
(2003) 02 OHC CK 0008
In the Orissa High Court
Case No : Writ Petition (C) No. 365 of 2002

Pravas Kumar Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(1)

Citation : (2003) 02 OHC CK 0008

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : Shri Shyam Sundar Das, for the Appellant; Shri Debashis Das, A.G.A., M.R. Panda, A. Mohapatra, R.C. Sahoo and J.M. Rout for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The order dated 2.7.2002 passed by the learned Member (Judicial), Central Administrative Tribunal, Cuttack in Misc. Application No. 552 of 2002 (arising out of Original Application No. 483 of 2001) is the subject-matter of challenge in this writ petition. By the impugned order, the learned Member has directed the Chief Secretary of the Government "to give a fresh look to the representation dated 3.5.2002" of the opposite party No. 3 who is the applicant before the Tribunal. The learned Member has also directed the enquiry officer not to take up the disciplinary enquiry against opposite party No. 3 which was posted to 3.7.2002.

2. From the records of O.A. No. 483 of 2001 which were produced before us on our direction, it appears that Opposite party No. 3 has filed the above M.A. No. 552 of 2002 on 1.7.2002 before the Tribunal for an interim relief praying stay of the disciplinary proceedings.

3. We have heard Shri S.S. Das for the Petitioner, Dr. M.R. Panda for opposite party No. 3 and Shri D. Das, learned Additional Government Advocate, for the

State.

4. Opposite party No. 3 has filed O.A. No. 483 of 2001 before the Tribunal principally for the following declarations:

(i) Charges levelled against him being not maintainable, the disciplinary proceedings initiated against him on the basis of charges are liable to be quashed;

(ii) He is not guilty of the charges levelled against him under Annexures-10 and 11 to the Original Application;

(iii) In view of the enquiries conducted by the respective departments, he is not liable to face further disciplinary proceedings in respect of the self-same charges;

(iv) Sealed cover procedure need not be adopted against him since the charge-sheets were served long after recommendation of the D.P.C. finding him suitable for promotion to Super-Time Scale of pay;

(v) To direct the State Government to promote him to Super-Time Scale of pay with effect from 17.11.2002 when his juniors were given promotion.

5. The interim prayer of opposite party No. 3 was earlier refused by the Division Bench of the Tribunal by an elaborate order dated 31.1.2002 observing, inter alia, as follows:

...The case of the applicant comes under this clause and therefore his case is covered under paragraph 11.1 and paragraph 21 of this circular. In the O.A. the Petitioner has prayed for quashing the charge-sheet. The O.A. is yet to be heard. In view of this, the interim relief as prayed for by the applicant cannot be granted and the prayer for interim relief is rejected.

From the order-sheet of the case, it appears that the main case was adjourned from time to time. The learned Member (Judicial) passed an order on 8.5.2002 which reads as follows:

None appears for the Petitioner. Division Bench matter. Put up before next Division Bench.

The purpose of our noting the above order is to mention that the learned Member (Judicial) knows that the matter is a Division Bench one and the interim prayer made in the application (M.A. No. 552 of 2002) on 1.7.2002 was not such an urgent matter which could not have waited till Division Bench was constituted particularly when the interim prayer made by opposite party No. 3 was earlier rejected on 31.1.2002 as mentioned above.

Be that as it may, now coming to the impugned order, we find that opposite party No. 3 had not made any grievance in his interim application (M.A. No. 552 of 2002) that the Chief Secretary of the Government without considering the materials on record erroneously rejected his representation dated 3.5.2002 to drop the charges and close the disciplinary proceedings. His prayer in the

application (M.A. No. 552 of 2002) was only for a direction to stay disciplinary proceedings till disposal of the Original Application. The learned Member has also found in paragraph-10 of the order that opposite party No. 3 has not filed any rejection order. He has observed "it is not known as to for what reason the Chief Secretary has turned down the prayer of the applicant made in his representation dated 3.5.2002". In the circumstances we do not find any valid reason to pass the impugned order directing the Chief Secretary to have a "fresh look" at the opposite party No. 3's representation to drop the charges.

6. Dr. Panda, learned Counsel for opposite party No. 3, in course of hearing of this writ petition before us on 4.2.2003 submitted that the impugned direction of the learned Member asking the Chief Secretary to have a "fresh look" has become infructuous because the main case is being heard by the Tribunal and there is little scope for the Chief Secretary to give a "fresh look" at this stage. When we asked him to file a memo clearly stating his above submission, he filed a memo on 7.2.2003 stating as follows:

3. That the final hearing of the Original Application (O.A. No. 483/2001) has also commenced hearing by the order of this Hon'ble Court passed in O.J.C. No. 3322/2002. The hearing took place before the learned Central Administrative Tribunal on 30.1.2003 and had been posted for further hearing to February, 2003 which would be evident from the order sheet of the O.A. No. 483/2001 (which had been called for).

Thus there is no scope of giving any opportunity to the Chief Secretary of the State to consider the representations of opposite party No. 3.

7. We may note that the above statement made in the memo dated 7.2.2003 does not reflect what the counsel for Opposite party No. 3 submitted before us on 4.2.2003.

8. Dr. Panda also challenged the locus standi of the Petitioner in questioning the validity of the impugned order by filing the present writ petition. In this connection, he placed reliance on the judgment of the Supreme Court in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, wherein it has been held that the Administrative Tribunals constituted under the Administrative Tribunals Act, 1985 cannot entertain public interest litigation at the instance of a total stranger because in order to bring a matter before the Tribunal an application can be made by a person aggrieved by an order as defined in explanation to Sub-section (1) of Section 19. The facts and circumstances of the case which would shortly be dealt with would indicate that presence of the Petitioner in O.A. No. 483 of 2001 pending before the Tribunal is necessary. He is not a total stranger. Moreover he has not moved the Tribunal questioning any order relating to the service matter of Opposite party No. 3. It is the opposite party No. 3 who is the applicant before the Tribunal.

9. A brief resume of relevant facts are necessary to be mentioned hereunder:

Three writ petitions i.e. O.J.C. Nos. 8712 of 1994, 10774 of 1997 and 3577 of 1999 were filed in this Court by way of public interest litigation. The present Petitioner was also the writ Petitioner in the above O.J.C. No. 10774 of 1997. This Court disposed of those writ petitions with a direction to the State Government, inter alia, to conduct special audit by the Account General, Orissa into the different allegations like the unauthorised diversion of funds, improper expenditure thereof, misuse of funds etc. The Court further directed the State Government to take suitable immediate action against the erring officers on the basis of the audit report along with some other directions regarding raising of funds for conducting Santosh Trophy, etc. In obedience to the said direction, the Accountant General audited and found serious objections against opposite party No. 3 who was then the Collector-cum-Chairman, D.R.D.A. As no action was taken against opposite party No. 3, the Petitioner filed contempt case bearing Original Criminal Misc. Case No. 578 of 2000 against the State Government. One of the allegations in the contempt case was that the State Government officials by forming an unholy alliance with opposite party No. 3 instead of complying with the Court's order were out to give him promotion to the Super Time Scale post despite the fact that in the audit report severe comments were made against him. On 14.11.2000 this Court passed an interim order that opposite party No. 3's case for promotion and posting, if any, on the basis of such promotion may not be finalised. Thereafter after hearing all concerned including opposite party No. 3, the said interim order was made absolute on 7.2.2001. In paragraph 8 of the said order, we observe as follows:

...It is not in dispute that the Accountant General (Audit) submitted the Special Audit report to the Government on 25.9.2000 in which it has been found that the diversion of D.R.D.A. funds for renovation of the "Sabhaghar" was unauthorised and this indictment is aimed at opposite party No. 5 because it was done when he was the Collector-cum-Chairman-Project Director, D.R.D.A., Angul. The State Government and its officials in the face of the direction of this Court and the findings recorded in the audit report should not have rushed to approve his promotion on the basis of the Screening Committee's recommendation. It ex facie amounts to contempt of Court. We, therefore, considered that it would be mete and proper that the opposites parties should be restrained from approving his promotion till the contempt matter is finally disposed of. Accordingly, we passed the interim order.

Against the aforesaid order dated 7.2.2001, opposite party No. 3 filed SLP No. 3717 of 2001 before the Supreme Court. By order dated 8.6.2001, their Lordships disposed of the SLP by making the following order:

By an interim order dated 16th March, 2001, this Court had suspended the impugned order passed by the High Court. It was also made clear that if promotion is given to the Petitioner in the meanwhile such promotion would be subject to the result of contempt petition pending in the High Court. This order nowhere directs that the Petitioners should be promoted. It does not direct

contrary also. In any case, if promotion is to be given to any one, the competent authority is bound to follow the necessary procedure prescribed under the rules and the law laid down by this Court....

From the above, there can be no doubt that the disciplinary proceedings started against opposite party No. 3 is subject to the final order to be passed in the contempt petition which is still pending.

The contention of Shri Das, learned Counsel for the Petitioner is that opposite party No. 3 is misleading the Tribunal by suppressing material facts. His submission is that opposite party No. 3 by making wrong averments had been trying to persuade the Tribunal that the Government have exonerated him from the charges which is not a fact. In this connection, he placed before us paragraph-8 of the impugned order. On perusal of the said paragraph it seems that opposite party No. 3 submitted before the Tribunal that the compliance of audit objection contained in audit report No. 91 of 1999-2000 has already been done and, therefore, the charges could not have been framed. From the statement of imputation annexed to the article of charges it would appear that the basis of charges against opposite party No. 3 is audit report No. 44 of 1997-98. The above statement made by opposite party No. 3 before the Tribunal is wholly incorrect and may border the vice of falsehood. He made the said statement apparently to mislead the Tribunal or to obtain a relief which he is not otherwise entitled to. Such statement made by a party before the Court of law is unfair and calls for appropriate action against him.

Shri Das also pointed out that opposite party No. 3 misled the Tribunal by referring to the affidavit dated 30.10.2001 of the G.A. Department filed before this Court to the effect that the School and Mass Education Department did not find anything wrong with the purchase of slates. In this connection Shri Das brings to our notice Annexure-3 to the writ petition which reads as follows:

Copy along with copy of compliance report and the views of the Director forwarded to the A.G. (O) for information and necessary action. The views of the Department of the School and Mass Education are as follows:

(a) The audit objections on purchase of slates (para-12) are found to be sustained.

(b) Some purchases which have been made through quotations should have been done through tender under OGFR.

(c) The payment of the NGO "AWARENESS" should not have been Routed through ZSS and ZSS should have refused to Route this amount.

(d) the vehicles should have been hired at approved rates like those of Commerce and Transport Deptt. or collected from Association of vehicle operators.

(e) Objection at para 9 and 10 are found to be sustainable.

The aforesaid indicates that the audit objections still hold good and it is not correct to say that the School and Mass Education Department did not find any fault in the matter.

10. As the impugned order passed by the learned Member of the Tribunal is based on wrong facts, as indicated above, the same cannot be sustained in law and is hereby quashed.

11. Shri Das also submitted that in view of the fact that this Court in the contempt matter is monitoring the disciplinary proceedings, the Tribunal cannot sit in appeal over the order passed by this Court and come to a different finding. According to Shri Das, the original application filed by Opposite party No. 3 before the Tribunal is not maintainable. He also contended that Opposite party No. 3's case for promotion was considered along with 1984 batch I.A.S. officers and the Screening Committee decided to keep the recommendation regarding suitability in sealed cover and that is the correct procedure adopted by the department. Shri Das says that the said procedure has been followed keeping in view the order dated 8.6.2001 passed in SLP No. 3717 of 2001 wherein their Lordships of the Supreme Court observed that if promotion is to be given to any one, the competent authority is bound to follow the necessary procedure prescribed under the rules and the law laid down by the Court. We are not expressing any opinion on the above submission at this stage because in the meantime Opposite party No. 3 had filed a writ petition bearing O.J.C. No. 3322 of 2002 against the order of the Tribunal refusing to grant interim prayer of promotion. A Bench of this Court declined to interfere with the said order but directed the Tribunal to dispose of the case within three months.

12. The presence of the Petitioner before the Tribunal is very much essential. Had he been heard by the learned Member, Opposite party No. 3 could not have misled him by bringing incomplete or wrong facts. Therefore, the Petitioner's presence in the original application is necessary in the interest of justice so that all the facts can be brought to the notice of the Tribunal at the time of hearing. We make it clear that Petitioner's role is limited before the Tribunal that he would bring necessary facts to its notice for disposal of the case according to law.

We hope and trust that the Tribunal will keep the above observations made by us in this order in view and decide the matter according to law after hearing all concerned.

Writ petition is accordingly allowed.

P.K. Misra, J.

13. I agree.