

L.MOHAPATRA, J & B.K.MISRA, J.

W.P.(C) NOS.4941/2005 & 10370/2004 (Dt.24.02.2012)

BIDYADHAR BEHERA

.....Petitioner.

.Vrs.

**ORISSA STATE ROAD
TRANSPORT CORPN.
& ORS.**

.....Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.311.

For Petitioner - Dr. M.R.Panda, M.K.Nayak,
B.P.B. Bahali, M.Panda &
C.Mohapatra.

For Opp.Parties - Mr. H.K.Tripathy

B.K.MISRA, J Both these writ petitions are being disposed of by this common order as they relate to the same person and same facts. The petitioner challenges the impugned order of the District Transport Manager (Administration), Orissa State Road Transport Corporation, Bhubaneswar (for short 'O.S.R.T.C.') at Annexure-7 in compulsorily retiring the petitioner from service as well as the dismissal of the appeal preferred by the present petitioner challenging the impugned order at Annexure-7 by the General Manager (Administration), Orissa State Road Transport Corporation, Bhubaneswar (Annexure-1).

2. The petitioner was appointed as a Conductor in the Baripada Zone of the O.S.R.T.C. on 7.2.1976 and while functioning as such he was transferred to Dhenkanal Zone of the O.S.R.T.C. by order dated 12.8.1996. The petitioner could not join at his new place of posting at Dhenkanal as he suffered from Malaria and A.P.D. and applied for leave to Opposite Party No.2 vide Annexure-2 series. Since the petitioner did not join his duties at Dhenkanal he was placed under suspension on 3.1.1997 in contemplation of initiation of a departmental proceeding. Ultimately, the petitioner was allowed to retire compulsorily by the authorities vide order at Annexure-7. It is the case of the petitioner that when on his representation the authorities were pleased to cancel his order of transfer from Baripada Zone of the O.S.R.T.C. to Dhenkanal Zone and he was allowed to continue at Baripada as per order dated 4.4.1997 (Annexure-6), the departmental proceeding which was taken up by the D.T.M., Dhenkanal was without jurisdiction and resultantly the impugned order at Annexure-7 is also vitiated because of want of jurisdiction. It is also his case that he has been denied opportunity of being heard in the departmental proceeding which was taken up behind his back and the authorities also illegally took into consideration his past conduct and punishment without affording any opportunity to him of being heard. Thus, the petitioner has challenged the action of the Opposite Parties and has sought for the intervention of this Court.

3. The Opposite Parties in their counter while refuting the allegations of the petitioner asserted that all procedures were followed in disposing of the departmental proceeding which was initiated against the petitioner but taking into consideration the antecedents of the petitioner, it was felt by the disciplinary authority to dispense with his services and thus compulsorily retired him without causing any pecuniary loss. Accordingly, it is prayed by the Opposite Parties for dismissal of the writ petition filed by the present petitioner.

4. We have heard the learned counsel for the respective parties and also perused the entire case record along with the Annexures. Dr. M.R. Panda, learned Senior Counsel appearing for the Petitioner assailed the impugned order of compulsory retirement of the Petitioner not only on the ground of disproportionality but also on the ground of fair play i.e. by denying the Petitioner the opportunity of being heard before awarding the impugned punishment and taking into consideration the past antecedent of the Petitioner.

5. Learned counsel appearing for the Opposite Parties fairly admitted that the past antecedent of the petitioner i.e. he was punished 12 times for allowing the passengers to travel without ticket and also that the petitioner who was transferred to Keonjhar Unit from Baripada did not join and remained on long leave were taken in to consideration while passing the impugned order at Annexure-7. Similarly, it was also contended by the learned counsel appearing for the department that the draft charges and other notices were sent to the Petitioner by registered post with A.D. in his home address but the petitioner deliberately avoided to receive them and did not attend the departmental inquiry for which it was taken up in his absence and therefore it cannot be said that due procedure was not followed.

6. Without entering into the disputed questions of facts that there was no service of notice to the petitioner by the Disciplinary Authority and that no opportunity was afforded to the petitioner before passing the impugned order suffice is to say that when the petitioner was transferred from O.S.R.T.C., Baripada Zone to Dhenkanal Zone, he did not join and remained on leave and also when the said transfer order was cancelled and he was reposted at Baripada even thereafter he did not join at his place of posting, Baripada. Thus, taking into consideration the alleged delinquency on the part of the petitioner, it is to be seen as to whether the order of compulsory retirement of the petitioner is grossly excessive and disproportionate. It is trite that the quantum of punishment to be imposed is completely in the domain of the Disciplinary Authority and Court cannot substitute punishment. The Court can intervene and give direction to the

Disciplinary Authority for reconsideration of the matter if it would be found that the punishment imposed on the delinquent is grossly disproportionate.

7. In the instant case, having found that the punishment of compulsorily retiring the petitioner is grossly disproportionate to alleged delinquency, we set aside the order of the Appellate Authority at Annexure-1 and remit the matter back to the Appellate Authority to reconsider the question of punishment and impose such punishment commensurating the alleged delinquency. The Appellate Authority may reconsider and pass appropriate orders within two months from the date of communication of this order.

Accordingly, both the writ petitions stand disposed of.

Writ petition disposed of.