



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27997 of 2023

Pradeep Kumar Padhy

....

Petitioner

Mr. S.C. Sahoo, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. A. Tripathy, AGA

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

21.08.2025

Order No.

- 03.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
- 2.** Heard learned counsel appearing for the Parties.
- 3.** Petitioner has filed the present Writ Petition *inter alia* challenging the order of punishment passed in a disciplinary proceeding vide order dtd.18.11.2019 under Annexure-4, further confirmed by the appellate authority vide order dtd.15.05.2023 under Annexure-7.
- 4.** It is contended that in the proceeding initiated against the Petitioner vide Memorandum dtd.28.11.2004 under Annexure-1, Petitioner was imposed with the punishment vide order dtd.18.11.2019 under Annexure-4 of Opposite Party No.4 with the punishment of stoppage of two annual increment without affecting his future



increment, suspension period was treated as such and Petitioner was censured.

4.1. It is contended that the appellate authority vide order under Annexure-7 while upholding the punishment passed under Annexure-4 only modified the punishment of stoppage of two annual increment without cumulative effect to stoppage of one annual increment without cumulative effect.

4.2. Learned counsel appearing for the Petitioner contended that punishment so modified vide order under Annexure-7, i.e. stoppage of one annual increment without cumulative effect, and punishment of censure, being in the nature of minor punishments, the suspension period from 04.07.2004 to 18.12.2008 could not have been treated as such, in view of the decision of this Court in the case of **Bani Bhusan Dash vs. State of Odisha & Ors.** (W.P.(C) No.7635 of 2019) so followed by this Court in order dtd.02.07.2024 in WPC(OA) No.99 of 2018. This Court in the case of **Bani Bhusan Dash** in Para-10 has held as follows:-

“10. Coming to the 3rd punishment, as imposed in the impugned order dated 15.09.2018 under Annexure-8, i.e. treating the period of suspension as leave due and admissible, no doubt the authorities are empowered to place an employee under suspension in contemplation or pending drawal of a proceeding exercising their power under Rule-12 of the OCS (CCA) Rules, 1962. Accordingly, they have to give a conclusion the manner



to treat the period of suspension at the time of passing final order in the departmental proceeding. The authorities are to keep the suspension as such or to revoke the said suspension order by revising the period of suspension as duty, as because honouring nonengagement certificate for the relevant period, the authorities have sanctioned subsistence allowance to the delinquent during the period of suspension. In the instant case, the authority, after taking a decision not to treat the period of suspension as such, is not empowered to take a decision to treat the period of suspension as leave due and admissible, when the petitioner did not ask for any leave during the said period of suspension. Regularization of a particular period treating as leave period of different kinds of leave, as provided under Orissa Leave Rules, can be considered only when the petitioner/employee concerned seeks leave from the competent authority for certain period under certain circumstances. The authority cannot initiate a proposal from its side in assumption of leave application from the delinquent or employee concerned to treat the period as leave due and admissible affecting the delinquent by way of consuming accrued leave in favour of the employee concerned without any fault on his part. As the authority has come to a conclusion to punish the petitioner only with a minor penalty, the decision of the competent authority to place the petitioner under suspension on the allegation of grave misconduct does not appear to be satisfactory, rather it seems that the order of suspension was issued without application of mind or in a routine or mechanical manner. As such, no review of suspension was held, as per the guidelines.



Under such circumstances, after concluding the departmental proceeding by imposing minor penalty of stoppage of one increment without cumulative effect, the authority should not have treated the period of suspension in any manner other than the duty affecting the service condition of the petitioner.”

4.3. This Court in order dtd.02.07.2024 in Para-4.1 has held as follows:-

“4.1. It is also contended that by following the decision in the case of BaniBhusan Dash, this Court in the case of Dr.SmitaMohanty vs. State of Odisha&Ors. (W.P.C.(OA) No. 2585 of 2016) vide order dtd.05.07.2023 held the Petitioner therein to get the benefit of duty pay for the period Petitioner therein remained under suspension. The view expressed by this Court in Para 4.1, 5 & 6 of the order dtd.05.07.2023 in the case of Dr.SmitaMohanty is reproduced hereunder:-

“4.1.Mr.Rath, learned counsel for the Petitioner also relied on another decision of the Hon’ble Apex Court reported in the case of Union of India &Anr. Vs. S.C. Parashar ((2006) 3 SCC 167). This Court in Para 10 of the reported case of BaniBhusan Dash has held as follows:-

“10. Coming to the 3rd punishment, as imposed in the impugned order dated 15.09.2018 under Annexure-8, i.e. treating the period of suspension as leave due and admissible, no doubt the authorities are empowered to place an employee under suspension in contemplation or pending drawal of a proceeding exercising their power under Rule 12 of the OCS (CCA) Rules, 1962. Accordingly, they have to give a conclusion the manner to treat the period of suspension at the time of passing final order in the departmental proceeding. The authorities are to keep the suspension as such or to revoke the said suspension order by revising the period of suspension as duty, as because honouring non-engagement certificate for the relevant period, the authorities have sanctioned subsistence allowance to the delinquent during the period of suspension. In the instant case, the authority, after taking a decision not to treat the period of suspension as such, is not empowered to take a decision to treat the period of suspension as leave due and admissible, when the petitioner did not ask for any leave during the said period of suspension. Regularization



of a particular period treating as leave period of different kinds of leave, as provided under Orissa Leave Rules, can be considered only when the petitioner/employee concerned seeks leave from the competent authority for certain period under certain circumstances. The authority cannot initiate a proposal from its side in assumption of leave application from the delinquent or employee concerned to treat the period as leave due and admissible affecting the delinquent by way of consuming accrued leave in favour of the employee concerned without any fault on his part. As the authority has come to a conclusion to punish the petitioner only with a minor penalty, the decision of the competent authority to place the petitioner under suspension on the allegation of grave misconduct does not appear to be satisfactory, rather it seems that the order of suspension was issued without application of mind or in a routine or mechanical manner. As such, no review of suspension was held, as per the guidelines. Under such circumstances, after concluding the departmental proceeding by imposing minor penalty of stoppage of one increment without cumulative effect, the authority should not have treated the period of suspension in any manner other than the duty affecting the service condition of the petitioner.”

Similarly, Hon’ble Apex Court in Para 12 of the reported Judgment in the case of Union of India (supra) has held as follows:-

“12. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three the tune penalties: (1) reduction to the minimum of the timescale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to of Rs 74,341.89p. i.e. Rs 18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly installments. Whereas reduction of timescale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clauses (iii) and (i)(a) thereof. The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.”

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5. Mr. R.N. Mishra, learned AGA does not dispute the ratio decided in the case of BaniBhusan Dash as well as the view expressed by the Hon'ble Apex Court in the case of Union of India.

6. Having heard learned counsel appearing for the Parties and taking into account the materials available on record, it is found that while disposing the proceeding the Petitioner was imposed with a minor punishment i.e. stoppage of two increments without cumulative effect. On the face of such punishment imposed and in view of the decisions as cited supra, the period of suspension should not have been treated as such instead of treating the same as duty. Therefore, this Court is inclined to quash the order so far as it relates to treat the period of suspension as such. While quashing the same, this Court directs the Opp. Party No. 1 to treat the period of suspension as duty and extend the financial benefit as due and admissible in favour of the Petitioner. Such an exercise shall be undertaken and completed by the O.P. No 1 within a period of two (2) months from the date of receipt of this order”.

4.4. Learned counsel appearing for the Petitioner accordingly contended that since punishment of stoppage of one annual increment without cumulative effect and punishment of censure are minor punishments as provided under Rule-13 of the OCS (CCA) Rules, 1962, the period of suspension could not have been treated as such in view the decisions as cited (supra) and period of suspension treated as such is required to be treated as duty for all purposes with quashing of the orders under Annexure-4 & 7 to that effect.

5. Learned Addl. Government Advocate for the State on the other hand while supporting the impugned order contended that since the order passed by the disciplinary authority has been confirmed by the appellate authority and there is no allegation that the proceeding was not



conducted in accordance with the Rule and by giving due opportunity hearing to the Petitioner, no illegality or irregularity can be found with the impugned order.

6. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that the proceeding initiated against the Petitioner on 28.10.2004, the disciplinary authority –Opposite Party No.4 while disposing the proceeding passed the following order of punishment:-

“i) The suspension period for the period from 04.07.2004 to 17.12.2008 is treated as such.

ii) Two annual increments are stopped without affecting his future increments.

iii) The delinquent is Censured”.

6.1. It is found that the appeal preferred by the Petitioner against such order of punishment was also rejected by Opposite Party No.3 vide order dtd.15.05.2023 under Annexure-7, but by modifying the punishment of stoppage of two annual increment to one increment without cumulative effect while upholding the other punishments. Following the decision in the case of **Bani Bhusan Dash** so followed in the case of **Prafulla Kumar Acharya**, this Court is of the view that while imposing punishment of stoppage of one annual increment without cumulative effect and censuring the Petitioner which are in the nature of minor punishments as provided under Rule-13 of the OCS (CCA) Rules, 1962, the period of suspension could not have been treated as such.



6.2. Therefore, this Court is inclined to interfere with the order dtd.18.11.2019 so passed under Annexure-4 and order dtd.15.05.2023 under Annexure-7, wherein the period of suspension has been treated as such. While interfering with that part of the order only, this Court directs Opposite Party No.4 to treat the period of suspension from 04.07.2004 to 17.12.2008 as duty and pass a fresh order in that regard within a period of two (2) months from the date of receipt of this order. After passing of such an order as directed, consequential follow up action be taken to release the financial benefit as due and admissible within a further period of 2(two) months.

7. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

Signature Not Verified

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Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 08-Sep-2025 18:39:57

