
(2002) 04 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8049 of 1999

Sunakar Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 477A

Citation : (2002) 2 OLR 1

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : J.M. Mohanty, D. Samal, N.K. Das, S. Sarkar, S.N.B. Ray, K.C. Misra and P.K. Mohanty, for the Appellant; S.K. Das, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Disciplinary proceeding was started against the petitioner while he was serving as a Junior Clerk in the office of the Settlement Officer, Cuttack. The charges were enquired into and on the basis of the enquiry report, the disciplinary authority by order dated 21.6.1989 (Annexure-13) removed him from government service. The appellate authority modified the penalty of removal from service to compulsory retirement but treated the period of suspension as such. The aforesaid two orders were challenged by the petitioner before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 390 (c) of 1994. The Tribunal by order dated 18.3.1999 disposed of the matter with a direction that the petitioner who was in possession of the enquiry report would file a fresh appeal before the appellate authority who would dispose of the same by passing a speaking order. Pursuant to the said order, the petitioner filed appeal and the appellate authority by order dated 7.6.1999 (Annexure-15) dismissed the same with the following order :

"However, the orders of the Disciplinary authority communicated in office order No. 156 dated 21.6.1989 i.e., removing him from Government service and treating the period of suspension as such are modified as follows: (i) He is

treated as compulsory retired from Govt. service with effect from the date he was removed from Government service; and

(ii) His period of suspension should be treated as such."

2. The petitioner in this writ petition seeks quashing of the enquiry report at Annexure-12 as well as the order of the appellate, authority dated 7.6.1999 at Annexure-15.

3. Counsel for the State Government submitted that the petitioner ought to have challenged the order of the appellate authority before the Orissa Administrative Tribunal and he cannot invoke the jurisdiction of this Court straightaway for quashing of the same. Counsel for the petitioner on the other hand submitted that he need not go again to the Tribunal, inasmuch as, the order of the Tribunal dated 18.3.1999 out of which the impugned appellate order arises is vulnerable. His contention is that essentially the petitioner challenges the basic order of the Tribunal dated 18.3.1999 in this writ petition although he has not made any specific prayer for quashing of it and this Court can mould the relief in the interest of justice. It is contended that the Tribunal failed to take note of the fact that the enquiry conducted against the petitioner was in violation of the principles of natural justice and in the enquiry no evidence was adduced, far less, in the presence of the petitioner and the Enquiry Officer by merely summarising the charges with reference to certain documents submitted the enquiry report.

4. We may state here that although the petitioner has not made any specific prayer for quashing the first order of the Tribunal dated 18.3.1999, this Court is not powerless to mould the relief if occasion arises in the interest of justice and quash the same. No order should be allowed to subsist if its illegality comes to the notice of the Court.

5. On careful perusal of the order dated 18.3.1999 of the Tribunal at Annexure-14, we find that it failed to take note of the fact that the enquiry conducted against the petitioner was in gross violation of the rules of natural justice. In the enquiry no witness was examined nor was any evidence adduced, far less, in the presence of the petitioner. The Enquiry Officer, as it appears from his report at Annexure-12, merely referred to some documents and drew up the report. In course of hearing, we called upon the learned State Counsel to produce the records of the enquiry, but despite several adjournments granted for the purpose, he did not produce the same. In absence of any other evidence to the contrary, we are inclined to hold that the finding of guilt recorded by the Enquiry Officer in his report cannot be supported in absence of any evidence in support of it. The petitioner was not given reasonable opportunity to contest the case. The documents referred to by the Enquiry Officer in his report were received behind the back of the petitioner and in the circumstances they could not have formed the basis for holding him guilty. For the reasons aforesaid, the final order passed by the Disciplinary authority on the basis of such defective enquiry report cannot be supported. The Tribunal without examining this aspect

adopted a short cut for disposal of the case and having found that the petitioner had not been supplied with the enquiry report ought to have remitted the matter to that stage at least and should not have directed him to file an appeal before the appellate authority. This procedure followed by the Tribunal is wholly unwholesome and against the established principles. Had the Tribunal not directed the petitioner to file appeal before the appellate authority, he could have approached this Court challenging the order of the Tribunal. In the circumstances, we are inclined to hold that approaching the Tribunal by the petitioner for the second time to question the validity of the appellate order is a futile exercise. As the basic order of the Tribunal dated 18.3.1999 at Annexure-14 is vulnerable for the reasons aforesaid, we quash the same. As a necessary corollary, the appellate order dated 7.6.1999 at Annexure-15 automatically falls and we quash the same.

6. Shri Mohanty also submitted that the charges in the departmental proceeding were also the subject matter of criminal charge against the petitioner in G.R. Case No. 2219 of 1985/ Trial Case No. 22 of 1988. He produced before us a copy of the judgment of the learned Additional Chief Judicial Magistrate, Cuttack in the aforesaid case from which we find that the petitioner was placed on trial to face charges under Sections 409/477-A, I.P.C. and he has been acquitted of the charges by the judgment dated 17.11.1990. We are aware of the legal position that even after acquittal by the Criminal Court, departmental proceeding on the self-same charge can be held. But here is a case, the Criminal Court has recorded order of acquittal on the merits and not on any technical ground. It has recorded a clear finding that the prosecution has failed to prove its case beyond all reasonable doubt. As already noted, the departmental enquiry conducted against the petitioner was in contravention of the principles of natural justice. It is, therefore, inappropriate to continue the departmental proceeding afresh.

7. For the reasons mentioned above, we hereby quash the final order passed against the petitioner by the disciplinary authority as well as the order of the Tribunal dated 18.3.1999 in O. A. No. 390 (C) of 1994 at Annexure-14 and the order of the appellate authority dated 7.6.1999 at Annexure-15. With the quashing of the aforesaid orders, the petitioner has to be reinstated in service with all service benefits. We order accordingly. The opposite parties are directed to pass appropriate order within one month of receipt of writ from this Court.

Pradip Mohanty, J.

8. I agree.