

(2008) 05 OHC CK 0053
In the Orissa High Court
Case No : O.J.C. No. 10153 of 1999

Sri Bishnu Prasad Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2008) 05 OHC CK 0053

Hon'ble Judges : Lmhapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : J. N. Ray, A.K. Rout and P. Nayak, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ application is directed against the Order dated 19.1.1999 of the Orissa Administrative Tribunal Circuit Bench at Berhampur in O.A. No. 55(B) of 1996 dismissing the same.

2. The case of the Petitioner is that while he was working as Constable in the undivided Koraput district five disciplinary proceedings were initiated against him at different times and he was also made an accused in two criminal cases. The departmental proceedings and the criminal cases continued simultaneously and punishments were awarded in the departmental proceedings whereas he was acquitted in both the criminal cases. After conclusion of departmental proceedings, in one of the departmental proceedings he was dismissed from service and in the departmental appeal the order of dismissal from service was set aside and the Petitioner was directed to be reinstated by awarding two black marks and stoppage of increments for a period of twelve months. According to the Petitioner, in view of the aforesaid punishment imposed by the appellate authority, all other proceedings in existence then had been set at rest, but proceeding No. 78 of 1989 was reopened and in that proceeding punishments

were also awarded imposing stoppage of increments for a period of eighteen months carrying the value of three black marks as a result of which Anr. proceeding was initiated for earning nine black marks in the service career which according to the Police Manual entail in dismissal from service. In the said proceeding a final order was passed dismissing the Petitioner from service in the year 1997 while the original application was pending before the Tribunal. The Petitioner approached the Tribunal with the following prayer:

Therefore, in the circumstances, it is prayed that the annexures 1 and 3 be quashed and in the meantime, the operation thereto be stayed till disposal of this petition and grant such other and further reliefs as deemed fit under the circumstances of the case.

3. The sole contention before the Tribunal was that both the departmental and judicial proceedings cannot continue on the self same charges and the decisions in the judicial proceedings have to govern the departmental proceedings and therefore the Petitioner having been acquitted in the criminal cases initiated against him, D.P. No. 16 of 1990 could not have been continued and should have been dropped. It was case of the Petitioner that in D.P. No. 78 of 1989 he has been punished twice by not only imposing punishment of stoppage of increments for a period of eighteen months but also by awarding three black marks which ultimately ceased in dismissal from service, having earned nine black marks in the service career.

4. The learned Counsel appearing for the Petitioner assails the impugned judgment on the ground that the departmental proceeding No. 78 of 1989 has resulted in two punishments, as stated earlier and therefore such punishments cannot be sustained. It was also contended by the learned Counsel that the charges in departmental proceeding Nos. 68 of 1989 and 16 of 1990 are same and therefore on self charges two departmental proceedings cannot be initiated and on self same charges the two criminal cases and D.P. No. 16 of 1990 cannot be permitted to continue.

5. The learned Counsel for the State submitted that the departmental proceeding Nos. 68 of 1989 and 16 of 1990 have been initiated on two different sets of charges and the charges in both the proceedings are not common. According to the learned Counsel for the State, the Departmental proceeding No. 68 of 1989 was initiated for remaining absent unauthorisedly and leaving the headquarter without permission whereas departmental proceeding No. 16 of 1990 was initiated for being involved in two criminal cases. Similarly, it was contended by the learned Counsel for the State that in departmental proceeding No. 8 of 1989 two separate punishments are not imposed. The Petitioner having been found guilty of the charges in the said proceeding, punishment of stoppage of increments for a period of eighteen months had been awarded which is equivalent to three black marks as per the Police Manual. Therefore, the contention of the learned Counsel for the Petitioner that in departmental proceeding No. 78 of 1989 the Petitioner has been punished twice is not correct.

6. There is no dispute that during the service period the Petitioner faced six departmental proceedings and the 7th one was initiated for earning nine black marks in the service career. D.P. No. 36 of 1989 was initiated for gross dereliction of duty having been found absent on 25.6.1989 and in the said proceeding one black mark was awarded. D.P. No. 68 of 1989 was initiated for gross misconduct and dereliction of duty as the Petitioner was found absent from duty on 4.10.1989 and had left the headquarters without leave application or permission from the competent authority. In the aforesaid proceeding the Petitioner was found guilty and was awarded one black mark. In D.P. No. 16 of 1990 the Petitioner was preceded for gross misconduct being involved in two criminal cases. In this proceeding he was found guilty and the punishment was awarded which is equivalent to one black mark. In D.P. No. 11 of 1990 the Petitioner was again charged for gross misconduct and indiscipline for creating nuisance in a hotel for which a proceeding u/s 107 Code of Criminal Procedure was registered and in the said proceeding he was also found guilty and one black mark was imposed as punishment. In D.P. No. 58 of 1991 he was charged for gross misconduct for entering into Jeypore Town Police Station for humiliating the Officers in the Police Station. In this proceeding he was found guilty of the charges and was dismissed from service but ultimately in appeal he succeeded and the punishment imposed by the appellate authority was equivalent in two black marks. In D.P. No. 78 of 1989 the Petitioner was charged for misconduct having misbehaved with the Officers-in-charge for immediate disbursement of the salary along with a group of constables and in the said proceeding he was found guilty and punishment of stoppage of increments for eighteen months was imposed which is equivalent to three black marks. In all the above six proceedings the Petitioner having earned nine black marks, D.P. No. 19 of 1994 was initiated to show cause as to why the Petitioner should not be dismissed from service for having earned nine black marks during his service career. Before final decision was taken in the said proceeding No. 19 of 1994 the Petitioner approached the Tribunal for the relief as stated earlier, but during pendency of the original application he was dismissed from service in D.P. No. 19 of 1994 with effect from 4.1.1997.

7. So far as first ground taken by the learned Counsel for the Petitioner is concerned, it relates to D.P. No. 78 of 1989 wherein the Petitioner was charged with gross misconduct on the allegation that while he was on deputation to Jeypore striking force on 5/6th September, 1989 at about 2.10 A.M. he along with a group of constables demanded immediate disbursement of salary of the force, pressed the Sentry constable to call the O.I.C. from the quarters and also challenged the O.I.C. as to why there was delay in disbursement of the salary. He also insisted that the S.D.P.O. should come to the police station and unless the S.D.P.O. comes, the force will not accept the salary and furniture of the Town P.S. will be broken. He was found guilty of the charges and punishment was imposed for forfeiture of increments for a period of eighteen months. This punishment is equivalent to three black marks as provided in Rule 835 of the

Orissa Police Manual. The learned Counsel for the Petitioner submitted that the Petitioner in the said departmental proceeding having been punished with forfeiture of increments for a period of eighteen months, imposition of three black marks amounts to double punishment. We do not find any force in such contention considering the fact that Rules 834 and 837 deal with black marks and provide that if an officer earns nine black marks in his career, a proceeding shall be drawn up for awarding punishment of dismissal/removal etc. On reading of the aforesaid provisions, it is clear that in a departmental proceeding, if an officer is found guilty of the charges, he may be awarded with black marks or punishment prescribed in the rules and equivalent black marks can be considered for the purpose Rule 836. Therefore, it cannot be said that the punishment imposed in D.P. No. 78 of 1989 amounts to double punishment.

8. The next ground of challenge is with regard to D.P. No. 68 of 1989 and D.P. No. 16 of 1990. It was contended by the learned Counsel for the Petitioner that both the proceedings were initiated on the selfsame charges. As is evident from the record, D.P. No. 68 of 1989 was initiated on the charge of gross misconduct and dereliction of duty on the allegation that while the Petitioner was attached to APR Koraput, he was found absent from duty on 4.10.1989 and had left the headquarters without leave or permission from the competent authority. Along with the above charge, it was also mentioned that he was involved in two criminal cases vide Similiguda P.S. Case Nos. 66 and 67 of 1989. For being involved in the above two criminal cases, a separate proceeding vide D.P. No. 16 of 1990 was initiated. Therefore, the charges in both the departmental proceedings are distinct and merely because there is mention of involvement of the Petitioner in two criminal cases in D.P. No. 16 of 1990, it cannot be said that both the proceedings were initiated on the selfsame charges. As stated earlier D.P. No. 68 of 1989 relates to unauthorized absence from duty from 4.10.1989 whereas D.P. No. 16 of 1990 relates to involvement of the Petitioner in two criminal cases. We therefore do not find any force in the contention of the learned Counsel in this regard.

9. The other point raised by the learned Counsel for the Petitioner is that D.P. No. 16 of 1990 was initiated on the allegation of involvement of the Petitioner in two criminal cases. The Petitioner having been acquitted in both the criminal cases, such departmental proceeding cannot be continued and no punishment can be awarded in the said proceeding. In this connection reliance was placed by the learned Counsel for the Petitioner on a decision of the Apex Court in the case of G.M. Tank Vs. State of Gujarat and Another, . In the said decision it was held that if an employee is acquitted in criminal cases honourably, punishment in departmental proceeding for same cause of action is unjust and unfair. In the said reported case the Appellant was charged for offence of acquisition of movable and immovable properties disproportionate to his known sources of income and a criminal case was initiated as well as departmental proceeding. In the departmental proceeding he was found guilty and was dismissed from service. The criminal case was initiated for commission of offence u/s 5(1)(e)

read with Section 5(2) of the Prevention of Corruption Act, 1947 based on same set of facts, charges, evidence and witnesses. The criminal Court honourably acquitted the Appellant of the said charges by holding that the prosecution failed to prove the charges levelled against the Appellant. The said order of acquittal was not challenged and it became final and conclusive. Under these circumstances, the Court on consideration of the material available in the departmental proceeding held that it was a case of no evidence and there was no iota of evidence against the Appellant to hold him guilty of having illegally accumulated excess income by way of gratification. The witnesses in both the proceedings were same and on consideration of the above, the Court expressed that the aforesaid charge had not been proved. There is no material before us to show that the witnesses examined in the departmental proceeding No. 16 of 1990 and the witnesses examined in both the criminal cases are same. In absence of any such material before us, it is difficult to conclude that the departmental proceeding No. 16 of 1990 and the two criminal cases are based on same set of facts and evidence and therefore we are of the view that even though the Petitioner has been acquitted of the charges in the two criminal proceedings, in absence of any material to show that both the departmental proceeding and criminal proceedings are based on same set of evidence or that the same witness have been examined in both the proceedings, the ratio laid down by Supreme Court in the aforesaid case has no application on facts.

10. Undisputedly the Petitioner was dismissed from service having earned nine black marks during pendency of the original application. Against such order of dismissal the Petitioner should have preferred appeal. He having not done so and not having challenged the order of dismissal at all before any forum, there is hardly any scope for this Court to set aside the same.

11. In view of the discussions made above, we do not find any merit in the writ application, which stands dismissed.

B.K. Patel, J.

12. I agree.