

(2006) 05 OHC CK 0047
In the Orissa High Court
Case No : O.J.C. No. 17537 of 1997

Dasarathi Parida and after his death Shantilata Parida and Others APPELLANT

Vs

GRID Corporation of Orissa Ltd. and Others RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 102 CLT 190 : (2006) 2 OLR 146

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Advocate : A.K. Patnaik, R.C. Patnaik, S. Patnaik and S. Mohanty, for the Appellant; Banoj Kumar Patnaik, P. Sinha and S.K. Pradhan for O.Ps. 1 and 2 and Addl. Government Advocate for O.P. No. 3, for the Respondent

Judgement

A.K. Samantaray, J.—In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioners who are the legal representatives and have been substituted after the death of the original petitioner, Dasarathi Parida, who expired during pendency of this writ petition, have come forward with prayer to quash the order of penalty dated 1.5.1997 (Annexure-5) imposed on him by the Disciplinary Authority in a Departmental Proceeding and the order dated 17.9.1997 (Annexure-7) confirming the same by the Appellate Authority censuring him and directing for treating the period of suspension as such.

2. Said Dasarathi Parida, while functioning as S.D.O. (Electrical), Mahanga Electrical Sub-Division under Salipur Electrical Division, was placed under suspension on 1.11.1995 pending Departmental Proceeding bearing No. 1179 dated 1.11.1995 (Annexure-1) on the charges of gross negligence in duty, gross inefficiency in collection of Board's dues leading to heavy loss on the part of the Board, disobedience of order and dereliction of duty for failing to reside at the place of posting so as to discharge duties effectively. The delinquent was directed to submit his written statement of defence within thirty days from the date of

receipt of notice to show cause, vide Annexure-2. The petitioner after receiving a copy of the memorandum of charges and notice to show cause, represented to the Chairman, GRID Corporation of Orissa Limited (O.P. No.I) to supply him the documents which were relied upon for framing charges against him so as to enable him to file his written statement, but the same was neither supplied to him nor the O.P. No. 1 allowed him to inspect the records. The petitioner since was directed to submit his show cause within thirty days, finding no other way, submitted his written statement of defence on 18.12.1995. On 3.1.1996, the delinquent made a representation to the Chairman, Orissa State Electricity Board (hereinafter called as "OSEB") for his reinstatement in service. On 4.6.1996, the GRID Corporation of Orissa Limited (in short the "Corporation"), which in the meantime stepped into the shoes of OSEB on 1.4.1996, appointed Officer on Special Duty as the Enquiry Officer to enquire into the charges against the delinquent. After completion of the enquiry, the Enquiry Officer submitted report recommending that the delinquent may be censured and the period of his suspension may be treated as duty. The Chairman-cum-Managing Director of the Corporation after going through the enquiry report recommended that the delinquent may be censured and the period of suspension may be treated as duty and the same was communicated to the delinquent, vide Corporation letter No. 871 dated 28.12.1996 (Annexure-3). On 17.3.1997, by a notification the delinquent was reinstated in service, vide Annexure-4. On 1.5.1997, the delinquent was communicated the memo No. 264 (Annexure-5) to the effect that he was inflicted with the punishment of censure and his period of suspension to be treated as such. It is alleged in the writ petition that the copy of the enquiry report was never supplied to him for which he made a representation to the Director, HRD of the Corporation (O.P. No. 2), requesting him to supply the same. The report was not even supplied to him when he wanted it for preferring an appeal against the order of punishment and on 13.8.1997, he ultimately submitted a memorandum of appeal (Annexure-6) to the Secretary to Government of Orissa in the Energy Department (O.P. No. 3) and the same was rejected by a cryptic order dated 17.9.1997 (Annexure-7). It is stated in the writ petition that imposition of penalty of censure and to treat the period of suspension as such is ex facie illegal and contrary to the settled principles of law and as such, the same is liable to be quashed. It is specifically pleaded that non-supply of enquiry report to the delinquent officer for affording him opportunity to represent against the proposed punishment is in utter violation of rules of natural justice and added to it the Disciplinary Authority differing from the suggestion of the Enquiry Officer without affording any opportunity of hearing and without assigning any reason for differing is sufficient to quash the order of imposition of punishment.

3. Opposite Parties 1 and 2 entered appearance and filed their counter affidavit through the Sr. General Manager (HRD)-cum Managing Director in-charge of the Corporation. In the said counter affidavit they have taken a stand that the petitioner was an Assistant Engineer (Electrical) at the relevant period and he

was in the State Government Cadre and was an employee of Government of Orissa. It is stated that his services were placed under the erstwhile OSEB and then under the GRID Corporation on deputation and as such, he was, working in the Corporation being deputed by the State Government. It is further, stated in the counter that during his incumbency under the OSEB, he committed misconduct, such as negligence of duties, gross inefficiency in collection of Board's dues leading to heavy loss, disobedience of orders and dereliction of duties for which he was placed under suspension, charge-sheeted and proceeded against in an enquiry where he was found guilty and awarded with the punishment of censure and treating the period of suspension as such. The appeal preferred by him was also rejected, vide order dated 17.9.1997. A stand has been taken in the counter that the employee concerned being a State Government employee the dispute raised by him can only be adjudicated by the State Administrative Tribunal under the Administrative Tribunals Act, 1985 and that the writ petition is misconceived and not maintainable. However, the specific stand taken in the writ petition that the copy of the enquiry report was not supplied to him affording him opportunity to file representation before the Disciplinary Authority has not been denied by these opposite parties.

4. The State of Orissa in the Department of Energy (O.P. No. 3) though put in appearance has not filed any counter.

5. The learned Counsel appearing for the petitioners submitted that vide communication No. 18049 dated 11/12 June, 1997(Annexure-10) the Corporation had permanently absorbed the original petitioner, Dasarathi Parida, Assistant Engineer (Electrical), in the service of the Corporation with effect from 1.4.1997 on terms and conditions of the GRID Corporation Officers' Service Regulations and after his permanent absorption he was re-designated as Assistant Manager (Grade E-3) in the Corporation. He argued that when the writ petitioner had already been absorbed permanently in the service of the Corporation, the Corporation could not take a stand in the counter affidavit filed in the year 2005 that the delinquent officer was a Government servant at the relevant time when the punishment in the Departmental Proceeding was inflicted on him censuring him and treating his period of suspension as such by the order passed by the Government in the month of May, 1997. He vehemently urged on the basis of the aforesaid factual position that the delinquent officer was absorbed permanently in the service of the Corporation prior to the infliction of the punishment of censure and treatment of the period of suspension as such, he has rightly filed this writ petition in this Court as an employee of the Corporation. This contention has sufficient force and we find that as the delinquent officer was not a government servant and was employee of the Corporation at the time of infliction of punishment, he has rightly challenged the direction of the Disciplinary and Appellate Authorities in this writ petition.

6. The learned Counsel for the petitioners submitted that as per Annexure-3, the Enquiry Officer had submitted the enquiry report which was placed before the

Chairman-cum-Managing Director of the Corporation who after going through the report recommended that the delinquent officer may be censured treating the period of his suspension as on duty. He also recommended that the delinquent officer be reinstated in service with immediate effect pending finalization of the proceeding against him. This Annexure-3 was addressed to the Deputy Secretary to Government of Orissa in Energy Department who, vide Annexure-5 (Memo No. 264 dated 1.5.1997) directed the delinquent officer to be censured and further directed that the period of his suspension to be treated as such. The learned Counsel argued that since the delinquent officer was not supplied with the enquiry report after completion of the enquiry, which is not denied by O.Ps.1 and 2 in their counter affidavit, and since the Enquiry Officer found some adverse material for which he proposed the punishment of censure and sent the same to the Disciplinary Authority, who without supplying a copy of the same proceeded against him and inflicted punishment of treating the period of suspension as such in addition to the proposed punishment of censure, the delinquent officer had no knowledge of any material which led the Disciplinary Authority to reach such conclusion and had occasion to represent his case against such finding and the punishment proposed, the rules of natural justice is affected thereby.

7. In this connection, the learned Counsel cited before us a decision of the Apex Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, where the Apex Court have held that:

We make it clear that wherever there has been an Enquiry Officer and he has furnished a report to the Disciplinary Authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of report would amount to violation of rules of natural justice and making the final order liable to be challenged hereafter.

Learned counsel for the petitioners with the aid of this dictum of the Apex Court argued that in the instant case, admittedly, in spite of the representation of the delinquent officer to supply him copy of the enquiry report, the same was not supplied to him so as to enable him to effectively represent his case before the Disciplinary Authority against the finding and proposed punishment made by the Enquiry Officer and the Disciplinary Authority inflicted the punishment without hearing the delinquent officer and enhanced the punishment. This, according to him, is in clear violation of rules of natural justice. Apart from that, drawing our attention to the order of the Disciplinary Authority (Annexure-5) he further submitted that the Disciplinary Authority has not recorded any reason as to why he chose to differ from the suggestion made by the Enquiry Officer as well as the Chairman-cum-Managing Director of the Corporation regarding the quantum of punishment.

8. Admittedly, the delinquent officer after his superannuation from service in the year 2001 has expired on 26.6.2002 during pendency of the writ petition and his

legal representatives have been substituted and they are pursuing the writ petition adopting the same prayer for quashment of order of punishment imposed, vide Annexure-5 and the order of the Appellate Authority, vide Annexure-7.

9. Learned Additional Government Advocate appearing for the State of Orissa (O.P. No. 3) simply submitted that since the delinquent officer was permanently absorbed in the service of the Corporation, it is the Corporation who is to bear and pay the differential amount that might be required to be paid to the petitioners in case they succeed in this writ petition and the Government may not be saddled with the financial burden in the changed circumstances. Learned Counsel appearing for the Corporation (O.Ps. 1 and 2) submitted that the Corporation had suggested to the Disciplinary Authority, while forwarding the enquiry report to treat the period of suspension as duty and in case the petitioners succeed they be entitled to the pecuniary benefits and the family pension be re-fixed at the appropriate rate.

10. In view of the our observation in the preceding paragraphs that there has been violation of rules of natural justice in the case of the delinquent officer in the matter of finalization of the Departmental Proceeding by the Disciplinary Authority as well as the Appellate Authority, vide orders passed by them in Annexure 5 & 7, we quash both Annexures 5 & 7 and mandate O.Ps. 1 and 2 to treat the period of suspension from 1.11.1995 to 17.3.1997 as duty and compute the differential pecuniary entitlements of the said ex-employee, Dasarathi Parida, Asst. Manager (Grade E-3) and pay the same to the petitioners within a period of four months from the date of communication of this order. The family pension be re-computed accordingly, if already computed and steps be taken for releasing the same within the aforementioned stipulated time. The order passed be communicated to O.Ps. 1 & 2 at the cost of the petitioners.

11. However, we make no order as to cost.

B.P. Das, J.

12. I agree.