

Brundaban Padhi Vs. State of Orissa

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Court : Orissa

Decided On : Jul-08-1969

Reported in : AIR1970Ori81; 35(1969)CLT926

Judge : G.K. Misra, C.J. and ;R.N. Misra, J.

Acts : [Constitution of India](#) - Article 311(2)

Appeal No. : O.J.C. No. 203 of 1965

Appellant : Brundaban Padhi

Respondent : State of Orissa

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : C.V. Murty, Adv.

Disposition : Petition allowed

Judgement :

G.K. Misba, C.J.

1. The petitioner was an Aniin in the Hirakud Land Organisation. Certain charges were framed against him alleging misconduct. After the enquiry was over. Government in the Political and Services Department communicated their tentative decision to discharge the petitioner from service and he was asked to show cause.

The petitioner showed cause. Ultimately, however, the petitioner was dismissed by the order of the Collector dated 20-3-65, and a direction was also issued to realise Rs. 343-85 from him representing half the misappropriated amount.

The writ application has been filed under Articles 226 and 227 of the Constitution saying that the order so passed was without jurisdiction and must be set aside.

2. Law is well settled that if the punishment tentatively proposed against a civil servant is of a lesser kind, but after hearing his representation he is awarded a graver form of punishment, there is non-compliance with the provisions of Article 311(2) of the Constitution. 'Discharge' has been accepted as a punishment lesser than 'dismissal'. (See *Dayanidhi Rath v. B.S. Mohanty*, AIR 1955 Orissa 33). This has been followed in *S.K. Pandey v. State of Bihar*, 1967 BLJR 58.

3. On the accepted position that the proposed punishment was one of discharge, but the ultimate punishment inflicted was one of dismissal the order cannot be supported. The impugned order is accordingly set aside and the writ application is allowed with costs. Hearing fee Rs. 100/- (one hundred).

B.N. Misra, J.

4. I agree.