

(2010) 11 OHC CK 0018
In the Orissa High Court
Case No : Writ Petition (C) No. 10824 of 2006

Nirmal Kumar Das

APPELLANT

Vs

Orissa Power Transmission Corporation Ltd. and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2011) 1 ILR (Ori) 356

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The Petitioner having been dismissed from service in pursuance of a departmental proceeding by order dated 30.8.2005 in Annexure-26 has filed this writ petition challenging the said order of punishment.

2. The Petitioner initially joined as a Junior Engineer under the State Government in 1979 and in the year 1981 he was recruited as an Assistant Engineer by way of promotion. In the same year he was sent on deputation to Orissa State Electricity Board (OSEB) from the Energy Department of the N. Kumar Das v. Orissa Power Transmission (L. Mohapatra, J) Government of Orissa. Later OSEB was abolished and GRID Corporation came into existence. The services of the Petitioner were placed under GRIDCO and he was permanently absorbed in GRIDCO. While working under GRIDCO, in March 2001 the Petitioner got himself examined by Dr. B.C. Satpathy, Medical Officer, GRIDCO Dispensary for his ailment in Kidney. As per advice of the doctor, Ultrasound test was conducted and it revealed that both the kidneys had developed mild degree of hydronephrotic changes and both the ureters were abnormally dilated in proximal area. Since there was malfunctioning of the kidneys, Dr. Satpathy advised him to contact Prof. L.K. Sahu of Urology, S.C.B. Medical College & Hospital, Cuttack. The Petitioner thereafter got himself examined several times in between April 2001 to July 2006 and remained under treatment of Dr. Sahu. While the Petitioner was under treatment, he was transferred on 13.6.2001 to Talcher Thermal Power

Station and as per the orders of the authorities, he relinquished the charges on 9.7.2001. Because of his ailment, the Petitioner applied for leave from 10.7.2001 to 30.7.2001 and also submitted a representation to recall the order of transfer on the ground of illness. The first representation for recalling the order of transfer having not been attended to, some more representations were made on subsequent dates. On 7.8.2003 the Petitioner was directed to appear before a Medical Board of GRIDCO on 12.8.2003 as he had availed leave on medical ground from 10.7.2001. The Petitioner appeared before the Medical Board but he was found fit to resume duty. Accordingly, on 20.8.2003 the Petitioner was directed to resume duties at Talcher Thermal within seven days. Even though the Petitioner joined at Talcher on 27.8.2003, a departmental proceeding was drawn up against him for remaining on leave from 10.7.2001 to 26.8.2003 without submitting any Medical Certificate along with the leave application and also on the ground that the Medical Board having found him fit to resume duty, he should not have availed leave on medical ground. On such allegations, the charge memo was served on the Petitioner and he was called upon to submit a reply. The Petitioner submitted his reply explaining the reasons for his absence in details. But the same was not accepted and an enquiry was conducted. The Petitioner participated in the enquiry and after conclusion of the enquiry, a report was submitted by the Enquiring Officer finding the Petitioner guilty of the charge. The disciplinary authority thereafter called upon the Petitioner to submit his reply to the report of the Enquiring Officer and after receipt of the reply, the order of punishment was passed dismissing the Petitioner from service. Challenging the said order of dismissal from service, this writ application has been filed.

3. A counter affidavit has been filed by the opposite parties and a preliminary objection was raised by the learned Counsel appearing for the INDIAN LAW REPORTS, CUTTACK SERIES (2011) opposite parties to the effect that the order of punishment is appellable and without exhausting the alternative remedy, the Petitioner should not have approached this Court by filing a writ petition. Though the learned Counsel appearing for the opposite parties has some justification in raising such preliminary objection, we are not entertaining the said objection considering the fact that the writ application is pending here for more than four years by now and directing the Petitioner to prefer an appeal against the order of punishment at this stage will result in undue hardship to the Petitioner.

4. Shri Biswajit Mohanty-1, the learned Counsel appearing for the Petitioner assailed the enquiry report as well as the order of punishment on the ground that the basis for framing the charge is the report of the Medical Board constituted by GRIDCO. But the report of the Medical Board was never placed before the Enquiring Officer and therefore, the document on the basis of which charge was framed having not been produced before the Enquiring Officer, the Petitioner could not have been found guilty of the charge. Apart from the above, the learned Counsel also drew attention of the Court to the evidence of the three doctors examined in course of the enquiry to substantiate his submission that the leave applications filed by the Petitioner were not without any basis and because

of his ailment and the treatment he was undergoing under Dr. Sahu, he was forced to take leave and at no point of time he was physically fit to resume duty. The learned Counsel for the opposite parties supporting the enquiry report submitted that the three doctors constituting the Medical Board having been examined in course of the enquiry, there was no necessity to produce their report before the Enquiring Officer and the evidence of these three doctors clearly establish that even though the Petitioner was fit physically to resume duties, he went on submitting leave applications without supporting medical certificates.

5. Law is well settled that this Court in exercise of writ jurisdiction cannot sit in appeal and reassess the evidence adduced before the Enquiring Officer and come to a different conclusion. Only if the findings of the Enquiring Officer are based on no evidence, the Court may interfere and set aside such report. The charge framed against the Petitioner in Annexure-9 relates to disobedience of orders of superior authority, misleading the authority by providing false information and gross mis-conduct. The allegation is that the Petitioner was transferred from PMU (Trans), GRIDCO and was posted as SDO, LD & TC Sub-Division, T.T.P.S. vide Office order dated 13.6.2001 and was accordingly relieved with effect from 10.7.2001. Instead of joining the N. Kumar Das v. Orissa Power Transmission (L. Mohapatra, J) new assignment at Talcher, he remained at Bhubaneswar and represented on 16.7.2002 for modification of the transfer order on health ground. From the date of relieve, he remained on leave continuously on the ground of medical observation of problem related to kidney and submitted thirteen applications for extension of leave on very same ground. He did not submit any Medical Certificate along with the leave applications in support of medical observation. He was asked to appear before a Medical Board on 12.8.2003 and the Medical Board did not find any abnormality in his physical and mental ability and declared him fit for resuming duty. Therefore, his stay on leave for such a long period on medical ground is proved to be false. From the aforesaid conduct, it is clear that he has intentionally not joined the new assignment at Talcher and tried to avoid joining duty on health ground.

6. The Petitioner in response to the said charge memo submitted his reply indicating the reasons for taking leave and also prayed for supply of certain documents as indicated in Annexure-10. Though it is alleged that the said documents were not supplied, it may not be material for the purpose of the case considering the stand taken by the Petitioner in his reply to the charge sheet. The authorities not being satisfied with the explanation given, appointed an Enquiring Officer and the Petitioner also participated in the enquiry. In course of enquiry witnesses were examined and documents were produced by both the parties and the Enquiring Officer submitted his report in April, 2005 finding the Petitioner guilty of the charges. The learned Counsel for the Petitioner submitted that the report of the Medical Board was never placed before the Enquiring Officer and the said fact is borne out from the proceeding of the enquiry dated 28.8.2004. The Enquiring Officer has recorded in the proceeding dated 28.8.2004 that in course of enquiry it was felt and pointed out that the Confidential Letter

No. 23 dated 14.8.2003 of Dr. P.K. Nayak, Medical Officer, GRIDCO Dispensary is simply a forwarding letter but the detailed findings of the medical examination report is supported with the letter. This recording in the proceeding itself shows that the findings of the Medical Board constituted by GRIDCO had not been produced before the Enquiring Officer and only the forwarding letter of Dr. P.K. Nayak had been produced. The charge framed against the Petitioner is based on the report of the Medical Board that the Petitioner was fit physically and mentally to resume duty, but he availed leave on a false plea that he was suffering from kidney problem. Therefore, the first submission of the learned Counsel for the Petitioner is substantiated from the above recording. We find that in course of enquiry Dr. B.C. Satpathy, Medical Officer, GRIDCO Dispensary, Dr. P.K. Nayak, Ex-Medical Officer, GRIDCO Dispensary and Dr. Biswa Kalyani Das, Lady Medical Officer, GRIDCO Dispensary were examined. Dr. B.C. Satpathy, who had first examined the Petitioner has stated in course of enquiry that he had not seen the contents of report and it was not shown to him by Dr. P.K. Nayak. He also stated that he had seen the prescriptions and connected papers submitted by the Petitioner at the time of medical examination by the GRIDCO Medical Board. He also stated that the Petitioner was advised some investigations and there was some abnormality with him for which he had been referred to Dr. Sahu, Urologist of S.C.B. Medical College and Hospital, Cuttack. He has also stated that the Petitioner was being treated by Dr. Sahu. This witness has also stated that there was no test conducted on the Petitioner and the opinion of the Medical Board was formed only on the basis of the documents submitted by the Petitioner. Dr. P.K. Nayak has also stated in his evidence that none of the doctors in the Medical Board was Urologist and no test had been conducted on the Petitioner as Laboratory facilities were not available in the GRIDCO Hospital so far as Urological diseases are concerned. The Board only verified the available medical records and formed its opinion. Dr. Biswa Kalyani Das also stated that no physical test was conducted in the GRIDCO Dispensary at the time of medical examination and all the three doctors of the Board only examined the records produced by the Petitioner relating to his disease. It is, therefore, clear from the evidence of these three doctors that in course of examination by the Medical Board, only documents produced by the Petitioner in relation to his ailment were considered by the Board and the Petitioner was not put to physical examination even though the Petitioner alleged that he was suffering from ailment relating to kidney. The Board did not have an Urologist in the panel to examine the said documents. No facilities were available in the GRIDCO Hospital for any kind of pathological test relating to Urology. All the three doctors admitted that their opinion is based on the documents produced by the Petitioner in relation to his ailment. As is evident from the evidence of Dr. B.C. Satpathy, the Petitioner had some problem relating to his kidney and he had advised him to contact Dr. Sahu, who was then working as Professor of Urology in the S.C.B. Medical College and Hospital, Cuttack. Therefore, it was the duty of the Medical Board to examine the Petitioner physically to find out as to whether he had any ailment relating to his kidney or not. Though an opinion can be formed on the basis of the reports

submitted by the Petitioner, since the dispute was as to whether the Petitioner was having any problem relating to his kidney or not, it would have been better on the part of the Medical Board to put the Petitioner to physical medical test to find out the truth or otherwise of the claim made by the Petitioner. Prima facie from the evidence of Dr. B.C. Satpathy, we are satisfied that the Petitioner was having some problem in relation to his kidney for which he had been directed to contact Dr. Sahu, an Urologist for treatment. Therefore, all the leave applications submitted by N. Kumar Das v. Orissa Power Transmission (L. Mohapatra, J) the Petitioner indicating that he was under treatment of Dr. Sahu cannot be said to be false as held by the Enquiring Officer. The report of the Medical Board which formed the basis of the charge having not been produced before the Enquiring Officer and the evidence of the three doctors being that no test was conducted and an opinion was formed only on the basis of the documents produced by the Petitioner, we are of the view that the findings of the Enquiring Officer that the Petitioner submitted leave applications on false ground is unsustainable and without any basis specially in view of the evidence of Dr. B.C. Satpathy. Accordingly, we set aside the findings of the Enquiring Officer and consequently the order of punishment in Annexure-26 is also set aside.

The writ petition is accordingly allowed.

Writ petition allowed.