

(2001) 02 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 18195 of 1997

Sashi Bhusan Ram

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Orissa Police Manual Rules, 1940 — Rule 826, 834, 836, 837

Citation : (2002) 93 CLT 392 : (2002) 94 FLR 275 : (2002) 1 OLR 377

Hon'ble Judges : Pradipta Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : K.P. Bhaumic, for the Appellant; S. Swain, for the Respondent

Final Decision : Allowed

Judgement

Pradipta Ray, J.—The writ petitioner Shashi Bhusan Ram was appointed as a Fireman in the Orissa Fire Service Department on November 18,1963. Fire Service Personnel are subject to Police Manual Rules. The said Police Manual Rules contain provisions for imposition of black marks alone or in addition to other punishments. Under Rule 836 nine black marks entail dismissal. If any person governed by the said Rule is awarded nine black marks, proceedings may be drawn up for his dismissal. Police Manual Rule 837 provides for giving an advance warning when imposition of one more black mark may result in reduction in rank, loss of increment or dismissal.

2. On or about July 18,1990 a notice was served on the Petitioner to show cause why he would not be dismissed from service as per Police Manual Rule 836 for earning nine black marks. It was mentioned in the said charge-sheet that during his tenure of service he earned 10 black marks to his discredit. The petitioner submitted a representation to the Director General of Police, Fire Services praying that the disciplinary proceeding should be dropped as no notice of caution as required by the Police Manual Rules was served on him before initiation of the said disciplinary proceeding. The Director General of police rejected the said representation and directed that the process of award of

punishment should continue as per rules. .Against rejection of his representation the petitioner filed Original Application No. 48/92 before the Orissa Administrative Tribunal. By order No. 4 dated January 15, 1992 the Tribunal granted an interim order not to pass final order without leave of the Tribunal. Ultimately by judgment and order dated November 12, 1997 the Tribunal dismissed the petitioner's original application. Against the said order the petitioner has filed this writ application.

3. Mr. Bhaumic, learned Advocate appearing for the petitioner has submitted that the Tribunal failed to appreciate the petitioner's contention and proceeded on an erroneous view that the dispute related to the number of black marks received by the petitioner. Mr. Bhaumic has further submitted that the petitioner's contention before the Tribunal was that without issuing a caution as required under Police Manual Rule 837 no proceeding for dismissal under Rule 836 could be initiated. That apart, Mr. Bhaumic has pointed out that during pendency of the proceeding before the Tribunal the petitioner retired from his service on June 30, 1996 and that after petitioner's retirement from service there cannot be any question of dismissal from service. He has referred to Rule 7 of the Orissa Civil Services Pension Rules in support of his submission. It is an admitted position that the departmental proceeding was not concluded before retirement of the petitioner. The proceeding was for dismissal from service on the ground of earning a total number of nine black marks. The Opp. parties have also failed to show that any caution as required under the Rules was given before initiation of the proceeding. From a bare reading of the relevant Police Manual Rules it appears to us that the authorities are required to issue a notice of caution mentioning the number of black marks already earned by the concerned employee and they can initiate a proceeding after another black mark was earned by him. Nine black marks are the minimum for which an employee is liable to be dismissed. It is open to the authorities to issue notice of caution after 8th black mark is awarded. If no notice of caution is issued after award of 8th black mark the authorities cannot start a proceeding immediately upon award of 9th black mark. They will have to first issue a notice of caution, wait for another award of black mark to start a proceeding. It appears to us that the Tribunal really failed to appreciate the question involved before it. We hold that initiation of the proceeding against the petitioner was contrary to the scheme as envisaged in the Police Manual Rules.

4. There is also substance in Mr. Bhaumic's submission that in any event the proceeding for dismissal has become absolutely redundant after petitioners' retirement from service on attaining the age of superannuation. The proceeding was in fact in the nature of a show cause why the petitioner would not be dismissed from service for earning more than nine black marks. None of the punishments contemplated under Rule 836 or 837 is available after a Government servant retires. The only punishment that can be awarded after retirement is withholding pension or gratuity in full or in part or withdrawing a pension in full or in part whether permanently or for a specified period or

recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Government. Even after retirement a disciplinary proceeding can be instituted with the sanction of the Government, but the same cannot be in respect of any event which took place more than four years before institution of such proceeding. In the present case the proceeding for dismissal was initiated in 1990 for the black marks, last of which was awarded in January, 1986. It is thus not possible to initiate any post-retirement proceeding as the events took place more than four years before.

5. For the foregoing reasons we find that initiation of the proceeding against the petitioner without issuing any notice or caution was contrary to law and in any event the same has become wholly redundant and infructuous after petitioner's retirement from service on June 30, 1996. Accordingly, we allow this writ petition, set aside the judgment and order of the Tribunal and quash the impugned proceeding for dismissal against the petitioner.

A.S. Naidu, J.

6. I agree.