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**(2015) 07 OHC CK 0071**

**In the Orissa High Court**

**Case No : Writ Petition (C) No. 17786 of 2012**

State of Orissa and Others

APPELLANT

Vs

Golekha Chandra Routray and Others

RESPONDENT

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**Date of Decision : 27-07-2015**

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 13(i)(d), 7

**Citation : (2015) 2 OLR 480**

**Hon'ble Judges : D.H. Waghela, C.J; Biswanath Rath, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

D.H. Waghela, C.J.

1. The petitioners-State has approached this Court to challenge the order dated 24.4.2013 of the Orissa Administrative Tribunal in Original Application No. 194(C) of 1992 whereby the order dated 24.12.2011 dismissing the respondent has been quashed and he has been directed to be re-instated in service with immediate effect.

2. There is no dispute about the facts that the respondent had been dismissed by the order dated 24.12.2011 under the provisions of Rule-18 of the Orissa Civil Services (CCA) Rule, 1962 which reads as under:--

"18. Special Procedure in certain cases Notwithstanding anything contained in Rules 15, 16, and 17 -

(i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be recorded in writing by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure,

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit:

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary."

3. In the facts of the present case, it is not in dispute that the opposite party-employee was charged for the offence punishable under Section 13(2) read with Section 13(1)(d)/7 of the Prevention of Corruption Act and the amount of bribe was alleged to have been recovered from the physical possession of the opposite party. After a full fledged trial, learned Special Judge (Vigilance), Sambalpur, by order dated 18.10.2011, found the opposite party guilty of the offence punishable under Section 7 of the Prevention of Corruption Act and Section 13(2) read with Section 13(i)(d) of P.C Act. After such conviction and sentence, the Director of Town Planning Orissa made the Border dismissing him from service under Rule 13 read with Rule 18 of the Orissa Civil Services (CCA) Rules, 1962.

4. Challenge to that order before the Orissa Administrative Tribunal was upheld on the basis of a Division Bench judgment of this Court in Prasant Kumar Sahoo v. State of Orissa & Anr., 2011 (Suppl.II) OLR 848 wherein it was held that mere conviction of a Government servant in a criminal case did not automatically result in his dismissal from service.

5. Upon the petition being heard before this Court, it was argued for the respondent that the impugned order of dismissal was a non-speaking order passed without application of judicial mind.

6. Learned Senior Counsel Mr. Kalyani Patnaik appearing for the opposite party relied upon a Division Bench Judgment of this Court in Surya Narayan Acharya v. State of Orissa, 2013 (Suppl.I) OLR 736 in support of the arguments that the Tribunal had rightly exercised its jurisdiction and the order of dismissal is liable to be quashed for want of consideration of circumstances and in view of the ratio of the Division Bench Judgment, it was deemed to be proper to refer the matter to Larger Bench and oral order was made in that regard. However, before that order could be signed, learned Addl. Government Advocate appearing for the petitioner has cited a judgment of the Apex Court in Union of India (UOI) Vs. V.K. Bhaskar, (1998) 9 JT 301 : (1997) 11 SCC 383 : (1998) SCC(L&S) 162 to submit that in view of the binding dicta of the Apex Court reference to a large bench was uncalled for and the present case could be decided following the judgment of the Apex Court which was rendered specifically with reference to the identical provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

7. Therefore, the arguments of the opposite party again heard and learned counsel has relied upon judgment of the Apex Court in State of M.P. and Others

Vs. Hazarilal, AIR 2008 SC 1300 : (2008) 1 CLT 589 : (2008) 2 JT 390 : (2008) 2 LLJ 715 : (2008) 2 SCALE 361 : (2008) 3 SCC 273 : (2008) 1 SCC(L&S) 611 : (2008) 1 UJ 315 : (2008) AIRSCW 1354 : (2008) 2 Supreme 51 to emphasize the following observation.

"7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge" but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted."

8. Provisions of Rule-18 applicable in the facts of the present case opens with non-obstante clause removing the effect and operation of Rules 15, 16, and 17. Those Rules provide for procedure for imposing penalty and enquiry. Non-obstante clause contained in Rule-18 having excluded the application of Rules of Procedure incorporating principle of Natural Justice, the case of dismissal on the ground of conduct leading to conviction on a criminal charge directly empowers the disciplinary authority to consider the circumstances of the case and pass such orders thereon as deemed fit. Therefore, it is clear that the powers of considering the circumstances of the case are conferred upon the disciplinary authority and even if it is considered to be power couple with duty, it nowhere prescribes recording of reasons or affording an opportunity of hearing to the delinquent. At the same time, what factors may go into consideration by the disciplinary authority are also not prescribed.

9. It was under such circumstances that the Apex Court observed in Union of India v. V.K. Bhaskar (Supra) that the statement contained in the order of dismissal indicates that disciplinary authority had applied it's mind and, after considering the conduct of the opposite party which led to his conviction on a criminal charge, has arrived at the conclusion that the said conduct was such as to render further retention of the opposite party in public service undesirable. It was only on such statement that it was held that the order of dismissal was passed after applying its mind to the nature of the conduct which led to his conviction.

10. In the facts of the present case, the opposite party is convicted and sentenced for the offence involving moral turpitude and the conduct leading to the conviction is directly related to the service of the opposite party under the petitioner. Therefore, it was specifically put to learned counsel for the opposite party that even if the question of penalty of dismissal were put to test, what could be the extenuating circumstances or the representation of the opposite party for awarding lesser punishment. No plausible reason was assigned for reducing the punishment or imposing lesser punishment in a case of acceptance of bribe.

11. In the facts and for the reasons discussed hereinabove, the case of the opposite party did not deserve reconsideration on the basis of any possible consideration of the circumstances although, in principle, an order of dismissal should not be an automatic result of conviction of a Government servant in a criminal case. In the peculiar facts of the case, the opposite party did not have any case for consideration or judicial intervention and hence the impugned order of the Tribunal is set aside. The petition is allowed accordingly with no order as to costs.