
(2021) 02 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (Civil) No. 19809 Of 2008

Siba Narayan Naik

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 02 OHC CK 0006

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : Sashi Bhusan Jena, R.C. Ray, S. Behera, M. Nayak, A. Mishra, Aurovinda Mohanty

Final Decision : Allowed

Judgement

Biswanath Rath, J.

1. This writ petition involves a challenge to the dismissal order dated 14.5.1998 passed by the Disciplinary Authority, vide Annexure-6, the order dated

6.12.2006 of the Appellate Authority, vide Annexure-11, the order dated 24.8.2007 passed by the Revisional Authority, vide Annexure-13 and the

order dated 25.9.2007 passed by the Reviewing Authority, vide Annexure-15.

2. Taking this Court to the pleadings available on record and also the materials appended thereto at Annexure-1 as well as Annexure-2 series, Sri

Behera, learned counsel for the petitioner in view of the materials disclosure therein through the above documents and for the nature of admitted ex

parte disposal of Disciplinary Proceeding herein submitted that for the medical disclosure, at least on filing of the appeal, the Disciplinary Proceeding

should have been directed to be opened. It is in this context, a submission is also advanced by Sri Behera in spite of raising the ground before the

Revisional Authority as well as the Reviewing Authority, both the Authorities have mechanically disposed of both the Revision as well Review

Applications. It is at this stage, taking this Court to the observation of the Disciplinary Authority in paragraph-4 of the impugned final order in the

Disciplinary Proceeding, Sri Behera, submitted that for the regularization of the leave period so also the unauthorized period in the manner prescribed

therein, in all probability, the petitioner should have been allowed to continue in service.

Â 3. Entering into contest, Sri Mohanty, learned Central Government Counsel appearing for the Union of India and the Department involved herein

though did not dispute the presence of materials in the writ petition on establishing the fact that the petitioner was under mental treatment for quite

some period, but, however, submitted that, it is at this stage, the veracity of the materials cannot gone into without the delinquent establishing the same

through evidence. Sri Mohanty, learned Central Government Counsel, however did not dispute that the Disciplinary Proceeding was initiated basing

upon the Charge-Sheet, vide Annexure-3 on 19.09.1997 and was concluded finally on passing of the dismissal order by the Disciplinary Authority on

14.05.1998 and an ex parte one. The Authority for non-co-operation of the delinquent had no other option than to close the Disciplinary Proceeding ex

parte.

4. On the claim of illegal orders being passed by the Appellate Authority, Revisional Authority and Reviewing Authority, Sri Mohanty, is, however,

unable to resist the contention of the learned counsel for the petitioner that none of these Authorities have taken into account the medical supporting

produced by the delinquent to at least have a de novo enquiry. For the admitted ex parte disposal of the Disciplinary Proceeding and for the material

particulars disclosed in the writ petition through Annexure-2 series, this Court finds, the delinquent had a genuine reason in not appearing before the

Disciplinary Authority at the relevant point of time.

Â 5. It is in this view of the matter, this Court while disapproving the ex parte closure of the Disciplinary Proceeding further looking to the medical

support with the petitioner completely preventing him attending the proceeding, interfering with the order at Annexure-6, sets aside the same. It is for

the interference in Annexure-6 and setting aside the same, this Court directs for

reopening of the Disciplinary Proceeding. As a consequence, this

Court also interferes with the orders of the Appellate Authority, Revisional Authority as well as Reviewing Authority, which are all set aside.

As the Disciplinary Proceeding is required to be re-opened, this Court while remitting the matter to the Disciplinary Authority for fresh enquiry

involving the charges against the petitioner herein, directs the petitioner to submit his explanation to the charges levelled against him by the Disciplinary

Authority as expeditiously as possible, preferably within a period of four weeks. It is also open to the delinquent to refer to medical support

preventing him to remain absent at particular time. Upon receipt of the explanation from the delinquent, the Disciplinary Authority shall fix the date

and place of enquiry and intimate the same to the petitioner for his appearance, evidence and submission etc. The Disciplinary Proceeding will be

disposed of afresh providing fullest opportunity to the delinquent and other parties involved therein and also keeping in view the observation of the

Disciplinary Authority at paragraph-4, vide Annexure-6. For remittance of the matter with fresh disposal of the Disciplinary Proceeding, this Court

observes petitioner's service position prior to holding him ex parte in the Disciplinary Proceeding shall be maintained and the financial benefits, if

any, in the meantime shall ultimately be subject to the ultimate outcome in the Disciplinary Proceeding.

6. With the above observation, the writ petition succeeds. However, there shall be no order as to cost.