

(2005) 03 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2935 of 2001

Sri Bijaya Kumar Routray

APPELLANT

Vs

Registrar (Administration), Orissa High Court and Another

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 — Rule 12, 12(6), 13
Orissa Service Code, 1939 — Rule 91, 91(2), 91(4)

Citation : (2005) 1 OLR 685

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : I. Mohanty, R.P. Mohapatra and R.P. Mohapatra, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Quddusi, J.—By means of this writ petition a question has arisen before this Court as to whether on accepting the report of the Enquiring Officer by the Disciplinary authority and exonerating him from the charges, the period of suspension can be treated as such ?

2. The brief facts of the case are that the petitioner, who was working as the Judicial Magistrate First Class, Sambalpur was placed under suspension vide order-dated 20.1.1995 by this Court on administrative side pending conclusion of the enquiry. Consequently, a charge sheet was issued against the petitioner on 26.8.1995. Thereafter another additional charge sheet was issued on 15.1.1996. The petitioner submitted written statement and thereafter an enquiry was conducted under the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 (hereinafter referred to as "the C.C.A. Rules"). After conclusion of the enquiry, the Enquiring Officer, i.e., the District Judge, Cuttack, had submitted his report holding that none of the charges was found to have been proved against the petitioner and thus he had opined that the delinquent needs to be

exonerated of the charges. This report was submitted on 15.5.1997. Thereafter two Hon"ble Judges of this Court had made the scrutiny of the enquiry report and found that as many as nine charges were levelled against the delinquent officer and the Enquiring Officer absolved him of all the charges by giving weighty reasons for coming to the conclusion. The Hon"ble Judges opined that there was no material to disagree with the findings arrived at by the Enquiring Officer and they recommended that the report submitted by the Enquiring Officer may be accepted and the delinquent officer may be exonerated of the charges. This recommendation is dated 16.7.1997. Thereafter, this Court on administrative side took a decision on 12.11.1997 and accepted the enquiry report as well as the comments of two Hon"ble Judges of this Court thereon and decided to reinstate the petitioner but further decided that the period of suspension shall be treated as such. Needless to mention here that the petitioner moved several representations against the said decision but in vein. He has also faced the consequences of that decision to the extent that his efficiency bar was not crossed and his position has been lowered down in the seniority list because of the reason that the period of suspension was not treated as a period spent on duty. Being aggrieved, the petitioner has filed the instant writ petition.

Under the C.C.A. Rules there are two types of suspension. One is provided in Rule 12 in which it has been laid down that the appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension where the disciplinary proceeding against him is contemplated or is pending; or where a case against him in respect of any criminal offence is under investigation or trial. This type of suspension order is not treated as punishment as it does not cast stigma against the delinquent but in Rule 13 thereof, the suspension has been shown as one of the punishments and hence the same is stigmatic. Rule 13 is quoted as under :-

"13. Nature of penalties - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant.

Namely :

(i) Fine;

(ii) Censure;

(iii) Withholding of increments;

(iii-A) Withholding of promotion;

(iv) Recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of Parliament or of the Legislature of a State, by negligence or breach of orders.

(v) Suspension;

(vi) Reduction to a lower service, grade or post or to a lower time scale or to a lower stage in a time scale;

(vii) Compulsory retirement;

(viii) Removal from service which shall ordinarily be a disqualification for future employment; provided that the penalty of fine shall be imposed only on Class IV Government servants."

Thus if the period of suspension of a delinquent officer is treated as such, it comes within the category of penalty No. v. At this stage, learned Addl. Government Advocate has referred Rule 12(6) of the C.C.A. Rules, which reads as under:-

"12(6) The disciplinary authority, while passing the final order of punishment or of release in the disciplinary proceedings against the Government servant, shall give directions about the treatment of the period of suspension, which is passed not as a measure of substantive punishment but as suspension pending inquiry, and indicate whether the suspension would be a punishment or not."

Before proceeding further, it is necessary to peruse the provisions of Rule 91(2) of the Orissa Service Code (hereinafter referred to as "the Code") which is applicable in the service of the petitioner which is also reproduced as under :-

"91(2) Where such competent authority holds that the Government servant, has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowances of which he was in receipt to his dismissal, removal or suspension."

In this regard, Sub-rule (4) of Rule 91 of the Code is also liable to be perused which is reproduced as under :-

"In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes."

Now this is a matter for consideration as to whether in the facts and circumstances where a delinquent has been fully exonerated, it is open for the disciplinary authority to treat the period of suspension as such meaning thereby that the period of suspension should not be counted as spent on duty. It is a common law that delinquent cannot be treated as guilty unless his guilt has been proved as a result of enquiry conducted against him in accordance with the relevant rules and the procedure laid down thereunder. There may be cases where on the suspicion of some act committed by the delinquent, departmental enquiry is ordered and the delinquent is placed under suspension but if the Enquiring Officer finds the delinquent spotless and recommends his exoneration and the disciplinary authority does not disagree with the findings and the

recommendations of the Enquiring Officer, awarding penalty of treatment of suspension period as such on the delinquent employee cannot be held proper. If after exoneration of the delinquent employee and acceptance of the recommendations of the Enquiring Officer by the disciplinary authority, the delinquent is still treated as guilty then what would be the purpose to hold an enquiry against him and to accept the enquiry report.

Sub-rules (2) and (4) of Rule 91 of the Code are the statutory provisions and the disciplinary authority is duty bound to follow those provisions in principle in case a delinquent is spotless by way of exoneration from the charges leveled against him.

A Division Bench of this Court in the case of Rajkishore Dash Vs. State of Orissa and Others, held that in a case covered under Clause (2) of Rule 91 which deals with total exoneration in period of absence from duty shall be treated as a period spent on duty for all purposes. As a bare reading of Rule 12(6) of the Rules shows there is a marked distinction between suspension as penalty and suspension during pendency of enquiry. It has to be clearly indicated by the disciplinary authority whether suspension would be a punishment or not. In a case of full exoneration, as provided in Rule 91 of the Code, period of absence from duty shall be treated as a period spent on duty and in that view of the matter the direction contained in the order that the suspension would be treated as such even though there is a complete exoneration cannot be maintained, whatever be the gravity of charges. If charges were not established and proved and there was exoneration, question of any penalty would not arise.

In view of the facts and circumstances of the case as mentioned above, we are of the firm opinion that the disciplinary authority in the instant case had no option than to follow Clauses (2) and (4) of Rule 91 of the Code and the period of suspension should have been treated as spent on duty and the petitioner was entitled to full salary during the period of suspension.

In view of the above mentioned facts and circumstances the writ petition is allowed. The decision communicated vide impugned order dated 25.3.1998 (Annexure-5 to the writ petition) passed by the disciplinary authority, in which the period of suspension of the petitioner has been treated as such, is quashed. Consequently, the orders dated 28.3.1998; 8.10.1999 and 3.2.2001 (Annexures 6, 10 and 12 to the writ petition) are also quashed. A writ in the nature of mandamus be issued commanding the opposite parties to treat the period of suspension of the petitioner as spent on duty. Needless to say that the petitioner will be entitled for the benefit of salary and all other consequential, financial and service benefits.

No order as to costs.

N. Prusty, J.

3. I agree.