

(2020) 12 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (Civil) No. 15927 Of 2020

Susanta Kumar Satapathy

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Orissa Civil Services (Classification, Control & Appeal) Rules, 1962 — Rule 3(1)(c), 29

Citation : (2020) 12 OHC CK 0025

Hon'ble Judges : Sanju Panda, J;S.K. Panigrahi, J

Bench : Division Bench

Advocate : Manoj Kumar Mishra, Tanmay Mishra, S.Senapati, Anoop Mishra, S. Das, M. K. Khuntia

Final Decision : Disposed Of

Judgement

S.K. Panigrahi,J.

1. The petitioner by way of this writ petition, assails the judgment and order dated 30.10.2018 passed by the Odisha Administrative Tribunal, Cuttack

Bench, Cuttack in O.A. No.2330 (C) of 2017 in holding that there is substantial compliance to Rule-29 of the OCS (C.C.& A) Rules, 1962 in the

instant case and held that the punishment of one Black Mark cannot be treated as excessive to the delinquency committed by the applicant.

2. The factual conspectus of the present petition hovers around the order of punishment imposed by the Disciplinary Authority/Opposite Party No.4

which is alleged to have been passed in a mechanical manner without application of mind. The petitioner while posted as Officer-in-Charge (OIC),

Naugaon Police Station in the District of Jagatsinghpur, was served with an Office Order vide Memo No.381 dated 26.06.2012 issued by the

Superintendent of Excise, Jagatsinghpur (Sub-Collector, Jagatsinghpur), wherein it was mentioned that the Collector & District Magistrate,

Jagatsinghpur has been pleased to allow shifting of the left stock of the IMFL & Beer from Mundal IMFL Shop to Jagatsinghpur IMFL

Shop within a period of seven days due to a situation of exigencies. During such exercise, the petitioner was directed to remain present at

the time of shifting, which is quite evident from the Office Order dated 26.06.2012. In fact, the Police Manual does not mandate through Rules or

standing instructions prescribing a Police Officer need to seek prior permission of the highest authority to remain present at the spot for providing

necessary security. Curiously, in the instant case, the petitioner remained present at the spot of shifting the shop in compliance with the order passed

by the District Magistrate. Since the order was only to give security to the E.P. Holder and the OIC of the Police Station was only to accompany the

Excise Authorities when they asked for such security.

3. Learned Counsel for the petitioner submits that on receiving information from the concerned Excise Inspector and in compliance with the Office

Order dated 26.06.2012 issued by the Collector & District Magistrate and the Sub-Collector (Superintendent of Excise), Jagatsinghpur, the petitioner

had to move to the spot of shifting of Foreign Liquor shop. It is also clear from the record that the petitioner was not involved in shifting process but

the E.P. holder and the Excise Staff were engaged in the shifting process. During the said shifting process, due to some old dispute between the

villagers and the E.P. holder, the villagers obstructed the shifting process, even though the excise staff and the petitioner tried to convince the villagers

by way of showing the order of the Collector and Excise Superintendent (Sub-Collector). They did not get pacified and sat in front of the loaded truck

which forced the excise staff and the petitioner to leave the place.

4. It is stated that the local MLA complained against the petitioner before the Superintendent of Police/Opposite Party No.4. On the aforesaid

complaint, the Superintendent of Police (Opposite Party No.4) directed the SDPO, Jagatsinghpur to make an inquiry. It is further stated that the local

MLA was the person behind the entire agitation, who actively instigated the local people to lodge an FIR against the petitioner to create problem at the

spot. On the next day morning, one Abhiram Sethi, who lodged an FIR against

the petitioner's alleged misbehaviour and outraging the modesty of the woman, belonging to SC & ST community, during shifting of the Foreign Liquor shop. The entire episode was orchestrated by the people at the behest of the local MLA.

5. On the direction of the Superintendent of Police (Opposite Party No.4), the SDPO, Jagatsinghpur conducted a detailed inquiry and submitted inquiry

report on 30.07.2012 before the said authority returning a finding that the petitioner has not shown any adamant attitude towards the villagers and the

villagers made an imaginary and fabricated story against the petitioner including lodgement of the FIR alleging the abusive language and caste

aspersion. But the said Inquiry Officer did mention about the petitioner's alleged disobeying of the direction of the superior.

6. In spite of detailed inquiry report by the SDPO, Jagatsinghpur, which clearly reflects that the petitioner has not shown adamant attitude towards the

villagers, hence the entire FIR is imaginary and fabricated. Even after a positive report in favour of the petitioner, the Opposite Party No.4 initiated a

Departmental Proceeding against the petitioner issuing Charge Memo dated 14.08.2012 on the ground of gross misconduct, negligence of duty and

involvement in criminal case. The focus of the allegation was stated to be the petitioner's movement to Mundal Bazar to maintain law and order

situation in the mid night at the time of shifting of liquor without prior permission from the higher authority.

7. In fact, in the instant case, the petitioner had not gone there to maintain law and order situation but he had gone there to provide necessary security

to the E.P. Holder in compliance of the order of the Collector & District Magistrate and the Sub-Collector (Superintendent of Excise), Jagatsinghpur.

Hence, the petitioner's act of proceeding to that shifting spot was not automatic.

8. It is further contended that the petitioner moved to the spot of shifting of Foreign Liquor OFF Shop on the direction of the superior authority

i.e., Collector and the Superintendent of Excise (Sub-Collector) and he was present at the spot at the time of shifting of the Foreign Liquor for

necessary protection of E.P. Holder. There was total absence of any direction from the Collector to maintain law and order situation in that order,

hence, prior permission of the higher authority was not at all required before

leaving to the spot of shifting. The Disciplinary Proceedings against the petitioner smacks mala-fide because the petitioner had gone to the spot of shifting in order to accompany the excise authority for the necessary protection of E.P. Holder. Hence, prior permission is not necessary.

9. The petitioner has not violated any Rule nor there was any misconduct or negligence on his part, hence the charges made in the charge memo is totally vague. Though the Inquiry Officer stated that the charge relating to the involvement of criminal case could not be proved but the petitioner has been alleged to have been negligent of his duty. The entire conclusion in the Inquiry Report is based on a concocted story without mentioning the Rules and Regulations or standing order which alleged to have been violated by the petitioner. Thus, this clearly reflects a personal bias at the behest of Disciplinary Authority.

10. Mr. Mishra strenuously persuaded that pursuant to the show-cause notice dated 20.12.2012 handed out to the petitioner asking for explanation on the inquiry report, the petitioner filed explanation on 12.01.2013 stating therein that he has not violated any Rules and Regulations nor is he negligent on his duty. The Disciplinary Authority also never handed out the documents which were relied on while framing the charges against him. Thus, the golden thread of the principle of natural justice is missing in the entire episode. The Orissa Government Servant Conduct Rules has categorically defined the word "negligence". But in the instant case, the authority has not specified as to what kind of negligence he has shown to his duty.

The Disciplinary Authority has given a deaf ear to the submission of the petitioner and without discussing anything about the Government Servant Conduct Rules which imposed major punishment of one Black Mark on the petitioner stating that the Inquiring Officer has found him guilty on the charge against the petitioner beyond reasonable doubt.

11. It is stated that the entire proceeding reflects a clear non-application of mind by the Disciplinary Authority while imposing a major penalty on the alleged delinquent officer. He further submits that the so-called criminal case initiated against him does not have any basis, which reveals from the CRLMC No.948 of 2013 for quashing the criminal case against the petitioner vide order dated 22.04.2013 which ultimately quashed the same.

12. The petitioner in the present case, preferred Departmental Appeal on

05.06.2013 before Appellate Authority assailing the order of punishment

passed by the Disciplinary Authority. The Appellate Authority has also passed the order in a mechanical manner and rejected the appeal of the

petitioner vide order dated 20.08.2013. The said order is completely not based on the appreciation of proper facts, hence a cryptic order. Being

aggrieved by the order passed by the Appellate Authority, the petitioner filed revision of the said order before the Opposite Party No.2. It reveals from

the order dated 08.08.2014 passed in the said order of revision that it has been passed without discussing and considering the matter in its proper

perspective.

13. After having heard the parties, the learned Tribunal remitted the matter back to the Appellate Authority to record his findings strictly adhering to

the provisions under OCS (C.C.& A) Rules, 1962. The petitioner once again approached the learned Tribunal vide O.A. No.2330 (C) of 2017

challenging the order dated 22.12.2016 passed by the Appellate Authority/ Opposite Party No.3, which suffered a dismissal vide judgment and order

dated 30.10.2018.

14. Learned Counsel for the State, Shri Khuntia strenuously contended that the learned Tribunal has reached to the conclusion based on material on

record and keeping in mind the Rules and various decisions on the subject. Hence, the order passed by the learned Tribunal cannot be faulted with. He

further refuted the charges of mala fide in the Disciplinary Proceeding and reaffirmed his submissions and submitted that the charge memo is not at all

vague. The principle of natural justice has also been complied with. He further submitted that if any documents which were not supplied to him at the

time of conducting the Disciplinary Proceeding, he could have raised that issue before the Disciplinary Authority. Instead, he has raised such plea at

the appellate stage, which is not in accordance with law. He further submitted that the Appellate Authority have examined the entire records, Rules

and compliance of natural justice upholding the order of Disciplinary Authority. Hence, the allegation of cryptic order being passed in this case, is not

at all correct.

15. In the above background, we heard the learned counsel for the parties, perused the records and found that the statement of imputation reflects

three charges framed against the petitioner without specifying the allegations or

the Rule, which he has violated. The said charges against the petitioner include a criminal case, allegation of misbehaviour to lady protestors and negligence of his duty on 26.06.2012 night. However, the Inquiry Officer stated that the first two charges could not be proved but the negligence of duty is of serious one. The entire submission of the learned counsel for the State, revolves around the parrot like statement of the Disciplinary Authority alleging the fact that the petitioner did not take prior permission while moving to the spot.

It is apparent from the charges which are vague and contrary to the provision laid down in Rule-4 of the Police Manual, Appendix-49. It is also clear from the fact as narrated above that the Appellate Authority has not considered the facts in proper perspective in compliance with the provision made in Police Manual, Appendix-49 and without discussing the matter which is illegal, improper and unjust.

16. The learned Tribunal passed order dated 28.09.2016 in O.A. No. 3379(C) of 2014, which states that the order of the Appellate Authority is in accordance with the provision of Rule-29 of the OCS (C.C. & A) Rules, 1962 and accordingly the matter was remitted back to the Appellate Authority to record his findings. However, the Appellate Authority has failed to understand the implication of the learned Tribunal's order and once again passed order in a mechanical manner. The said order passed as follows:-

It is worthwhile to mention that as per Govt. of Odisha, Home Department Resolution No.33610/ BBSR, dtd. The 31st May, 2003, Para-3, special provisions have been made in the Odisha Police Rules (commonly termed as Police Manual Rules or PMR) with regard to appointment and disciplinary matters for the Police Personnel. Therefore, the O.C.S. (C.C. & A) Rules shall not be applicable to Police personnel appointed under the Police Act, 1861 in view of Rule-3(1)(c) of the O.C.S. (C.C.&A) Rules, 1962. As set of penalties have been prescribed in Police Manual Rule-824 and the detailed provisions have been laid down in Chapter-XX and Appendix-49 of PMR relating to procedure to be followed for disciplinary proceedings. In view of this, the Govt. has been pleased to decide further that the disciplinary proceedings against the sub-ordinate ranks of Police personnel shall be initiated, processed and concluded under the provisions of the Police Manual Rules only and not under the O.C.S. (C.C.& A), Rules, 1962.

The proceeding has been enquired following the Rules prescribed under P.M. Appendix-49, allowing natural justice to the Charged S.I. (appellant). The findings of the E.O. holding the appellant guilty of the charge has been duly accepted by the Disciplinary Authority who has awarded the impugned punishment i.e.

One Black Mark after due application of mind.

In view of this, there is no cogent reason to interfere in the orders of the Disciplinary Authority. Therefore, after further careful scrutiny of records in the light of

order of Hon'ble OAT, the appeal petition is rejected being devoid of merit.

17. Learned Counsel for the petitioner submits that as per Odisha Police Manual (Vol.-II) Appendix-49, Para-5(b) (i.e. Rules for proceedings for departmental punishment)

The Govt. Servant shall, for the purpose of preparing his defence, be supplied with all the records on which the allegations are based. He shall be permitted to inspect and take extracts of such other official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in

the opinion of the disciplinary authority, such records are not relevant for the purpose or it is against public interest to allow him access thereto.

In the present case, the above Rules have not been complied with in letter and spirit. There is absence of any disobedience nay any wilful

disobedience to attract the vice of violation of any Standing Order or instruction. In the light of this, the charge itself is baseless.

18. Discipline is essential in every government service, nay every walk of life. If the Government servants are undisciplined, the governance will be in

rough weather. It is also equally true, without any specific charges, the employees should not be harassed unnecessarily which leads to demoralisation

of the employees. Learned Appellate Tribunal without considering all these aspects, dismissed the appeal of the petitioner. The learned Tribunal also

rejected the order of the Appellate Authority simply quoting the same, which is illegal, improper because of non-application of mind.

19. Appointing Authority/Disciplinary Authority/Government is entitled to exercise the control and maintain the master-servant relationship but it has to

on the touchstone of reasonableness especially while awarding the major punishment like one Black Mark. Whenever there is a violation of the

principle of natural justice or unreasonableness of punishment or punishment awarded with mala-fide or oblique motive, it is the duty of the court to

examine the same. This Court constantly follow the principle of non-interference with the autonomy of the Disciplinary Authority, however, any action

taken by the Disciplinary Authority is contrary to maintain clean and honest administration need not be interfered with. But in the instant case, there is

clear deflection of such a thought process and the Disciplinary Authority has been very casual about impact of its order on the career of the petitioner.

20. At the same vein, if the action taken by the Disciplinary Authority is unreasonable and arbitrary, it is likely to demoralise and deleterious effect of

the efficiency of the employee and warrants interference from this Court. We cannot ignore the well accepted principles while examining such

punishment in the appellate jurisdiction, without clarity on the nature of allegation, violation of rules etc. is nothing but it is a case of arbitrary exercise

of power. In this context, it is pertinent to extract the observations of Lord Denning as found in Wade on Administrative Law, "the discretion of

statutory body is never unfettered". It is a discretion which is to be exercised according to law. That means at least the authority must be guided

by relevant consideration and not by irrelevant motive. If its decision is influenced by extraneous considerations which it ought not to have taken into

account, then the decision cannot stand. No matter, the authority may have acted in good faith, nevertheless the decision will be set aside.

21. The case, in hand, portrays a negative shade of the power exercised by the Disciplinary Authority because it is dehors legitimate reasons and

reasonableness. The Court being custodian of law should interfere with such kind of unjust punishment awarded to the delinquent employee. Hence,

this Court is of the view that the order passed by the Disciplinary Authority has been too harsh on the delinquent officer because the charges framed

against him do not reveal any tangible reasons for attracting such a major punishment. We also feel to say, the only charge against the delinquent

officer is that he neglected his duty on 26.06.2012 night, without indicating which rules he violated, the authority-imposed punishment which is

erroneous. The punishment is shockingly disproportionate to the alleged misconduct committed by the petitioner.

In the case of Union of India and others v. P. Gunasekaran, (2015) 2 SCC 610, the Hon'ble Supreme Court has delineated the scope of interference

by the High Court in a disciplinary enquiry. The High Court in exercise of its power under Articles 226 & 227 of the Constitution of India cannot

venture into re-appreciation of evidence, or interfere with the conclusions of the enquiry proceeding if the same are conducted in accordance with law,

or go into the legality/adequacy of evidence, or reliability of the evidence, or interfere, if there be some legal evidence on which findings can be based,

or correct the error of fact, however grave it may appear to be, and go into the proportionality of punishment unless it shocks its conscience. But in the

present case, the punishment is handed out in a casual manner without application of mind or indicating which rules, instruction or standing order

purported to have been violated by the petitioner herein.

22. In our considered opinion, the act of imposition of major penalty on the delinquent/petitioner vitiates the proceedings and the punishment imposed,

dehors sufficient reasons smacks arbitrariness and mala-fide. Hence, the order dated 30.10.2018 passed by the State Administrative Tribunal in O.A.

No.2330(C) of 2017 is set aside. The present Writ Petition is allowed and all consequential benefits including promotions be granted to the petitioner

forthwith preferably within a period of one month.

Accordingly, the Writ Petition is disposed of.