
(2014) 09 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 4826 of 1996

Bighnaraj Tripathy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : (2014) 2 ILR 1097

Hon'ble Judges : Amitava Roy, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Advocate : L. Pradhan, Advocates for the Appellant; P.K. Muduli, Addl. Standing Counsel, Advocates for the Respondent

Judgement

Amitava Roy, C.J.—Heard Mr. L. Pradhan, learned counsel for the petitioner and Mr. P.K. Muduli, learned Additional Standing Counsel for the opposite parties. Challenge is to the order dated 13.1.1986 of the District Judge, Koraput, Jeypore, as disciplinary authority, dismissing the petitioner from service as a disciplinary measure and to the order dated 17.10.1995 of the Appeal Committee dismissing his appeal and sustaining his dismissal.

2. The relevant facts in brief are that the petitioner while working as Sherishtadar in the Office of the J.M.F.C, Umerkote was placed under suspension and disciplinary proceeding was initiated against him on the following charges.

"1) He fabricated forged summons against persons of village Gandhinagar and extorted money from them.

2) He committed theft of seventeen case records from the court of Judicial Magistrate, Umerkote.

3) He sold some of those stolen case records and collected Rs. 2000/- from the concerned accused persons.

4) He remained absent from duties from 20.11.82 onwards having left the headquarters without intimation or prior permission.

5) He proceeded to village Pakhanaguda carrying the process server, Sri Gopal Behera with him by illegally using his official position and asked persons from the village to pay him money so that he would get their cases dropped and he threatened the Process Server not to divulge it.

6) He, while working as Sheristadar, Munsif-cum-S.D.J.M.'s Court, Jeypore, sent letter No. 391 dated 30.3.82 without the list of valuables and the said list is found missing due to his negligence."

3. As required, he submitted his written explanation denying the same. His prayer for being allowed to engage a legal practitioner as defence representative was turned down. The Enquiry Officer submitted his report exonerating the petitioner and other co-delinquents. The disciplinary authority, however, disagreed with the findings and eventually by order dated 13.1.1986 imposed the penalty of dismissal on the petitioner. Prior thereto, the said authority in a detailed order dated 10.1.86 recorded exhaustive reasons to disagree with the findings of the Enquiry Officer. Being aggrieved, the petitioner preferred an appeal which was, as referred to herein above, also dismissed. He has thus approached this Court.

4. In the counter affidavit filed by the opposite party Nos. 3 and 4, it is stated, in substance, that the procedure prescribed under Rule 15 of the Orissa Civil Services (CCA) Rules, 1962 (for short hereinafter referred to as "the Rules") has been scrupulously adhered to and having regard to the gravity of charge, the penalty imposed on him was not disproportionate.

5. Mr. Pradhan has argued that as the disciplinary authority had disagreed with the findings of the Enquiry Officer, it was incumbent on him, before imposing the penalty of dismissal, to communicate to the petitioner the reasons for such disagreement and to afford him an opportunity to represent. As the same has not been done, Mr. Pradhan has argued that the order of dismissal is per se not sustainable in law.

6. Mr. P.K. Muduli has argued that the petitioner had been given an opportunity of personal hearing by the appellate authority and thus even assuming without admitting that the disciplinary authority had not communicated to him the reasons for disagreement, the same ipso facto would not render the order of dismissal bad in law. The learned counsel however has not admitted that the reasons for disagreement had not been communicated to the petitioner.

7. We have carefully considered the pleadings and the documents. Vis-?-vis the plea of omission on the part of the disciplinary authority to communicate to the petitioner the reason for his disagreement with the finding of the Enquiry Officer, no categorical statement to the effect either in the memorandum of appeal has been made before the appellate authority or in the writ petition. It is, therefore, not possible for us to sustain this contention. The charges levelled against the petitioner are very serious and having regard to the reasons recorded by the disciplinary authority to conclude that the same have been proved and that the

same call for dismissal from service we are not inclined to sustain the challenge.

8. In that view of the matter, the decision of the disciplinary authority and sustained by the appellate authority that the petitioner was guilty of the charges does not call for any interference.

9. In course of the arguments, Mr. Pradhan has argued that the petitioner is presently on the wrong side of sixty and is physically infirm and is at the fag end of his life and that if he is denied his retiral benefits, he would suffer irreparable loss and prejudice apart from untold misery and sufferings.

10. Upon hearing learned counsel for the parties and on consideration of the facts and circumstances of the case in full, we are of the opinion that it would meet the ends of justice, if the penalty of dismissal from service is converted into one of compulsory retirement. We order accordingly. It is further made clear that the consequential retiral benefits would be computed on the basis of his last pay drawn when he was dismissed from service but would be payable actually from the date of this order. He would also be entitled to other incidental benefits on the basis of this adjudication. The petition is allowed to this extent.