
(2010) 04 OHC CK 0026
In the Orissa High Court

Ganeswar Mishra

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : (2010) 1 OLR 807

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Judgement

N. Prusty, J. (Chairman)

1. The applicant has retired from his services when he was working as Civil Supplies Officer, with effect from 31.3.2002. When the applicant was engaged as Marketing Inspector under the administrative control of the Department of Food and Civil Supplies, he was sent on deputation to the Orissa State Civil Supplies Corporation to work as Marketing Inspector. During the period of his deputation under the Orissa State Civil Supplies Corporation, a disciplinary proceeding was initiated against him. The memorandum of charges dated 23.10.1986 (Annexure-2) was served on him and the applicant had filed his show cause to the memorandum of charges. Thereafter inquiring officer was appointed by the disciplinary authority and after enquiry into the matter the inquiring officer submitted the enquiry report dated 30.12.2000 (Annexure-9) to the disciplinary authority with the following recommendation;

...the charges framed against the Delinquent Officer, Sri Ganeswar Mishra, Ex-Inspector of Supplies on deputation to OSCSC Ltd. as MI, Bhubaneswar, may not substantiate in absence of supported documentary evidence and records. In similar charges, Sr. D.K. Dandapat, the then MI, Bhubaneswar in charge of the MFP shop, Bapujinagar, the Govt. have also allowed Sri Dandapat all his benefits. Therefore, I suggest the Delinquent officer may be exonerated from the charges and the Departmental Proceedings framed against him may be dropped.

After receipt of the enquiry report, even though it was suggested by the inquiring

officer that, the delinquent officer may be exonerated from the charges and the departmental proceeding framed against him may be dropped, the Disciplinary Authority has issued punishment order dated 23.2.2001 (Annexure-8), whereby the applicant was imposed with punishments i.e. "(1) stoppage of one increment without cumulative effect (2) period of suspension is treated as such". It has been alleged that the entire proceedings after the date of submission of the enquiry report onwards are unjust and illegal. Since such illegal order of the disciplinary authority was upheld by the appellate authority as well as revisional authority, the applicant has filed this O.A. with a prayer to quash the impugned punishment order dated 23.2.2001 (Annexure-8) and all the consequential orders.

2. Heard Mr. Mallik, learned Counsel for the applicant and Mr. Kanungo, Iearned Government Advocate.

3. Since Mr. Mallik, learned Counsel for the applicant in earlier occasion, when this matter was taken up on 15.3.2010, submitting that without any notice to the applicant asking him to file his show cause relating to the proposed punishment to be passed by the disciplinary authority, even though the inquiring officer had recommended for complete exoneration of the applicant and to drop the proceeding initiated against him, this Tribunal had directed Mr. Kanungo, learned Government Advocate to produce the departmental proceeding file after flag-marking the same. In compliance with the said order Mr. Kanungo produced the departmental proceeding file in Court today along with the entire sheet of the proceeding.

4. On the basis of the materials available in the counter affidavit as well as departmental proceeding file, Mr. Kanungo, learned Government Advocate submits that there is no such document/order is available in the D.P. file indicating reason recorded by the Disciplinary Authority for differing from the finding and suggestion of the Inquiring officer and also any order relating to issuance of notice to the applicant for filing his show cause on the proposed punishment order which was suggested by the disciplinary authority differing from the suggestion made by the Inquiring Officer.

Mr. Mallick, learned Counsel submits that since no notice was issued by the Disciplinary Authority relating to the proposed punishment along with the reason for differing from the report/suggestion of the Inquiring Officer, entire proceeding is vitiated and as such the impugned orders are liable to quashed.

However, considering the submissions made by the learned Counsel for both the parties and keeping in view of the fact that after submission of the enquiry report dated 30.12.2000 (Annexure-9), whereby it has been suggested by the Inquiring Officer that the delinquent officer may be exonerated from the charges and the departmental proceeding framed against him may be dropped, the disciplinary authority without issuing any notice relating to proposed punishment along with the reason for differing from the report/suggestion of the Inquiring Officer,

inviting show cause from the applicant has passed the impugned order of punishment dated 23.2.2001 (Annexure-8) and nothing is available in the departmental proceeding record to that effect, I am of the considered view that without going into the order of the appellate authority as well as revisional authority, the punishment order dated 23.2.2001 (Annexure-8) along with all consequential orders which have been passed by the Appellate Authority as well as the Revisional Authority, on the basis of such punishment order are liable to be quashed and those are accordingly quashed.

Since I quashed the order of punishment dated 23.2.2001 (Annexure-8), the matter is remitted back to the Disciplinary Authority to take a fresh decision in the matter and pass appropriate order after issuance of appropriate notice to the applicant indicating the reason with regard to non-acceptance of the report of the Inquiring Officer, wherein he has suggested for dropping the proceeding which was initiated against the applicant, keeping in view the order which was passed in respect of another Marketing Inspector i.e., D.K. Dandapat, since it has been alleged that he is similarly placed like the applicant..

In view of the fact that the applicant has since retired from his services on superannuation in the meantime and as submitted by Mr. Mallik, learned Counsel to the effect that even after the effective period of punishment is already over, till date no retrial dues of the applicant have been disbursed in his favour, the entire exercise be completed within a period of three months from the date of receipt of copy of the order.

The O.A. is accordingly disposed of with the above observation/ direction.

The disciplinary proceeding file which has been produced by the learned Government Advocate for verification, returned to him in Court today.