
(2009) 10 OHC CK 0089
In the Orissa High Court
Case No : Writ Petition (C) No. 14053 of 2003

Nikhil Kumar Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 109 CLT 584

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

Bench : Division Bench

Advocate : Dhuliram Pattnayak and Associates, for the Appellant; A.G.A., for the Respondent

Judgement

A.S. Naidu, J.—The Petitioner seeks to assail the order dated 12th December, 2003 passed by Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 3043(C)/2000.

2. According to the Petitioner he was working as O.I.C., Jujumara Police Station in the year 1991 and was investigating into a murder case bearing P.S. Case No. 53/1991. In course of investigation he arrested some persons including one Susil Kumar Bag and brought them to the Police Station for interrogation. After interrogation they were released from custody on 22nd September, 1991. It appears that Susil Kumar Bag thereafter was admitted in the Headquarters Hospital, Sambalpur and died on 23.9.1991. It was alleged that the said Susil Kumar Bag succumbed to the injuries caused to him while he was in police custody. Consequently a case was lodged against the Petitioner for commission of offence u/s 302 I.P.C. and the investigation was handed over to Crime Branch. After investigation the Crime Branch submitted Final Form which was accepted by the Court and the matter was dropped.

4. While matter stood thus, the Petitioner was suspended by order dated 24th September, 1991 and a Disciplinary Proceeding was initiated against him. The copy of the charge sheet was served upon him and he was called upon to show

cause which he complied. The show cause filed by him was not accepted and an Enquiry Officer was appointed to enquire into the matter. After completion of the enquiry the Petitioner was found guilty and imposed the following punishments:- (i) reduction to the rank of S.I. of Police (ii) the period of suspension from 24.9.1991 to 14.9.1993 be treated as such. Being aggrieved by the said punishment the Petitioner approached the Tribunal.

5. The specific case of the Petitioner before the Tribunal was that adequate opportunity was not granted to him to meet the charges and that the report of the Enquiring Officer along with the supporting documents were not served upon him, consequently he was prejudiced and could not submit proper reply to the second show cause notice. Even otherwise it is stated that the conclusions arrived at by the Enquiry Officer and the punishment imposed being disproportionate to the charges levelled, the same should be set aside.

6. After receiving notice, replies were filed by the State Government taking the stand that the Disciplinary Proceeding was in fact conducted, observing the principles of natural justice and equity. It was further averred that as per the provisions of Rule 15(10) of the O.C.S. (CCA.) Rules, 1962 show cause was served upon the Petitioner indicating the punishment proposed to be taken and the Petitioner having shown his cause the authority after considering the same imposed the punishment. In short, it is averred that the Departmental Proceeding was conducted in consonance with law and any submissions made to the contrary was unfounded.

7. The Tribunal after hearing learned Counsel for the parties and taking into consideration all facts and circumstances came to the conclusion that no ground was made out to interfere with the impugned order of punishment, consequently the original application was dismissed. The Petitioner as stated earlier being aggrieved by the said decision has approached this Court.

8. Mr. Pattnayak, learned Counsel for the Petitioner, strenuously took this Court through the charges the reply submitted by the Petitioner, the letter issued by the Petitioner in course of disciplinary proceeding requesting to supply the relevant documents, the written defence filed by the Petitioner and last but not the least the finding of the Addl. S.P., Sambalpur, who was appointed as Enquiring Officer. Perusal of the said report (Annexure-6) reveals that the Enquiring Officer has observed as follows:

Analysis of statements of P.Ws. reveals that S.I. N.K. Das had not been implicated directly by anybody about assault to Susil Bag, Ranjit Barei during 21.9.91 to 22.9.91. However statement of witnesses clearly prove that Susil Bag & Ranjit Barei had been assaulted in Police custody during the period for which OIC, Jujumura P.S. is morally responsible as Officer-in-Charge of that P.S. during that period. I am to further mention that no witness has told that he had seen or heard Susil Bag or Ranjit Barei being assaulted by S.I. N.K. Das. Hence charge No. 1 stands proved (on the ground of moral responsibility of OIC as he had

failed in his supervision to stop assault in police custody).

It is pertinent to mention here that out of the four charges framed the observations quoted supra was in respect of charge No. 1. The Enquiring Officer however found that Charge No. 2 with regard to acceptance of illegal gratification was not proved and so also Charge Nos.3 and 4.

9. Mr. Patnaik further submitted that after receipt of the aforesaid Enquiry Report (Annexure-6) the authorities did not serve a copy of the same upon the Petitioner nor call upon him to show cause, instead they took a decision to impose punishment and called upon the Petitioner by order dtd. 23rd May, 2000 (Annexure-8) to submit his second show cause, consequently it is submitted by Mr. Patnaik that the principles of audi alterem partem were violated. Further, relying upon the decision of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, and other decisions, it is submitted that non-service of copies of the enquiry report and other documents greatly prejudiced the Petitioner and amounts to violation of principles of natural justice and equity and on the said ground alone the punishment should be quashed. In paragraph-10 of the Writ Petition, the Petitioner has specifically averred that non-supply of the enquiry report and advice of the O.P.S.C. as well as other documents had caused prejudice to the Petitioner in giving a full-fledged second show cause.

10. Law is no more res integra to the effect that a delinquent is entitled to get the copy of the enquiry report and other documents before any punishment is imposed. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , it was held that non-supply of enquiry report to the delinquent is equal to denial of reasonable opportunity to him. In the case of Harekrushna Jena v. Addl. S.P. of Police and Ors. reported in 1985 OLR 438 it was held that non-supply of copies of evidence of witnesses examined in the preliminary enquiry amounts to violation of natural justice. The consistent view expressed by the Supreme Court, however, is that mere non-submission of enquiry report would not be fatal unless the delinquent is able to satisfy the Court, that due to such non-supply of the enquiry report and other documents great prejudice had been caused to him.

11. In the case at hand, in fact the Petitioner has not only made specific averments but has also satisfied the Court that he was greatly prejudiced, inasmuch due procedure was not followed in course of enquiry and the said allegation could have been raised by him if an opportunity would have been given to the Petitioner to file show cause after supply of the final report.

12. After hearing learned Counsel for the parties and after considering the position of law, we feel that it is a fit case where a copy of the enquiry report should have been supplied to the Petitioner before taking a decision to impose punishment.

13. In view of the aforesaid irregularity which goes to the route of imposing punishment, we set aside the order of punishment and remit the matter back to

the authorities to supply the copy of the enquiry report and other relevant documents and thereafter proceed from that stage of enquiry. As the matter is pending since long we direct the authority to complete the entire exercise as expeditiously as possible.

14. It is made clear that this Court has not examined the merits of the contentions raised before this Court and it is open to the authority to dispose of the matter strictly in accordance with law.

B.N. Mahapatra, J.

15. I agree.