

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.35393 of 2022

Md. Noor Ellahi

....

Petitioner

Ms. B.K. Pattanaik, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.K. Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.12.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the writ petition as well as the documents annexed to the writ petition.

3. The present writ petition has been filed by the petitioner with a prayer to quash the order dated 03.12.2022 under Annexure-10 and further prays for reinstate the petitioner with all the financial and consequential benefits and also dismissal order after quashing of the order under Annexure-10.

4. It is submitted by learned counsel for the petitioner that the disciplinary proceeding initiated against thirty constables including the petitioner in contravention of Rule 3 and 4 of OGSCR, 1959 and Section 8 of OISF Act, 2012 and also asked to submit their show-

cause. Thereafter the some of persons approached the learned Tribunal and the learned Tribunal while issuing notice had passed interim order directing that the departmental proceeding may proceed but, final order shall not be passed without leave of the Tribunal. The WPC(OA) No.1985 of 2019, however, the said WPC(OA) No.1985 of 2019 subsequently withdrawn. Thereafter, the disciplinary proceeding initiated against the above referred thirty constables and finally punishment has been imposed.

5. At this juncture, learned counsel for petitioner submits that so far as the constables are concerned, namely, Manas Kumar Amanta and other twenty-eight others constables are considered, the disciplinary authority after taking into consideration their conduct imposed punishment two black marks instead of proposed punishment and further they were warned careful in future. So far as the present petitioner is concerned, it is submitted by learned counsel for the petitioner that the case of the petitioner considered separately and he has been discriminated while imposing punishment of charge major punishment for dismissal from service. Accordingly, the petitioner has approached this Court challenging the order passed by the disciplinary authority order dated 03.12.2022 under Annexure-10.

6. Learned counsel for the State, on the other hand, submits that the order dated 03.12.2022 under Annexure-10 is appealable one. Therefore, the petitioner may be directed to approach the appellate authority by filing statutory appeal memo as directed under the relevant rules.

7. Considering the aforesaid submission, this Court disposes of the writ petition granting liberty to the petitioner to approach the appellate authority by filing an appeal memo ventilating his

grievance within a period of two weeks from today. If such an appeal is filed within the time stipulated, the same shall be considered and disposed of by the appellate authority in accordance with law within a period of three months from the date of presentation of the appeal. Further, it is open for the petitioner to file any judgment including the judgment of the Hon'ble Supreme Court in the case of ***Rajendra Yadav vrs. State of Madhya Pradesh and others*** : reported in (2013) 3 SCC 73. The disciplinary authority-Opposite Party No.3 is directed to consider case of the petitioner in the light of law laid down by the Hon'ble Supreme Court and taking into account order passed in Annexure-4 and dispose of the same in accordance with law as expeditiously possible as directed hereinabove.

8. Further, the Disciplinary authority is directed to act upon on production of certified copy of this order. It is also directed that while disposing of the case of the petitioner, this Court has not expressed any opinion on the merits of the case and condone the delay for filing of the appeal as the case is pending before this Court. The decision so taken on the appeal of the petitioner shall be communicated within ten days thereafter.

9. With the aforesaid observation the writ application stands disposed of.

Urgent certified copy of this order be granted on proper application.

(***A.K. Mohapatra***)
Judge