

(111)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

Original Application No. 50 of 1988.

Date of decision: December 19, 1988.

Sri Bhagirathi Behera, I.F.S.,  
now posted as Working Plan Officer,  
Sambalpur, permanent resident of  
village. Musamari, P.O. Debsol,  
Dist- Mayurbhanj.

....

Applicant.

Versus

1. Union of India, represented through  
it's Secretary, Home Department,  
New Delhi.
2. State of Orissa, represented through its  
Secretary, Forest, Fisheries & Animal  
Husbandry Department, At/P.O-Bhubaneswar,  
Dist- Puri.
3. The Chief Conservator of Forests, Orissa, Cuttack,  
Old Secretariate, At/P.O/Dist- Cuttack.

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Respondents.

M/s M. R. Panda, G. R. Nai  
and P.K. Panda, Advocates ....

For Applicant.

Mr. A. B. Misra, Sr. Standing Counsel  
(Central).

Mr. Tahali Dalai, Addl. Standing  
Counsel ( Central ) ...

For Respondent No. 1

Mr. K. C. Mohanty, Government  
Advocate ( State ) ...

For Respondent No. 2 & 3

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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be  
permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not ? NO.
3. Whether Their Lordships wish to see the fair  
copy of the judgment ? Yes.

JUDGMENT

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Adt, 1985, the petitioner prays to quash the impugned order of punishment contained in Annexure-1 as bad, illegal and unsustainable and to further command the respondents not to give effect to the order passed under Annexure-1 and so also to declare the applicant to be deemed to be continuing in service notwithstanding the order of suspension.

2. Shortly stated, the case of the petitioner is that he is a Member of the Indian Forest Services and while he was posted at Ghumsur (Bhanjanagar) as Divisional Forest Officer, he was placed under suspension on 30.12.1987 due to a contemplated proceeding. The order of suspension was revoked on 20.1.1988 vide Annexure-2. This application has been filed with the aforesaid prayer.

3. In their counter, the State Government maintains that the order of suspension having been revoked, there is no further cause of action for the petitioner to ventilate his grievance before the Bench and therefore this case being devoid of merit is liable to be dismissed.

No counter has been filed on behalf of the Central Government for the reasons best known to them.

4. We have heard Mr. M.R. Panda, learned counsel for the petitioner, Mr. K.C. Mohanty, learned

Government Advocate appearing for the State Government and Mr. Tahali Dalai, learned Additional Standing Counsel for the Central Government at some length. From records, we find that the undisputed position is that the petitioner was placed under suspension on 30.12.1987, vide Annexure-1 and the said order of suspension was revoked on 20.1.1988 vide Annexure-2 with a stipulation that the petitioner would be deemed to be on duty from the day he joins after revocation of the order of suspension. This application has been filed on 17.2.1988 namely long after the order of suspension was revoked contained in Annexure-2. Even if the order of suspension has been revoked, yet the right of the person aggrieved cannot be sorted out merely because the order of suspension has been revoked and the petitioner would not be permitted to further raise his grievance on this issue if any. Mr. Panda submitted that before passing of the order contained in Annexure-1 i.e., placing the petitioner under suspension, concurrence of the concerned Minister or that of the Hon'ble Chief Minister not having been taken by the Secretary to the Government, Forest Department, the order of suspension is not only illegal but without jurisdiction and therefore the petitioner is entitled to the full emoluments from 30.12.1987 to 20.1.1988. This contention of Mr. Panda was sought to be repudiated by the learned Government

Advocate on the basis of the averments made in the

counter. In para- 6 of the counter, it is stated as follows :

" xx                    xx                    xx

Basing on the report of serious charges of corruption the petitioner was placed under suspension which has been approved of the Chief Minister. "

In para- 8 of the counter, it is stated as follows :-

" That with reference to paragraph 6(10) it is submitted that the contention of the applicant that the Minister concerned and the Chief Minister have passed the order for revoking the order of suspension but the said order has been suppressed and not communicated to the applicant are not correct. The Chief Minister of the State of Orissa is competent authority. The Government of Orissa passed the orders for reinstatement of the applicant in the service with effect from the date of joining and the same was communicated promptly to the applicant vide the order of the Government dated 20.1.88. Since applicant was transferred from his previous place of posting, he was asked in the said order to join at new place of posting ".

Further in para- 9 of the counter , it is stated as follows :-

" The order of suspension has the approval of the competent authority and as such there is no illegality in the same to be quashed ".

5. Mr. Panda, learned counsel for the petitioner heavily pressed before us that the concerned files should be called and perused by the Bench because Hon'ble Chief Minister had never passed any orders to suspend the petitioner from service and on that account Mr. Panda wanted an adjournment. We refused to allow the prayer for adjournment because this issue cannot be decided by us

for the present. If no proceeding would have been started, then we think this issue could have been decided by us appropriately at this stage. But from the counter we find that a departmental proceeding has already been initiated against the petitioner in furtherance of the suspension order passed on 30.12.1987. There is no denial from the side of the petitioner disputing the fact of initiation of a departmental proceeding. Once the departmental proceeding has been started it is for the disciplinary authority to determine at the time of culmination of the departmental proceeding as to how the period of suspension would be treated. We are sure that all the above mentioned contentions of Mr. Panda on behalf of the petitioner would be seriously taken into consideration by the disciplinary authority and he would pass orders according to law. Any expression of opinion by this Bench at this stage would not only be premature but it may embarrass the Inquiring Officer and the disciplinary authority and therefore we have purposely refrained ourselves from expressing any opinion reserving our right to make a judicial review of the order passed by the disciplinary authority as to the legality or otherwise as to how the period of suspension should be treated.

In case the order is illegal certainly we shall interfere otherwise not. Therefore, we do not feel inclined to interfere with the discretion of the disciplinary authority at this stage which is definitely

premature. Therefore we leave this question open to be decided at the appropriate stage.

6. We could not know as to the stage at which this proceeding is pending. In case explanation has been filed by the delinquent officer i.e., the present petitioner and in case the disciplinary authority has held that there are grounds to further probe into the matter and appointment of the Inquiring Officer has been completed, then we hope the inquiry would be completed within 120 days from the date of receipt of a copy of this judgment otherwise there will be no justification in making the Democlae sword to hang on the petitioner. In case explanation has not been submitted, we hope the petitioner would submit his explanation as soon as possible for his own interest and thereafter the disciplinary authority should pass necessary orders according to law and expeditiously dispose of the departmental proceeding, if ~~not~~ to continue.

7. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

*Agreed*  
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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, *I agree.*

*Agreed*  
.....  
Vice Chairman

Central Administrative Tribunal,  
Cuttack Bench.  
December 19, 1988/Roy, Sr.P.A.