
(2008) 08 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 13545 of 1998

Kumar Charan Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227
Orissa Government Servants Conduct Rules, 1959 — Rule 3

Citation : (2008) 08 OHC CK 0015

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : A.K. Mishra, B.B Acharya, J. Sengupta, P.R.J. Dash, D.K. Panda, C. Mohanty and G. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

B.K. Patel, J

1. The legality of the order dated 4.7.1998 passed by the Orissa Administrative Tribunal, Bhubaneswar in Original Application No. 1756 of 1994 filed by the Petitioner u/s 19 of the Administrative Tribunals Act, 1985 has been assailed in this writ application.

2. By the impugned order, the Tribunal did not allow the Petitioner's prayer to quash the charges leveled in the departmental proceeding against him and the order of the appellate authority directing de novo inquiry in the departmental proceeding against the Petitioner. Instead, the Tribunal directed to take a decision on the basis of the inquiry report and communicate the same to the Petitioner. If it was proposed to award any punishment to him, a copy of the report of the Commission of Departmental Inquiry (for short "C.D.I.") was directed to be furnished to the Petitioner indicating the proposed punishment giving the petitioner an opportunity to represent against it. It was further observed by the Tribunal that if the Petitioner would be aggrieved by the final

order passed, he would be at liberty to file a fresh application before the Tribunal. As the Petitioner had retired in the meanwhile and the alleged lapses had occurred more than 18 years by the time the impugned order was passed, the entire exercise was directed to be completed within a period of two months from the date of receipt of the impugned order.

3. Facts of the case briefly stated are as follows:-

While working as a Section Officer in the Rent Office of the General Administration Department, on the allegation of misappropriation of heavy amount of government cash of which he was the custodian as Cashier, by not properly accounting it and making false entries in the Cash Book, the departmental proceeding was initiated by order dated 26.9.1983 which reads:

Shri K.C.Jena, while working as Grade-I Assistant (Cashier) in the Rent Office under the defunct Political and Services Department, misappropriated Government cash, of which he was the custodian, in his official capacity, to the tune of Rs. 71,596.48 (Rupees seventy one thousand, five hundred ninety six and paise forty-eight) only by not accounting for all the amounts received from different parties in the cash Book. He defalcated the amount by falsifying Cash Book in the above manner. He thereby failed to maintain absolute integrity and devotion to duty and violated Rule 3 of the Orissa Government Servants Conduct Rules, 1959.

Before initiation of the proceeding, three criminal cases had been filed against the applicant-Petitioner on the charges of misappropriation. Though the Petitioner was convicted by the trial court he was honourably acquitted by the appellate court in Criminal Appeal Nos. 37/205 of 1979, 28/205 of 1979 and 29/206 of 1979. The Petitioner had challenged the departmental proceeding in O.J.C. No. 1030 of 1994 which was transferred to the Tribunal and registered as T.A. No. 261 of 1986, and finally dismissed on 16.4.1992 as being withdrawn. The departmental proceeding initiated against the Petitioner terminated in an order reverting the Petitioner as Senior Assistant and directing recovery of the amount allegedly misappropriated by him in monthly instalments of Rs. 1000/- from his salary and DCR. However, the appellate authority differing with the view taken by the disciplinary authority passed orders setting aside the inquiry report and absolving the Petitioner of the penalties awarded pending further inquiry on the ground that the inquiry suffered from factual and procedural irregularities. Consequent upon the said order of the appellate authority, office order was passed by the Director of Estates & Ex-Officio, Deputy secretary to Government, G.A. Department as per Annexure-7 to the Original Application which reads:

After careful consideration of the appeal petition dated 17.2.1992 filed by Sri Kumar Charan Jena, senior Assistant, G.A.(Rent) Department against the orders of penalties awarded in this Deptt. Order No. 1909 dated 5.2.1992, the appellate authority has been pleased to set aside the inquiry report and absolve him of the penalties awarded in the said order, pending further inquiry since the inquiry held

suffers from procedural and factual irregularities.

2. It is further ordered that since the charges are of grave nature, the case is to be remitted to the Commissioner, Departmental Inquiries for initiating action afresh.

The applicant filed the Original Application challenging the said order.

The Respondents filed reply to the original application stating that the Petitioner misappropriated heavy amount, part only of which was the subject matter of the criminal cases instituted against him. The disciplinary proceeding had been initiated in respect of the balance amount of Rs. 71,596/- only. In such circumstances, there was No. bar for initiating the disciplinary proceeding. In course of hearing of the Original Application it was also pointed out on behalf of the State-Respondent that in the meanwhile fresh inquiry conducted by the C.D.I. was concluded and the report had already been examined at the Government level awaiting disposal of the Original Application.

While passing the impugned order, Tribunal took note of the fact that another Original Application bearing No. 547-of-1992 had been filed by the Petitioner in which Misc. Petition bearing No. 856 of 1992 was filed when the appellate authority set aside the inquiry report as well as the penalty imposed against the Petitioner directing fresh inquiry by the C.D.I. In the Misc. Petition prayer had been made for withdrawal of the Original Application because of such order passed by the appellate authority. By order dated 19.12.1993 passed in the said Misc. Petition No. 856/92, Original Application No. 547 of 1992 was allowed to be withdrawn with liberty granted to the Petitioner to approach the Tribunal with a fresh application in the event any punishment was awarded to him pursuant to the fresh inquiry by the C.D.I. Taking note of such earlier order passed by it, it was observed by the Tribunal in the impugned order that in view of such earlier order, the Petitioner should have approached the Tribunal only in the event of imposition of any punishment awarded to him upon consideration of the fresh inquiry report submitted by the C.D.I.. However, the Petitioner approached the Tribunal by filing the Original Application 4.12.1993 passed by the Tribunal in M.P. No. 856 of 1992 arising out of the O.A. No. 547 of 1992. In the background of such observations, having heard from both sides, the Tribunal passed the impugned order.

4. We have carefully heard learned Counsel for the parties and scrutinized the materials on record. Copy of the order dated 14.12.1993 of the Tribunal, passed in miscellaneous petition arising out of O.A. No. 547 of 1992 preferred by the Petitioner, which is Annexure-A to the counter-affidavit filed on behalf of the Respondents, reveals that the order was passed in response to the Petitioner's prayer, inter alia, to permit him to withdraw the Original Application with liberty to file fresh application in the event he is awarded penalty in the fresh inquiry. While allowing prayer for withdrawal it was categorically observed:

xxx In the event of any punishment awarded on the applicant pursuant to the

fresh enquiry to be conducted against him with regard to the charge, he is free to approach this Tribunal with fresh application since the cause of action will be different from the case of action for which he has filed the present application xxx

Therefore, it was rightly held by the Tribunal that the Petitioner could not have filed the Original Application prior to award of punishment in the fresh inquiry. The Petitioner has failed to indicate any reasonable ground to interfere with the impugned order passed upon reference to and on the basis of the above quoted earlier order of the Tribunal which remained unchallenged.

5. Learned Counsel for the Petitioner assailed the legality of the order of the appellate court directing fresh inquiry to be conducted by the C.D.I. In this connection, learned Counsel for the Petitioner sought to draw support from paragraph (iii) of the instructions issued by the Government of Orissa in the General Administration Department vide letter No. 124(35) dated 2nd May, 1984 to the effect that only cases in which the inquiring authority has not yet been appointed should be entrusted to the C.D.I.; that No. attempt should be made to transfer a case, in which an inquiring authority has already been appointed, to the C.D.I.; and that such cases are expected to be disposed of by the inquiring officers already appointed. We find the contention misconceived in view of the fact that in the present case there is No. transfer of an inquiry pending for disposal by inquiring officer appointed earlier in as much as while remitting the matter to the C.D.I. the appellate authority not only set at naught the earlier action and directed for initiation of action against the previous inquiring officer by calling upon him to explain as to why disciplinary action shall not be initiated against him. Therefore, the de novo inquiry directed by the appellate authority necessitated appointment of inquiring authority and entrustment of de novo inquiry to the C.D.I. does not violate the instructions issued by the Government.

6. Learned Counsel for the Petitioner also sought to assails the inquiry on the ground of abnormal delay. In this connection, learned Counsel for the Petitioner sought sustenance from the decision State of Andhra Pradesh Vs. N. Radhakishan, . In the above cited decision itself it has been pointed out that it is not possible to lay down any predetermined principle applicable to all cases and in all circumstances where there is delay in concluding disciplinary proceedings. Whether on that ground disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. In the present case, undisputedly inquiry report has already been submitted by the C.D.I. The Tribunal has also taken into account the fact that the Petitioner has already retired in the meanwhile and the alleged lapses had occurred long back and accordingly it directed the entire exercise of considering the inquiry report after furnishing a copy to the Petitioner to be completed within a period of two months from the date of receipt of the copy of the impugned order. Therefore, in view of the facts and circumstances in the present case, the above cited decision does not come to the aid of the Petitioner.

7. For the reasons stated above, No. illegality, impropriety or irregularity in the

impugned order is noticed so as to warrant interference by this Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India.

The writ application is dismissed accordingly.

L. Mohapatra, J.

8. I agree.