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(1968) 12 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 267 of 1964

Muralidhar Mohanty APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 11-12-1968

Acts Referred:

Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 — Rule 2, 3

Citation : (1969) 35 CLT 245

Hon'ble Judges : Baraman, C.J;Patra, J

Bench : Division Bench

Advocate : R.N. Misra, R.C. Patnaik and B. Harichandan, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

Barman, C.J.—The Petitioner, an Assistant Sub-Inspector of Excise, challenges the order of Superintendent of Excise, Dhenkanal, by which a punishment was imposed on him, namely withholding of his annual increment in the revised scale for a period of four years 1962 to 1965 as a result of certain disciplinary proceedings against him, on charges of unauthorized absence from duty without written orders and disobedience of the orders of the authorities under whom the Petitioner was serving.

2. In January, 1950 the Petitioner was confirmed as an Assistant Sub-Inspector of Excise. In 1961 while he was posted at Dhenkanal in that capacity he was ordered to be transferred to Boinda. The Petitioner prayed for staying the order of transfer whereupon the Superintendent of Excise, Dhenkanal, asked the Petitioner to go on leave which, on application, was granted to him by the Superintendent of Excise. Subsequently, leave was refused by the Additional District Magistrate and the Petitioner was asked by the Superintendent of Excise to join at Boinda.

Thereupon, the Petitioner without joining at Boinda again made an application for reconsideration of the order of transfer on the ground that his wife was unwell. Thereafter, the Petitioner was suspended on August 28, 1961 and disciplinary proceedings were initiated against him on two charges, namely unauthorized absence from duty and thus withholding from duty without previous written orders and disobedience of the orders of the Additional District Magistrate, Dhenkanal, and the orders of the Superintendent of Excise, Dhenkanal-all as stated in the said charges.

3. Ultimately, by an order dated November 8, 1961 made by the Superintendent of Excise, Dhenkanal, the Petitioner, after termination of the departmental proceedings, was punished as aforesaid by the impugned order withholding of his increments in the revised scale for four years during 1962 to 1965. Against this order of punishment he appealed to the Additional District Magistrate, who, by his order dated September 16, 1962, rejected the same with slight modification of the punishment in that the withholding of the increments would not have cumulative effect.

4. One of the points taken in support, of the writ petition is that the Superintendent of Excise, Dhenkanal, not being the Petitioner''s appointing authority, had no power to issue the show cause notice on the Petitioner, nor could the Superintendent of Excise pass the impugned order of punishment.

5. Rule 45 of the Orissa Excise Manual, Volume III says that the power to appoint Assistant Sub-Inspectors of Excise and peons in the districts is delegated by the Commissioner of Excise to Collectors and Excise Superintendents respectively. It is accordingly submitted that the Superintendent of Excise not being the appointing authority in respect of an Assistant Sub-Inspector of Excise, the order imposing the impugned penalty passed by the Superintendent of Excise, Dhenkanal, is contrary to law.

6. The Petitioner also contends that the Superintendent of Excise was not validly empowered by the appointing authority or any higher authority to impose the penalty. This requires an examination of the relevant service rules applicable to the Petitioner. Under Rule 2 of the Bihar and Orissa Subordinate Services Discipline and Appeal Rules, 1935 which are applicable to the Petitioner, with holding of increment is one of the penalties which may, for good and sufficient reasons, be imposed upon any member of a, Subordinate Service. Rule 3 which prescribes the authority who could impose such penalties in this:

3. Any of the penalties mentioned in Rule 2 may be imposed on a member of a Subordinate Service:

(a) by the authority empowered to impose such penalty by any rule or order in force at the time when these rules come into operation ; or

(b) if no authority has been so empowered, by the Head of the Department, or the Head of the office having the power to appoint the members of the Subordinate Service on whom the penalty is to be

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7. The question is : Did the Superintendent of Excise who passed the impugned order of penalty of withholding increments have the power to impose such a penalty? In order to have such power he must come either under Rule 3 (a) or under Rule 3 (b) of the Rules quoted above which came into operation on July 1, 1935 as per notification No. 1995 A.R. dated June 14, 1935. Admittedly at the point of time when these rules came into operation in 1935 there was no rule or order by which the Superintendent of Excise was empowered to impose the penalty of withholding of increments on an Assistant Sub-Inspector of Excise as the Petitioner was. In this context our attention was drawn to paragraph 52(a) of the Orissa Excise Manual Volume III, as per amendment dated September 17, 1959, by which the power of punishing, except removal or dismissal, was delegated to the Superintendent of Excise in respect of Assistant Sub Inspectors of Excise. This provision in the Excise Manual, made in September, 1959 was not in operation in 1935.

8. Nor can it be said that the Superintendent of Excise could impose the impugned penalty on an Assistant Sub-Inspector of Excise under Rule 3(b). The reason is this : The phrase ''if no authority has been so empowered'' used in Rule 3(b) means ''so empowered'' under Rule 3(a), that is to say, so empowered under any rule or order in force at the time when the said rules came into operation as early as in 1935. Admittedly, the Superintendent of Excise was not so empowered under Rule 3(a) because, as discussed above, at the point of time when these rules came into operation in 1935 there was no rule or order by which the Superintendent of Excise can be said to have been empowered to impose the impugned penalty on an Assistant Sub-Inspector of Excise. Thus when no authority has been ''so empowered'', the only authority who could impose such a penalty was either the Head of the Department or the Head of the Office having the power to appoint a member of the Subordinate Service on whom the penalty is to be imposed. Admittedly, in the present case the Superintendent of Excise was neither the Head of Department, nor the appointing authority in respect of Assistant Sub-Inspectors of Excise. Therefore, he could not impose the impugned penalty oh the Petitioner.

9. In the view that we have taken that the Superintendent of Excise had no authority to impose the penalty on the Petitioner as discussed above, it is unnecessary to deal with the other points on merits raised by the parties. The impugned order of punishment is quashed. The writ petition is accordingly allowed with costs. Hearing fee Rs. 100/-.

Patra, J.

10. I agree.

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