
(2010) 03 OHC CK 0005
In the Orissa High Court
Case No : Writ Petition (C) No. 6030 of 2002

Narasingh Behera

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : (2011) 1 OLR 500 Supp

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Judgement

A.S. Naidu, J.—Petitioner, an erstwhile Constable of 37 Battalion of C.R.P.F., under Group Centre, seeks to assail the order of dismissal from service dated 16.3.1999 and prays to direct the opposite parties to reinstate him in service with all benefits. It is pertinent to mention here that the order of dismissal is not annexed to the Writ Petition though a prayer is made to quash the same.

2. Bereft of unnecessary details, the short facts of the case as would be evident from the inter se pleadings are :

The petitioner joined as a Constable on 21.9.1968. Being satisfied with his performance the authorities promoted him to the post of Lance Naik and posted him in 47 Battalion at New Delhi. In the year 1984 he was once again promoted to the post of Naik. In 1987 he was transferred to Bhubaneswar Group Centre. While serving at Bhubaneswar in the year 1990 he was promoted to the post of Havildar and in the year 1991 he was transferred to 41 Battalion under Durgapur Group Centre. In 1996 he was transferred to 52 Battalion, Bhubaneswar. After serving for one year in Bhubaneswar in the year 1987 he was transferred to 52 Battalion, New Delhi where he joined on 28.3.1997. While continuing at Delhi he applied for leave for his sister's marriage and leave was granted from 29.3.1997 to 27.5.1997. Unfortunately, it is submitted during the leave period the mother of the petitioner died and he was compelled to extend leave for a further period of 30 days. As ill luck would have it, before expiry of the said period he fell sick

and was admitted at M.K.C.G. Medical College and Hospital, Berhampur. He applied for some financial help which was turned down by the authorities mainly on the ground that a departmental proceeding had been initiated against him. The petitioner on coming to now about the said fact joined at the Transit Camp at Dimapur on 18.3.1999. On 20.3.1999 he was directed to move to Imphal. The petitioner reported at "B" Company-52 Bn, C.R.P.F. at Airport, Imphal. It is alleged that on 22.3.1999 he was intimated orally that he has been struck off from his service. He returned to Manipur and found notice affixed in his quarter at Bhubaneswar calling upon him to vacate the quarter immediately declaring him as a deserter. Challenging the said order the petitioner filed a Writ application which was registered as O.J.C. No. 4028/1999. The said Writ application was disposed of on 29.11.2000 on the basis of a submissions made by the opposite parties that the petitioner has been dismissed from service. Thereafter, it is alleged, the petitioner made "several representations but no action has been taken till date. Having no other way out he has approached this Court.

3. Ms. Mohapatra, learned counsel appearing for the petitioner, forcefully submitted that initiation of the departmental proceeding and imposition of punishment of dismissal from service, without granting an opportunity to the petitioner to show cause was unjust and illegal. It is stated that the petitioner had not received the order of dismissal, and law being well settled that the dismissal order comes into effect only from the date of service the opposite parties should be directed to reinstate the petitioner.

4. In short, according to Ms. Mohapatra, neither any show cause notice was served upon the petitioner nor any charges were framed and the departmental proceeding was initiated and culminated behind the back of the petitioner, without according any opportunity to him and as such it is a fit case where the so called order of dismissal from service should be quashed.

5. After receiving notice, a counter affidavit has been filed by the opposite parties taking the stand that considering the application filed by the petitioner leave was granted so as to enable him to attend his sister's marriage. Thereafter, he extended the leave for thirty days on the ground that his mother expired. His request was sympathetically considered and allowed. The petitioner, thereafter did not join and went on extending the leave on some ground or other. He was directed by letter dtd. 8.10.1997 to report for duty. The said letter was issued at his home address, but returned back undelivered with a remark made by the postal authorities to the effect that "addressee was always absent." Since the petitioner was not available at his home address and was not responding the commanding officer declared him "deserter" from service w.e.f. 27.6.1997, i.e. from the date of his unauthorized absence. Thereafter, a departmental proceeding was initiated and charges were framed. Petitioner was called upon to submit his show cause and appear in the disciplinary proceeding, but he failed to avail such opportunity and as the charges were proved beyond all reasonable

doubt, the order of dismissal from service w.e.f. 16.3.1999 was passed.

6. Mr. Das, learned Asst. Solicitor General, submitted that the allegation that the petitioner was not intimated with regard to initiation of the disciplinary proceeding is blatantly false. In fact notice issued to his home address returned back with an endorsement that he was always absent. Thus, no laches can be attributed to the authorities. That apart, Mr. Das submitted that the petitioner was aware of the fact that he was dismissed from service in the year 1999. Instead of preferring an appeal, the petitioner approached this Court in O.J.C. No. 4028/1999. The said Writ application was dismissed on 29.11.2000. Even thereafter the petitioner did not prefer an appeal. In view of the aforesaid facts and circumstances the Writ Petition filed after lapse of three years may be dismissed as not maintainable.

7. A rejoinder affidavit has been filed by the petitioner repudiating the averments made in the counter.

8. Heard learned counsel for the parties at length. Perused all the materials available on record diligently. Fact remains, the petitioner was found guilty in a departmental proceeding and was awarded the punishment of dismissal from service way back in the year 1999. The pleadings and the written submissions filed before this Court clearly reveal that the petitioner became aware about the fact of imposition of the punishment on 22.3.1999. He did not prefer an appeal against the order of dismissal. According to the petitioner he did not receive the copy of the dismissal order. But then, it appears that the petitioner never tried to obtain a copy nor he applied the authorities to furnish him the copy of the order passed by the Enquiry Officer in the departmental proceeding. In fact, a copy of the order passed in the departmental proceeding was annexed to the counter affidavit, still then he did not approach the appellate authority.

9. After hearing learned counsel for the parties this Court finds that the dispute in the case in hand is as to whether adequate opportunity was granted to the petitioner to defend himself in the departmental proceeding or not. According to the opposite parties notices were issued by registered post, but the same were returned with an endorsement that the petitioner was always absent at his home address. On the other hand, according to the petitioner, no notice was issued nor he received any notice. Such controversy cannot be decided under the Writ jurisdiction as it involves disputed questions of fact. The petitioner has prayed to direct the opposite parties to reinstate him on the ground that the dismissal order was never served upon him. Such a prayer is not available to him as he was aware that the order of dismissal was passed in the year 1999. The order passed by this Court in O.J.C. No. 4028/1999 clearly reveals that the petitioner was dismissed from service and the Writ Petition was dismissed.

10. In the aforesaid scenario, without delving into the disputed facts, this Court feels that ends of justice and equity will be better served if the petitioner is granted an opportunity to prefer an appeal before the competent authority. Law

is well settled that the appellate authority being the final Court of facts can decide both disputed questions of fact and law. This Writ Petition is, therefore, disposed of giving liberty to the petitioner to prefer an appeal before the competent authority within a period of six weeks along with a petition for condonation of delay and a petition u/s 14 of the Limitation Act. If such an appeal is filed, the authorities shall do well to dispose of the petition for condonation of delay taking a liberal view as the petitioner had served the C.R.P.F. for such a long time and dispose of the appeal as expeditiously as possible preferably within a period of six months from the date of filing of the appeal.

With the aforesaid observation, the Writ Petition is disposed of.

B.N. Mahapatra, J.

11. I agree.