
(1976) 01 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 362 of 1974

Purnananda Beura

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 13, 16

Citation : (1976) 42 CLT 353

Hon'ble Judges : S.K. Ray, J;N.K. Das, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Government Advocate for O.P. Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Das, J.—This is an application under Article 226 of the Constitution of India to quash the punishment imposed on the Petitioner in a disciplinary proceeding, and for a direction that the case of the Petitioner should be considered for promotion when his juniors were promoted.

2. The Petitioner is a primary Investigator, National Sample Survey, under the Director of Bureau of Statistics and Economics, Government of Orissa. A disciplinary proceeding was started against him for disobedience of order of higher authorities, lack of interest in Government duty, unauthorised absence from the sample village, submission of false report regarding arrival and departure in the sample village, wilful absence from duty by availing leave unauthorisedly, leaving headquarters without permission and utilising service postage stamps for private purposes. On enquiry, five out of nine charges were held to have been established and ultimately the order of punishment was passed. On his representation his case was reconsidered and after hearing him punishments as per Annexure-6 were imposed. He has challenged the proceedings on the ground that relevant records were not supplied to him, spot

enquiry as requested by him was refused and second show-cause notice was not served on him. He further contends that his arrear pay has not been given and during the pendency of the proceeding, opposite parties 3 to 8 who were juniors to him have been promoted and he has not been considered for promotion.

3. Mr. Mohanty, the learned Counsel for the Petitioner, does not press the prayer for consideration for promotion in view of the contention in the counter affidavit that the case of the Petitioner has been duly considered along with the case of opposite parties 3 to 8 for promotion. He also does not press the prayer for realisation of the arrear dues as the same has been paid to the Petitioner meanwhile. The only question that remains for consideration is, whether the punishments imposed on the Petitioner should be quashed. There is no dispute about the fact that the punishments Imposed on the Petitioner are minor punishments as provided in Rule 13 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. Therefore, the question of giving a second show-cause notice before final orders of punishment does not arise as provided under Rule 16 of the aforesaid Rules.

4. It is contended on behalf of the Petitioner that no opportunity was given to him for adducing evidence in defence and he was not allowed to examine any witnesses. The Petitioner was given opportunity for submitting his explanation. From the counter affidavit it appears that the enquiring officer gave him full opportunity to go through the records for his satisfaction and documentary evidence was also produced before the enquiring officer. The enquiry was held mostly on documentary evidence. Adequate opportunity for producing evidence on behalf of the Petitioner was given. The punishing authority also gave him chance for personal hearing. Indisputably the Petitioner did not file any appeal against the order of imposition of punishments. He filed a petition before the punishing authority for reconsideration of his case. The punishing authority gave a personal hearing to the Petitioner. The Petitioner submitted before him for reduction of the punishments. After hearing the Petitioner the punishing authority also reconsidered the matter and modified the order imposing liberal punishments. The records of the proceeding were also produced before us by the learned Addl. Government Advocate. After going through the records we are satisfied that sufficient opportunity was given to the Petitioner by the enquiring officer. As the enquiring officer was satisfied on the materials available on record he did not consider that a spot enquiry was necessary as requested by the Petitioner. It has been repeatedly held by the Supreme Court that while considering an application under Article 226 of the Constitution against a disciplinary proceeding the High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an

independent finding on the evidence. The findings of fact reached by an inferior Court of tribunal as a result of the appreciation of evidence are not reopened or questioned in the High Court. A finding of fact recorded by the tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the tribunal.

5. In the present case the enquiring officer was satisfied with the evidence adduced before him in arriving at his findings. The punishing authority has also been satisfied on the materials on record. The Petitioner was also given opportunity for personal" hearing. It is contended on behalf of the Petitioner that the rules as provided under the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 were not followed. The punishments imposed are minor punishments. The procedure to be followed for indecision of minor penalties are provided in Rule 16 of the aforesaid Rules which runs as follows:

16. Procedure for imposing minor penalties-(1) No order imposing any of the penalties specified in Clauses (i) to (v) of Rule 13 shall be passed except after

(a) the Government servant is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make:

(b) such representation, if any is taken into consideration by the disciplinary authority; and

(c) the Commission is consulted in cases where such consultation is necessary.

(2) The record of proceedings in such cases shall include

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the advice of Commission, if any; and

(v) the orders on the case together with the reasons therefor....

6. It would thus appear that the Petitioner was informed in writing of the proposal for action against him as well as the allegations on which it was proposed to be taken and he was given opportunity to make representation. His representation was also taken into consideration. From the records of the proceeding it is found that the requirements as envisaged under Rule 16 have been complied with. Therefore, the allegation of the Petitioner that the procedures under the rules have not been followed is without any basis. There is no dispute that the enquiry was made by the officer having authority to do so.

7. It is contended by Mr. Mohanty that the punishment in Clause (c) of Annexure-6 that the entire period of absence of the Petitioner is unauthorised and such absence from duty from 16-3-1968 to 23-7-1968 is to be treated as leave with loss of pay, does not come under the provisions of Rule 13 of the aforesaid Rules as it is not provided in that rule. It is contended by the learned Additional Government Advocate that this is not a punishment but is a consequential effect of absence which is to be decided according to rules for leave of Government servant. This is a period when the Petitioner had not worked and his absence from work without any authority or sanction is to be considered according to leave rules. Sufficient opportunity was given to the Petitioner to counteract such a contention, but he did not counteract it in any way. We also agree with the contention of the learned Addl. Government Advocate that this has been wrongly mentioned by the punishing authority as a punishment. Therefore, the period of absence is to be considered according to the leave rules and it is not a punishment according to the aforesaid Rules of 1962.

8. The contentions raised by the Petitioner are devoid of merit. The petition, therefore, fails and is dismissed but in the circumstances of the case there will be no order for costs.

S.K. Ray, J.

9. I agree.