
(2001) 03 OHC CK 0041
In the Orissa High Court
Case No : Misc. Case No. 12 of 2001

Pravash Kumar Sahoo

APPELLANT

Vs

S.M. Patnaik and others

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 3

Citation : (2001) 91 CLT 491

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is an application praying for a direction to the State Government to place opposite No. 5 under suspension.

2. An affidavit has been filed today sworn to by Shri U. N. Behera, Special Secretary to Government in the General Administration Department. We have perused the same. In paragraph-9 there of, it has been stated as follows :

"9. That as regards the prayer of the petitioner for suspension of Sri P. K. Nayak, from service, it is submitted in view of the pendency of the enquiry to the various allegations made against him, Sri P. K. Naik has been transferred from the post of Special Secretary to Chief Minister to the post of Addl. Secretary, Fisheries and Animal Resorces Development Department. The deponent submits that in such, circumstances there is no scope for the contemnor to tamper or manipulate the records relating to the departmental proceeding or the allegations. Therefore, the Government do not feel at present to put him under auspension."

Shri Panda, learned counsel for the petitioners, submitted that the deponent of the affidavit has been trying to shield opposite party No. 5 inasmuch as the latter has nexus with him as well as other officers in the Secretariate. It is brought to our notice by Shri Panda that charges have been framed against opposite party No. 5 on 30-12-2000 and 27-1-2001 much after he was transferred and posted

as Additional Secretary, Fisheries and Animal Resources Development Department. Shri Panda submitted that opposite party No. 5 was the Special Secretary to the then Chief Minister Shri Giridhar Gamango and after demission of office by Shri. Gamango in the later part of 1999, opposite party No. 5 came to be posted as Additional Secretary. Shri Panda contended that reading of paragraph-9, extracted above, would give an impression as if opposite, party No. 5 had been continuing as the Special Secretary to the Chief Minister and he has recently been posted as the Additional Secretary.

3. Shri Panda has brought to our notice that the present Special Secretary to the Government in the General Administration department has been trying to protect opposite party No. 5 from being proceeded against in departmental proceedings is apparent from the "Statement of imputation enclosed to the Government memorandum, dated 30-12-2000. Relevant portion to which objection is being taken reads as follows :

"The Inquiring Officer in para-01 of his observations in the inquiry report has held Shri P. K. Nayak, I. A. S., the then Collector and Chairman ZSS, Angul responsible for the irregularities as mentioned in the Article of charges though in the concluding paragraph he has not attributed any malafide to him for such irregularity."

It is contended that although there is no finding by the Inquiry Officer in his report that no malafide could be attributed for such irregularity, the Special Secretary has intentionally added it to the statement of imputation with a view to give an impression that the charges are not of very serious nature.

We may state here that the Inquiring Officer if in his report has not indicated anything about absence of malafide etc., such things should not have been mentioned in the statement of imputation. If Shri Panda's submission is correct, then evidently the defence to the charge is being made out by the authority who has framed the charge. Government Advocate is directed to produce the report of the Inquiring Officer on the next date of hearing.

4. We hasten to state here that whether an officer should be placed under suspension or not, it is for the State Government to decide in terms of rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 which lays down that if, having regard to the circumstances in any case and, where articles or charge has been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may pass an order placing him under suspension.

In view of what has been stated above, we are of the opinion that the reasons given in the affidavit of the Special Secretary are far from satisfactory. We accordingly reject the the same. It is open to him to file a fresh affidavit, if so advised.

5 Shri B. A. Mohanti, learned counsel appearing for opposite party No. 5, seriously takes objection to the opposite party No, 5 being described as a contemner No. 5. It appears from some petitions filed on behalf of the petitioners that opposite party No. 5 is being described as contemner No. 5. We make it clear that this contempt proceeding arises out of judgment of this Court in O. J. C. Nos. 8712 of 1994, 10774 of 1997 and O. J. C. No. 3577 of 1999 because of the allegation that the State Government and its officials have not been taking follow-up action within the stipulated time. It was also alleged that instead of taking action against opposite party No. 5, he has been given promotion in violation of the prevailing rules and having found prima facie case of contempt, this Court had directed not to give effect to the promotion order of opposite party No. 5.

In the aforesaid circumstances, more particularly in view of the orders of the Supreme Court, he has come to be added in this contempt, petition as opposite party No. 5. To make the position clear, he has not been arrayed in this contempt petition as contemner No. 5. Depicting opposite party No. 5 as contemner in the different petitions filed by the petitioners does not make him a contemner.

Put up this matter on 16-3-2001, as requested by the learned Government Advocate.

6. Application rejected.