
(2010) 03 OHC CK 0054
In the Orissa High Court

Dibakar Maharana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : (2010) 109 CLT 776

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, A.C.J.

1. In this writ application, the Petitioner has prayed for setting aside the Order Dated 3.11.2007-passed by the Learned District Judge, Cuttack in Disciplinary Proceeding No. 11 of 2004 (LVIII-5/08) which was subsequently confirmed by the Appeal Committee of this Court on 18.3.2009 dismissing the Petitioner from service with immediate effect & observing that the same shall be a disqualification for future employment.

2. The facts as reveal from the record are that the Petitioner was appointed as a Peon in the Court of the Learned S.D.J.M., Cuttack on 29.7.1977. Thereafter, on the authority being satisfied with his conduct, sincerity & obedience in due discharge of his duties, he was promoted & worked as Library Attendant in the Court of the Learned District Judge, Cuttack with effect from 3.11.1984 upto 30.9.2004. During the said period of his service, there were no adverse entries against the Petitioner, While the matter stood thus, on 30.9.2004 as per Rule 12 of the Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 (in short "CCA Rules"), the Learned District Judge, Cuttack passed the order of suspension & initiated a Departmental Proceeding against the Petitioner. On 8.10.2004, charges were framed against the Petitioner, i.e., (i) while posted as Library Attendant he incurred a housing loan of Rs. 1,30,000 under the Flood Loan Scheme from the Union Bank of India, Main Branch, Cuttack without prior

sanction of the authority & made unauthorised borrowing, (ii) he forged the signature & seal of his drawing & disbursing officer (i.e., the Registrar, Civil Court, Cuttack) in the loan application form, salary certificate & forwarding letter & misrepresented the Union Bank of India regarding his salary & wrongfully & fraudulently obtained the loan. His dishonest actions amounted to gross misconduct on the part of a Government servant & (iii) he furnished a fake salary certificate for the month of July, 2004 with the loan application to the Bank which was not his actual salary. Thereby, he deceived the Bank with false representation & his action was prejudicial to the interest & reputation of the authority. He acted immorally & dishonestly & cannot be trusted by the employer. On 16.11.2004, the Petitioner submitted his written statement of defence clarifying therein his stand on the accusations. He answered all the charges individually & in details explaining the actual situations of the alleged circumstances while admitting the fact that he incurred the housing loan under the Flood Loan Scheme from the Union Bank of India. He specifically denied that the loan application submitted by him to the Bank contained the forged signature & seal of the drawing & disbursing officer. He further explained that he was the sole earning member of his family & in the Super-Cyclone of the year 1999, his house was completely demolished. Being a low paid Government servant, he was in dire need of financial support to rebuild his house. He discussed his problem with his friend, namely, Dusasana Das of Pithapur, Cuttack, who gave him an impression that he had a good acquaintance with the drawing & disbursing officer & assured the Petitioner that he would get the loan application along with its enclosures approved by the drawing & disbursing officer. The Petitioner trusted such assurance of Dusasana Das. In his turn, Dusasana Das got the loan application duly approved by the drawing & disbursing officer with all required enclosures. The Petitioner not being appropriately qualified & acquainted with the handwriting & signature of the drawing & disbursing officer, could not understand the purport & contents of the loan application & its enclosures. In good faith, believing that the said application along with its enclosures to be genuine, he submitted those papers to the Bank. Acceptance of those papers by the Bank augmented the Petitioner's faith in Dusasana Das as well as the genuineness of his application & its enclosures. Further the Petitioner submitted that he never doubted the genuineness of those documents & also regarding incorrect description of his salary. As soon as he received all these allegations & charges, he rushed to Dusasana Das to enquire about the real affair but found him to be seriously ailing. Dusasana Das died due to his illness adding to the utter misfortune of the Petitioner, He further stated that he had not spent the loan amount of Rs. 1,30,000 & was ready to refund the said amount with accrued interest as & when directed. He never wilfully & consciously committed any act prejudicial to the conduct of a Government servant & prayed the authority to kindly exonerate him of the charges in such background.

3. During pendency of the enquiry, the Petitioner was reinstated with effect from 15.7.2005 after the suspension order was revoked & he was posted as Daftary

in the Court of the Learned Civil Judge (Senior Division), Jaipur. The Learned Civil Judge (Senior Division) was the enquiring officer. He enquired into the matter & examined two witnesses, i.e., the Accountant & the Registrar, Civil Court, who denied to have forwarded the loan application to the Bank & that the signature in the loan application did not belong to the drawing & disbursing officer. These two witnesses were not cross-examined by the delinquent. The enquiring officer submitted his report on 1.11.2006 holding the Petitioner guilty of the offences charged & recommending minor penalty of withholding three periodical increments with cumulative effect & not to assign him with any responsible post in future. Pursuant to the said enquiry report, notice was issued to the Petitioner to show cause as to why a major penalty like dismissal or removal from service should not be imposed on him for the misconduct. After receiving the said show-cause notice, on 28.7.2007 the Petitioner prayed for providing him the copies of deposition of the witnesses & documents relied upon to enable him to prepare his defence & reply to the said show-cause notice. In response to such prayer, nothing was communicated to him. Finding no other way, the Petitioner filed his show cause on 22.9.2007 specifically stating therein that he was ill-equipped in English language & the intricacies of law & prayed for engagement of a Counsel on his behalf which yielded no result. In his submission, he reiterated his innocence & explained his inability to defend him & properly participate in the enquiry & prayed to consider his case sympathetically by exonerating him from the alleged charges. However, after receiving the second show cause filed by the Petitioner, on 3.11.2007 the Learned District Judge passed the order of dismissal of the Petitioner from service & that the said dismissal shall ordinarily be a disqualification for future employment which is a major penalty. Against the said order of the disciplinary authority, the Petitioner filed an Appeal before the Appeal Committee of this Court on 1.2.2008. The Appeal Committee on 18.3.2009 confirmed the penalty imposed by the disciplinary authority. Hence, the writ application.

4. Learned Counsel for the Petitioner submitted that the Petitioner is a poor Class-IV employee & he had already explained the circumstances under which he was misrepresented by Dusasana Das. He had no knowledge about the genuineness of the signature of the drawing & disbursing officer. Also being an uneducated poor person, the Petitioner was not able to participate in the disciplinary proceeding effectively by engaging a Counsel & cross-examine the witnesses who are highly qualified officers. He further submitted that since Dusasana Das, who was the vital material witness of defence, died in the meantime the Petitioner was not able to prove his innocence in the matter. The said fact has not been considered by the authority which had a strong evaluative concern for the defence of the Petitioner. He further submitted that the case of the Petitioner should be considered sympathetically by setting aside the punishment imposed by the disciplinary authority.

5. The relevant record has been produced before us. We have gone through the same. Though no counter-affidavit has been filed in this case, the record reveals

that the Petitioner was not allowed to engage any Counsel to defend him in the Disciplinary Proceeding nor did he cross-examine the witnesses, i.e., the Accountant & the Registrar, Civil Court. As regards charge No. (ii), i.e., regarding forged signature & seal of the drawing & disbursing officer, only the signature was found to have been forged. However, the official seal was, genuine & how & who has used it is a mystery. The Petitioner was not in charge of the same. The Petitioner was under a bona fide impression that his personal misery evoked sympathy of the drawing & disbursing officer & she has approved the loan application. The fact that the Petitioner was not able to substantiate his defence effectively due to his Ignorance about the intricacies of law & his defence regarding misrepresentation by Dusasana Das has not at all been considered by the disciplinary authority which might have led to a second view regarding innocence of the Petitioner. In the circumstances, the enquiring officer recommended a minor penalty. Since two views are possible, the view which is favourable to the delinquent Petitioner should have been taken & a minor penalty, instead of the major penalty like dismissal from service, should have been imposed by the disciplinary authority. Law is well settled that if two views are possible, the view favourable to accused/delinquent should be taken.

6. "Misconduct" has not been defined under the CCA Rules. The conduct of the Petitioner in getting his loan application approved with the help of a friend who had good relationship with the drawing & disbursing officer can never be said to be unreasonable. The past conduct of the Petitioner was good & there was no complain against him from any corner whatsoever. As the house of the Petitioner was completely demolished in the Super-cyclone, with an intention to rebuild the same he tried to get the loan from the Bank & he was ready & willing to repay the same. Therefore, he had no intention to misappropriate the said amount. The enquiring officer found that the signature of the drawing & disbursing officer was not genuine. However, the seal of the said officer was genuine as stated by P.W.1 & the Petitioner was not in charge of the said seal. Therefore, some third person must have done it for the Petitioner. A reference may be made to the decision of the Apex Court reported in Shankar Dass Vs. Union of India (UOI) and Another, .

7. The enquiring officer recommended for withholding three periodical increments with cumulative effect & not to assign the Petitioner with any responsible post in future. However, the disciplinary authority imposed the penalty of dismissal from service. Further he held that the said dismissal shall be a disqualification for future employment. The punishment imposed on the Petitioner was disproportionate to the charges levelled against him. While imposing the penalty the disciplinary authority should have considered whether the penalty imposed suits the offence & the offender. It should not be vindictive or unduly harsh & should not be so disproportionate to the offence as to shock the conscience of a reasonable man. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the disciplinary authority, if the decision of the Court even as to sentence is an outrageous defiance of logic, then

the sentence would not be immune from correction. The Apex Court in the case of B.C. Chaturvedi Vs. Union of India and others, has held as under:

The disciplinary authority, & on appeals, the Appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty & impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/Appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional cases, impose appropriate punishment with cogent reasons in support thereof.

8. Further, the Petitioner, in his service career never committed any offence of misconduct or disobedience or done any act or omission so as to render him to be awarded with the penalty of dismissal from service & the said dismissal shall be a disqualification for future employment which seems to be very harsh. The Petitioner under the stress of personal misery committed the offence under a bona fide impression & had no intention to defraud the authority & legitimately he accepted that his friend got the loan application approved by the drawing & disbursing officer. After getting the loan from the Bank, he repaid the said loan amount & his past records do not indicate any insincerity in discharging his duty at any point of time.

9. Section 13 of the Rules provides for the nature of penalties. The Court's conscience is shocked to see that a peon who is in the lowest rung in the strata of Government employees, after 31 years of his unblemished service career has been made to suffer for his bona fide approach to get a loan for rebuilding his house which was demolished in the Super-cyclone & he was also aged about 50 years. As life includes livelihood, we are of the opinion that the matter should be reconsidered by the disciplinary authority once again & any other penalty be inflicted on the Petitioner except the punishment of dismissal from service taking into consideration his unblemished past service of 31 years.

10. In view of the foregoing reasons, the writ application is allowed, the impugned order of punishment of dismissal from service passed against the Petitioner is quashed & the matter is sent back to the disciplinary authority with the observation that notwithstanding the order of the appeal committee of this Court, the disciplinary authority shall reconsider the case of the Petitioner & award him some lesser punishment as the law permits. The disciplinary authority will make endeavour, to conclude the matter within a period of four months from the date of communication of the writ.

There shall, however, be no order as to costs.

Sanju Panda, J.

I agree