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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.220 of 1989.

Date of decision : January 18,1990.

Santosh Kumar Mohanty, s/o late Lingaraj Mohanty, aged about 43 years, Senior Auditor, CAD-1 Section, Office of the Accountant General. (Audit)-II, Bhubaneswar, now under suspension, residing at Qr.No.Type-II-126, A.G.Colony, Unit-IV, Bhubaneswar.

... Applicant.

Versus

1. Union of India, represented through Comptroller and Auditor General of India, New Delhi.
2. Accountant General (Audit) -1, Orissa, Bhubaneswar.

... Respondents.

For the applicant ... M/s. Dhuliram Patnaik,
Biswamohan Patnaik,
R.N. Misra,
P.R. Barik, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Senior Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. P.S. HABEEB MOHD, MEMBER (ADMINISTRATIVE)

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes.*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

N.SENGUPTA, MEMBER (J) The applicant has prayed for quashing the order of suspension dated 29.7.1988 (Annexure-3).

2. The allegations made by the applicant are that there were demonstrations in the Office of the Accountant General, Orissa, Bhubaneswar as a person Junior to the seniormost Assistant Accounts Officer was promoted as Accounts Officer. This was in July, 1988. On 19.7.1988 he (the applicant) was asked to show cause as to why disciplinary action should not be taken against him. To this he gave a reply on 9.8.1988 but that did not satisfy the authorities. On 16.7.1988 the Accountant General (Audit), Bhubaneswar addressed a letter to the Superintendent of Police, Bhubaneswar, for help in connection with the demonstration. This letter was forwarded by the Superintendent of Police to the Officer-in-Charge of Capital Police-station who treated that letter as an F.I.R. and took up investigation which ended in the filing of a charge-sheet on 31.12.1988 against 12 persons for offences punishable under sections 143, 452, 506 and 426 of the Indian Penal Code read with Section 149 of the same Code and Section 7 of the Criminal Law Amendment Act. In that charge-sheet the applicant was not named as an accused. On 29.7.1988, the Accountant General (Audit) - I passed the impugned order of suspension on the ground of a Criminal case against him (applicant) being under investigation. It is claimed by the applicant that in fact no criminal case against him was under investigation, hence the order of suspension is void.

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3. The respondents in their counter have stated that though infact a report¹ to the Police was made against the applicant, but another person having the same initials in his name was arrested and charge-sheeted. Later when this was discovered, the Accountant General (Audit) I wrote to the Police on 26.6.1989 that the person complained against was really ~~the~~ Santosh Kumar Mohanty and not Sunil Kumar Mohanty against whom charge-sheet was filed. Acting on this letter dated 26.6.1989, the Police filed a Supplementary charge-sheet against the ^{applicant} ~~accused~~. They have also taken the plea that the applicant not having exhausted the remedy of appeal, this application is not entertainable by this Tribunal.

4. We have heard Mr. Dhuliram Patnaik, learned counsel for the applicant and Mr. Ganeswar Rath, learned Senior Standing Counsel (Central) for the respondents. During the course of hearing the area of dispute has been narrowed to the question whether was there any criminal case against the applicant on the date of passing of the order of suspension, because admittedly the cause for the suspension as mentioned in the impugned order was "Whereas a case against Sri Santosh Kumar Mohanty, Senior Auditor in respect of criminal offence is under investigation".

5. It has been contended by Mr. Rath that an investigation into commission of criminal offence must be deemed to be pending from the day the police received the First Information Report and registered a case and in support of this contention of his he has cited a decision reported

in AIR 1955 SC 196 (H.N. Rishbad v. State of Delhi). There can be no quarrel over the proposition that a case would be under investigation the moment the police records the F.I.R. under section 154 of the Code of Criminal Procedure but for suspending a person a mere investigation is not sufficient; what is further required is that the investigation must have been against the suspended person in respect of any criminal offence. Mr. Rath submits that the applicant was named as S.K. Mohanty in the F.I.R. and the Police started investigating ^{- into -} ~~with~~ the case. This is a contention which is without substance. It is pertinent to note that after registering the case, the Police arrested some persons other than the applicant. From the copy of the charge-sheet it would be found that in it there is no mention of the name of the applicant either in the column meant to note the names of the persons sent up for trial or in the column for persons not sent up for trial. Therefore, there can be no doubt that the Police never thought prior to 26.6.1989 of investigating into the fact if the present applicant committed any criminal offence. Even though the Accountant General might have meant the applicant by mentioning the name "Sri S.K. Mohanty" what the Accountant General really meant is not relevant but what is relevant is whether the Police were investigating into a criminal offence against the applicant. The Accountant General did not purport to suspend under Rule 10(1)(a) of Central Civil Services (Classification, Control & Appeal) Rules, 1965 and clause (aa) of the said sub-rule (1) is not applicable. As has been shown above, clause (b) could not also apply as there was no case against the applicant under investigation

at the date of passing the order of suspension, the result is that the order of suspension was void from its inception. A void order can not be validated by subsequent events. Hence the order of suspension of the applicant has to be quashed.

6. The last of the contentions advanced on behalf of the respondents is about the bar of Section 20 of the Administrative Tribunals Act, 1985. Doubtless, under Rule 23(1) of the C.C.S. (C.C.A.) Rules an appeal lies against an order of suspension, but the bar under section 20 of the Administrative Tribunals Act is not absolute, in certain circumstances an application may be admitted even before the remedy of appeal is exhausted. In the instant case the applicant has averred in para 4(J) of his application that he on 9.8.1989 applied for undergoing a training for appearing at the final examination for Section Officer grade but due to the impugned order of suspension he was not allowed to undergo the training and he was deprived of an opportunity to appear at the said final examination. On reading paragraph 10 of the counter it would be manifest that there is practically no denial of this assertion of the applicant. There can be no doubt about the anxiety of a person to qualify himself for a promotional post as early as possible, therefore this is a case where urgent remedy is necessary, hence, the ordinary rule of exhausting the remedy of appeal need not be insisted upon. For this reason we are not able to accept the contention of Mr. Rath that the application is not entertainable under section 20 of the Administrative Tribunals Act.

7. In the result, the impugned order of suspension

dated 29.7.1988 is quashed being void ab initio and the period of absence of the applicant from duty from that date should be treated as duty. No costs.

PSH 18/1/1990
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Member (Administrative)



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Member (Judicial)