt. of India launched AIBP fund in 1996-97 for providing loan assistance to state Govt. for accelerating pace of irrigation development in the country. For creation/stabilization of additional irrigation potential, Govt. of India had released loan assistance under AIBP for PIP during 2000 to 2005. In no case that can be diverted for non-plan purpose. But irregular diversion of AIBP fund for non-irrigation work such as construction of road for Rs.22,13,503/- have been incurred by deviating the norms to AIBP funds by Md.M.Khan, which amounts mis- utilization of Govt. money.

Under such circumstances he has committed irregularities/irresponsibility during his incumbency in Potteru Canal Division No.III, M.V.79 as an Executive engineer.

Therefore, he is charged for

1. Disobedience of Govt. Order.
2. Negligence in duty.
3. Mis-appropriation of Govt. fund”.

2.1. Challenging such initiation of the proceeding, which is barred as per the provision contained under Sub-Rule-2 of

Rule-(7) of OCS Pension Rules, 1992, the Petitioner approached the Tribunal in O.A No.247/2019. The Tribunal while issuing notice of the matter on 16.01.2019 passed an interim order restraining the opposite parties from taking any further action pursuant to Annexures-4 & 5.

2.2. It is contended that as revealed from the Article of Charges framed against the Petitioner vide Annexure-5, the Petitioner was held liable in respect of a work executed during the period from 22.10.2001 to 30.11.2003 i.e. during the incumbency of the Petitioner as an in-charge Executive Engineer, Potteru Canal, Division, M.V.79.

2.3. Learned counsel for the Petitioner vehemently contended that as provided under Sub-Rule-2 of Rule-7 of OCS (Pension) Rules, 1992, the authorities are empowered to initiate the proceeding against a retired employee, in respect of an occurrence, which are taken place prior to four years of such retirement of the concerned employee. Since the Petitioner in the present case retired from service on 31.1.2012 and the proceeding was initiated on 26.07.2018 under Annexure-5 and that too in respect of an occurrence, which had taken place during the period

22.10.2001 to 30.11.2003, the proceeding so initiated against the Petitioner is not maintainable in the eye of law and it should be quashed by this Court. In support of his aforesaid submission, learned counsel for the Petitioner relied on a decision of this Court passed on dated 30.09.2015 in W.P.(C) No.14558 of 2015.

2.4. It is contended that the Tribunal in O.A No. 1514 of 2013 when quashed a proceeding of similar nature taking recourse to the provision contained under Section-7(2)(b) of the OCS (Pension) Rules, 1992 vide order dated 19.01.2015, the State-Machineries challenging the same before this Court in W.P.(C) No.14558 of 2015. This Court vide order dated 30.09.2015 when dismissed the writ petition by confirming the order passed by the Tribunal, the State-Machineries carried the matter to the Hon'ble Apex Court. But Hon'ble Apex Court also dismissed the Special Leave Petition No.12829 of 2016 vide order dated 19.07.2016.

2.5. Learned counsel for the Petitioner also relied on another decision of this Court passed on 17.10.2022 in W.P.(C) (OA) No.3132 of 2018.

3. Mr. M.K.Balabantaray, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the counter affidavit filed by the Opposite Party No.1. Though, it is not disputed that the Petitioner retired from his service on 31.01.2012 and the proceeding was initiated on 26.07.2018 in respect of an occurrence, which had taken place during the period from 22.10.2001 to 30.11.2003, but it is contended that since the said incident came to the knowledge of the authority on 29.01.2016 while conducting special audit, the period of limitation of four years so prescribed under Section-7(2)(b) of the OCS (Pension) Rules, 1992 will be made applicable from the date of knowledge i.e. 29.01.2016.

3.1. Accordingly, it is contended that if the date of knowledge will be taken into account then the proceeding initiated on 26.07.2018 within the period of limitation prescribed under the aforesaid provision. Hence, it is contended that since the proceeding has been initiated within four years from the date of knowledge of the incident, the same is very much maintainable and no interference is called for by this Court.

4. To the submission made by the learned counsel for the State-Opposite Parties that the period of limitation will be counted from the date of knowledge and not from the date of incident, learned counsel for the Petitioner relied on the decision of this Court reported in the case of **Satyanarayan Patro vs. Orissa Power Transmission Corporation Ltd., Bhubaneswar** reported in **2009(I) OLR 989**.

5. I have heard Mr.A. Rath, learned counsel for the Petitioner and Mr.M.K.Balabantaray, learned Standing Counsel for the State. On the consent of the learned counsel appearing for both the Parties, the matter was taken up for final disposal at the stage of admission and disposed of by the present order.

6. Having heard learned counsel for the Parties and after going through the materials available on record, this Court finds that the Petitioner retired from his service on attaining the age of superannuation on 31.01.2012 and the proceeding was initiated on 26.07.2018 under Annexure-5. From the charges framed in the said proceeding, it is apparent that the proceeding was initiated in respect of the incident, which had taken place during the

period from 22.10.2001 to 30.11.2003. Therefore, in view of the provision contained under Section-7(2)(b) of the OCS (Pension) Rules, 1992, and placing reliance on the decisions as cited (supra), the initiation of the proceeding in respect of the incident, which had taken place much prior to four years of the retirement of the Petitioner as per the considered view of this Court, is not maintainable.

6.1. The stand taken by the learned Standing Counsel that the period of limitation prescribed under Section-7(2)(b) of the OCS (Pension) Rules, 1992 will be counted from the date of knowledge is also not acceptable, in view of the reported decisions of this Court in the case of **Satyanarayan Patro** as cited (supra). Therefore, placing reliance on the decision of this Court passed in W.P.(C) No.14598 of 2015 as well as in W.P.(C)(OA) No.3132 of 2018, this Court is of the view that the proceeding initiated under Annexure-5 is contrary to the provision contained under Section-7(2)(b) of the OCS (Pension) Rules, 1992. This Court accordingly is inclined to quash the order dated 26.07.2018 under Annexure-4 and so also the proceeding initiated vide Memorandum No.1443 dated 26.07.2018 under Annexure-5.

7. The Writ Petition stands disposed of accordingly.
However, there shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 3rd of January, 2023/ Subrat (Sr. Steno)

