

(2019) 12 OHC CK 0014

In the Orissa High Court

Case No : Writ petition (C) No. 11811 Of 2003

Trailokyanath Khuntia

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(iii), 22

Citation : (2019) 12 OHC CK 0014

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : A.K. Mishra, J. Sengupta, D.K. Panda, P.R.J. Dash, G. Sinha, B.K. Sharma, A.Mishra, D. Lenka

Final Decision : Dismissed

Judgement

Biswanath Rath, J

1. This Writ Petition has been filed challenging the order of punishment vide Annexure-13 and also the order of rejection of the appeal at the instance

of the petitioner vide Annexure-15 and thereby seeking a direction to the opposite parties to hold the petitioner entitled to arrear service benefit.

2. Short background involved in this case is that the petitioner while continuing as the Deputy Commandant, C.R.P.F., Bhubaneswar was served with

a set of memorandum on 7.4.97 involving articles of charges that while the petitioner was continuing as Deputy Commandant, 43 Bn. CRPF under

Bhubaneswar, particularly while posted in 41 Bn., Barbera, Balugaon, Puri during the year 1994-95, committed serious misconduct by developing

physical intimacy with an unmarried girl under the false assurance that he will marry her. As a result of his physical intimacy with the said girl, she

became pregnant. Thereafter on 28.1.1995 he entered into a court marriage with

her in the court of the Sub-Registrar, Cuttack but later on deserted her and refused to accept her as his wife, further got engaged with another girl for solemnizing his marriage. Thus the petitioner was departmentally proceeded with as per rule 3(1)(iii) of the CCS (Conduct) Rules, 1964. Upon receipt of charges framed against him, on 12.5.1997 the petitioner submitted a letter to the D.G. of Police, CRPF to supply him the copies of the documents relied upon and the statement of witnesses to enable him to respond appropriately. On 11.6.1997 the petitioner alleged to have made another representation to allow him to get the documents and other case records which was subject matter of litigation before involving the civil and criminal proceedings. On 22.07.1997 the Enquiry Officer was appointed along with appointment of Presenting Officer. It is, at this stage petitioner submitted representation to be defended by Shri Rangadhar Mishra, Rtd. Officer of the I.F.S. cadre. On 9.10.1997 the Defence Assistant filed memorandum to supply the petitioner documents listed vide Annexure-3. The enquiry was adjourned to different dates. In the meanwhile, on 27.11.1997 a letter was addressed by the Defence Assistant to supply the statement of witnesses who were examined during the preliminary enquiry. It is alleged that the request for supply of the statement of witnesses examined during preliminary enquiry was rejected on the premises that same has no relevancy at that particular stage, but however, with a promise to the petitioner that he will be supplied with such copies only after recording of prosecution evidence as at Annexure-8. It is further pleaded that on 28.11.1997 the statement of witnesses who were examined during preliminary enquiry, was supplied to the petitioner. While the enquiry date was fixed the statement of P.Ws.2 & 3 were recorded and the next date of hearing was fixed to 29th, 30th & 31st of January, 1998. On 27th & 28th the statement of witnesses were recorded. For absence of Defence Assistant P.Ws.1, 2 & 3 were not examined. But however on 27.1.1998 the statement of P.W.1 was furnished to the petitioner. The enquiry was again adjourned to 18th & 19th of March when the petitioner was given opportunity to cross-examine P.Ws.1, 2 & 3. The petitioner alleged, the Defence Assistant who was allowed to be engaged on behalf of the petitioner was objected by P.Ws.1 & 2. After bringing to the notice of the Disciplinary Authority the name of the Defence Assistant, the petitioner requested to give him copy of

preliminary enquiry report. After examination of witness of both side the E.O. submitted his report indicating that the charges leveled against the petitioner has been partially proved to the extent that he had developed physical intimacy with an unmarried girl and later on engaged with another lady on his refusal to accept the first one as wife. Based on the enquiry the opposite party no.2 issued a notice of show cause to the petitioner indicating therein his disagreement with the findings of the E.O. To which the petitioner responded on 27.11.1999. The Disciplinary Authority finally punished the petitioner thereby reducing the pay of the petitioner to the lowest stage of Rs.10,000/-in the time scale of pay of Rs.10,000/--375.00-15,200/- for a period of five years w.e.f. 15.1.2001 with further direction that he shall not earn increments of pay during such period and on expiry of period of reduction, it will have the effect of postponing of his future increments of pay. Upon receipt of punishment order the petitioner filed appeal, which has been rejected by appellate authority on 7.7.2001 resulting filing of the present Writ Petition.

3. Shri Mishra, learned counsel for the petitioner assailed the impugned order on the premises that the enquiry suffers for non-supply of documents in spite of his asking for supply of the same. Petitioner also challenged the order of the Disciplinary Authority on the premises that the enquiry vitiates for appointment of Enquiry Officer before submission of explanation by the delinquent. So far as the appeal order is concerned petitioner also challenged the same on the premises that the appellate authority dismissed the appeal not only without dealing with the grounds raised by the petitioner but the appeal order also suffers for having no reason. Petitioner also relied on some decisions which are reflected as follows: (1) in the case of Govt. of A.P. and Others versus A. Venkata Raidu as reported in (2007) 1 SCC 338, (2) in the case of S.P. Malhotra versus Punjab National Bank and others as reported in (2013) 7 SCC 251, (3) in the case of State of Punjab versus V.K. Khanna and others with Civil Appeal No.6964 of 2000 in the case of Sardar Prakash Singh Badal versus V.K. Khanna and others as reported in (2001) 2 SCC 330 (4) Civil Appeal No.695 of 1971 in the case of Union of India versus Mohanlal Capoor and others, Civil Appeal nos.614-617 of 1971 in the case of State of Uttar Pradesh and another versus K.N. Misra and others Etc. Civil Appeals Nos.695 and 614-617 of 1971, decided on September 26, 1973 as reported in (1973) 2 SCC 836, (5) in the case of Sanjay

Kumar Rout versus State of Odisha and others as reported in AIR 2018 Ori. 162, (6) in the case of Ranjit Singh versus Union of India and others as

reported in (2006) 4 SCC 153, (7) in the case of Roop Singh Negi versus Punjab National Bank and others as reported in (2009) 2 SCC 570 (8) in the

case of Kranti Associates Private Limited and another versus Masood Ahmed Khan and others as reported in (2010) 9 SCC 496.

4. In his opposition Shri Lenka, learned Central Government Counsel while disputing each of the complaint made by Shri Mishra, learned counsel for

the petitioner submitted that on 9.02.1995 the victim appeared before the D.I.G.P., C.R.P.F., Bhubaneswar with a petition alleging therein that for the

intimacy of physical relationship by the petitioner with her under false promise of marriage, the petitioner made her pregnant and he was preparing to

marry another lady which is contrary to his own agreement. It was also complained therein that even the petitioner entered into a Court marriage in

the Office of the Sub-Registrar, Cuttack on 28.1.1995 and he decided to accept her as wife. On being called by the Department the petitioner rather

made a request to postpone the preliminary enquiry as he is in the process of persuading the victim to withdraw her complain and settle the matter

amicably with further intimation to the disciplinary authority that his marriage which was scheduled to be held on 20.2.1995 has already been

postponed. Preliminary enquiry was conducted involving the issue where the allegation against the petitioner was prima facie established thereby

necessitating a departmental enquiry involving the charges mentioned in the memorandum of charge served on the petitioner by the Presidential order

no.D.IX-54/95-CRC dated 7.04.1997 vide Annexure-1. After such order the petitioner was asked for submitting written statement on his defence.

After the statement of defence was submitted and not being satisfied with the explanation offered by the petitioner the Disciplinary Authority decided

to conduct a full-fledged enquiry, leading appointment of Enquiry Officer and the Presenting Officer again by the Presidential order vide Annexures-4

& 5. In the enquiry the petitioner was provided with all opportunity. The delinquent has not only been given with the scope of perusal of document but

also on being supplied with the statement so recorded, was given scope of cross examination as well as evidence from his side. He was also allowed

to be represented by the Defence Assistant non-else than a retired I.F.S Officer. The enquiry report was submitted before the Disciplinary Authority

observing that the charges leveled against the petitioner stood partially proved. However, the Disciplinary Authority since disagreed with the report of the Enquiry Officer, while serving a copy of the enquiry report along with disagreement note, by its order vide Annexure-11 called for an explanation from the petitioner before imposition of penalty based on the report. Response of the petitioner not being satisfactory the Disciplinary Authority finally imposed the punishment on reduction of the salary of the petitioner to the lowest stage i.e. to Rs.10,000/- for a period of five years with further stipulation that he will not earn increments of pay and further even after expiry of such period of reduction, it will have effect of postponing his future increments. Petitioner being aggrieved with such punishment order preferred appeal. Appeal got dismissed resulting filing of the Writ Petition. It is also brought to the notice of this Court by the opposite party that the petitioner filed Civil Suit vide T.S. No.107 of 1995 to nullify the marriage agreement dated 28.1.1995. The said suit was dismissed on 6.07.1996. On the allegation of the petitioner regarding non-supply of documents the counsel for the opposite parties while flatly denying the same submitted that the photocopies of the document mentioned in Annexure-III were supplied to the Presenting Officer by the letter dated 13.10.1997. His request for engagement of a legal practitioner was denied taking into account the instruction No.20 below the rule of CCS (Conduct) Rules, 1964, while there is clear restriction to engage legal practitioner. It is submitted that for the expressed provision that the Legal Practitioner can only be allowed to defend the delinquent unless the Presenting Officer is a Legal Practitioner and as the Presenting Officer was not a Legal Practitioner the Disciplinary Authority was compelled to reject the request for engagement of Legal Practitioner. On the allegation that appeal order suffers for no assignment of reason, it is contended that for the disclosures therein it cannot be said that the appellate order bears no reason. Thus while denying each of the allegation made by Shri Mishra, learned counsel for the petitioner Shri Lenka, learned Central Government Counsel submitted that for the reasons assigned therein the Disciplinary Authority has deferred from final view expressed by the Enquiry Officer. Ultimately on the premises that the petitioner has been provided with full opportunity and that the charges leveled against the petitioner not only involved serious charges but such charges have also been established, Shri Lenka, learned Central Government Counsel contended

that there is no infirmity in either the order of punishment imposed by the Disciplinary Authority or the appeal order impugned herein. Shri Lenka, learned Central Government Counsel thus prayed this Court for rejection of the Writ Petition.

5. Considering the rival contentions of the parties, the allegation of the petitioner, the contentions of the parties raised hereinabove, the ground of

challenge at the instance of the petitioner as enumerated hereinabove, opposition to the same by Shri Lenka, learned Central Government Counsel and

on reading of the charges framed against the petitioner, this Court finds, there are serious charges framed against the petitioner for keeping physical

intimacy with an unmarried girl with false assurance and even after entering into registered agreement to marry with such girl, the petitioner refused to

accept her as his wife, not only that he further got engaged with another girl for solemnizing his marriage. The materials though nowhere disclose

about denial of this aspect by the delinquent, it is on the other hand, document surfaced establishes that the delinquent even went to Civil Court for

declaring such registered marriage agreement as invalid, where the petitioner failed in his such attempt for the dismissal of the suit by the competent

court. Going through the affidavit and taking into account the submission of Shri Lenka, learned Central Government Counsel, this Court not only finds,

the opposite parties have demolished such allegation through materials available on record, but the petitioner has even also failed in establishing such

allegation. It also appears, in the enquiry, it is also observed that the Disciplinary Authority has not only examined the victim but also provided

opportunity of cross examination of the victim to the delinquent. Not only that this Court from the records also finds, there is series of litigations

between the victim and the charge-sheeted Officer involving some case in the Family Court and some cases in the Civil Court on the selfsame

allegations and there is clear report by the Enquiry Officer at least establishing the physical relationships between the victim and the charge-sheeted

Officer with availability of document establishing the victim being pregnant. The petitioner in the preliminary stage even requested the Disciplinary

authority to provide him some time as he was engaged with the victim to withdraw the complaint by settling the dispute amicably.

On perusal of the notice to show cause issued by the Disciplinary Authority in differing from the view of the Enquiry Officer, this Court finds, there is

sufficient reason assigned by the Disciplinary Authority in differing from the view of the Enquiry Officer. Further from the appeal order impugned herein at Annexure-15 this Court finds, even though the appeal was not maintainable for the provision at Rule 22 of the CCS (Conduct) Rules, 1964, yet the appellate authority to provide natural justice considered the appeal providing opportunity of hearing to the delinquent and has also dismissed the appeal giving reason therein. For the discussions therein and the reason available through the paragraph no.4 this Court observes, such orders cannot be called as orders without application of mind and assigning reason for establishment of a heinous charge against the petitioner. Looking to the charges framed against the petitioner under the particular provision inviting major punishment but however looking to the award of punishment at a lighter side, this Court finds, there has been a lenient view taken against the charge-sheeted officer in spite of establishment of a case of heinous nature that too involving a person in a discipline service. As such this Court finds no scope to interfere either with the order of punishment by the Disciplinary Authority or the dismissal order involving the appeal. Considered the decision cited at Bar at the instance of the petitioner and for the observation made hereinabove, this Court finds, none of the decisions cited at Bar has any application to the case at hand.

6. The Writ Petition stands dismissed. However there is no order as to cost.