

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.9518 of 2014

(An application under Articles 226 & 227 of the Constitution of India).

Sarat Ch. Khadogroy *Petitioner*

-versus-

Chairman-cum-MD, OSRTC and others *Opposite Parties*

For Petitioner : *Mr. J.K. Mohapatra, Advocate*

For Opposite Parties : *Mr. A. Tripathy, Advocate*

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING : 05.07.2023

DATE OF JUDGMENT: 05.07.2023

V. Narasingh, J.

1. Heard Mr. Mohapatra, learned counsel for the petitioner and Mr. Tripathy, learned counsel for the Opposite Parties-OSRTC.

2. The petitioner while working as a driver in the Opposite Party-OSRTC was prematurely retired by order dated 30.01.1999 at Annexure-2. The said order was up held by the appellate as well as the Reviewing Authority vide Annexure-8 and

10 respectively. Assailing the same, the petitioner has preferred the present Writ Petition.

3. It is the submission of the learned counsel for the petitioner that the order of premature retirement at Annexure-2 and the subsequent order passed by the appellate as well as reviewing authority are liable to be set aside since the same is in patent violation of Regulation-118 of OSRTC Employees (Classification, recruitment and condition of service) Regulation-1978, herein after referred to as Regulation-1978.

3.A. The Writ Petition has been filed seeking the following relief(s);

“.....the writ petition be allowed and the order of premature retirement dated 30.01.1999 under Annexure-2, order of rejection dated 12.12.2013 passed in appeal petition under Annexure-8 and order dt 09.04.2014 passed in review application under Annexure-10 may be declared as void and illegal and necessary direction be passed directing the Opp. Parties to give the service as well as retiral benefit to the petitioner within a stipulated period taking the age of retirement as 60 years”

4. At the outset, Mr. Mohapatra, learned counsel for the petitioner submitted that the office order at Annexure-2 is patently illegal inasmuch as the office order to retire the petitioner prematurely was passed on 30.01.1999 and the petitioner was made to retire the very next day on 31.01.1999 and that the same is in gross violation of the very Regulation-118 which has been referred to therein. For convenience of ready reference the said Regulation, is extracted herein;

“118. Superannuation and Retirement- (1) The age of compulsory retirement of an employee other than workmen and those holding Class IV posts is the date on which he attains the age of 58 years. But the Corporation may, at its discretion, authorise by a general or special order and subject to such conditions as it may specify the retention of such employees up to age of 60 years.

(2) For Workmen and Class IV employees the date of compulsory retirement is 60 years.

Provided that any employee other than “Workman and Class IV employee” may retire from service at any time after completion of 30 years qualifying service, or on attaining the age of 50 years on giving a notice in writing to the competent authority at least 3 months before the date on which he wishes to retire. The appropriate authority of Corporation may also require any office to retire in the public interest at any time after he completed 30 years qualifying service or attained the age of 50 years on giving a notice on writing to the employee at least 3 months before the date on which he required to retire :

Provided further that an employee who is highly skilled, skilled, semi-skilled or un-skilled artisan, shall be ordinarily retired in service upto the age of 60 years. Such employees may however be required to retire in public interest at any time after attaining the age of 55 years after having given a month’s notice or on a month’s pay in lieu thereof. Such an employee may also retire at any time after attaining the age of 55 years by giving one months notice.”

5. Per contra, Mr. Tripathy, learned counsel for the OSRTC submits that there is no illegality in the order, so passed.

6. It is seen that the petitioner preferred an appeal assailing the said office order at Annexure-2 and the appeal was disposed of by order dated 12.12.2013 at Annexure-8 affirming the order of compulsory retirement. Against such order, the petitioner preferred a review in terms of the Regulations.

7. The Regulations authorizing entertaining a review had been dealt with in Regulation-167 of Corporation. The same is extracted herein below for convenience of ready reference;

“167. Corporations Power of Review-Notwithstanding anything contained in these Regulations, the Corporation may, on its own motion or otherwise after calling for the records of the case, revise any order which is made is appealable under these Regulations and –

- (a) impose any penalty or confirm, modify or set aside the order; or*
- (b) remit the case to the authority which made the order or to any other authority, directing such further action or inquiry as it considers proper in the circumstances of the case, or*
- (c) pass such other orders as it deems fit:*

Provided that-

- (i) an order imposing or enhancing a penalty shall not be passed unless the employee concerned has been; given an opportunity or making any representation which he may wish to make against such penalty; and*
- (ii) If the corporation proposes to make any of the penalties specified in items (ix) and (x) of Regulation 138 in a case where an inquiry in accordance with the provisions of Regulations 141 (1 to 12) has not been held, it shall, subject to the provisions of regulations 146, direct that such inquiry be held and, thereafter on consideration of the proceedings of such inquiry, pass such orders as it may deem fit.”*

8. It is inter alia urged by Mr. Mohapatra, learned counsel for the petitioner that though the review was filed before the

Chairman-cum-Managing Director OSRTC but surprisingly, the Review was disposed of by the same authority i.e., General Manager(A) OSRTC, who admittedly passed the Appellate order. Hence, it is submitted that on this count alone the order of compulsory retirement is ought to be set aside.

8.A. One of the facets of principle of natural justice is that “One should not be a judge of one’s own cause”. “Nemo Judex In causa Sua”. In the instant case admittedly the appellate authority and the reviewing authority are one and the same. As such the principle of natural justice is patently violated and the exercise of the power by the reviewing authority thus militates against fairness of procedure.

9. The concept of “Nemo Judex In causa Sua” was dealt extensively by the Apex Court in its judgment reported in *AIR 1984 SC 1572 M/s. J. Mohapatra and Co. vs. State of Odisha* and in the said decision referring to the earlier judgment of the Apex Court in the case of *A.K. Kraipak vs. Union of India (AIR 1970 SC 150)* it was held that this doctrine not only applies to judicial proceeding but in equal measure is applicable to quasi judicial and administrative proceeding.

10. The principle as discussed in the judgment of the Apex Court in case of *M/s. J. Mohapatra (Supra)* is extracted hereunder for convenience of ready reference;

“9.....Nemo Judex in causa sua, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in Courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in

camera. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This Principle applies not only quasi-judicial and administrative proceedings.....”

“10.The Court held that the rule that no man should be a judge in his own cause was a principle of natural justice and applied equally to the exercise of quasi-judicial as well as administrative powers.”

(Ref: *A.K. Kraipak (Supra)*)

11. Assessed on the touch stone of the decisions of the Apex Court in the case of *M/s. J. Mohapatra and A.K. Kraipak (Supra)* and for the reasons stated above, the order passed by the reviewing authority at Annexure-10, confirming the order in appeal, is set aside and the matter is relegated to the stage of review.

12. On instruction, Mr. Tripathy submits that the Corporation is now manned by an officer designated as Chairman-cum-Managing Director who is higher in the hierarchy than the General Manager(A).

13. Taking note of the same, since ex-facie the consideration of the review was by the self same appellate authority who rejected the appeal, this Court is persuaded to direct the Chairman-cum-Managing Director, OSRTC to reconsider the review of the petitioner within a period of six weeks from the date of receipt/production of the copy of this order independently, without being influenced by the earlier order passed by the General Manager(A) acting as a reviewing authority.

14. It is needless to state that this Court has not expressed any opinion regarding the merits of the matter.

15. With the above observations, this Writ Petition stands disposed of. No costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 5th of July, 2023/Santoshi

