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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATIONS NO: 400 AND 401 OF 1989

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Date of decision: February, 19, 1991.

Harihara Hati : Applicant

Versus

Union of India and others : Respondents

AND

Narayan Panda : Applicant

Versus

Union of India and others : Respondents

For the applicant : M/s Pradipta Kumar Mohanty  
Indrajit Mohanty, Advocates

For the Respondents : M/s C.V.Murty, C.M.K.Murty,  
No. 1 and 3) Advocate

For the Respondents Nos(2&4): Mr. S.K.Rath, Advocates.

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CORAM:

THE HONOURABLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HONOURABLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

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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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JUDGMENT

~~N. SENGUPTA, MEMBER (J) :~~ ~~MAN:~~ Since the facts material for both the cases are the same and the reliefs claimed by the applicants in the two cases are practically identical, by this common judgment both the cases are being disposed of.

2. The applicant in Original Application No. 400 of 1989 is Harihara Hati and the one in No. 401 of 1989 is Narayana Panda. The case of the applicants is that both of them are in service in the Regional Research Laboratory(R.R.L.), Bhubaneswar. In the R.R.L. at Bhubaneswar two Associations of Employees have been formed, namely the Regional Research Laboratory Employees Association(RRLEA) and the other Scientific Works Association(SWA). The Members of RRLEA are the clerical and other Class-III staff such as Mechanic, Helper etc. and Class IV employees of RRL. The applicants in OA 400 of 1989 was the Joint Secretary and the applicant of OA 401 of 1989 was the General Secretary of RRLEA in August, 1989. The SWA comprises of all the

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Scientist employee in the RRL, Bhubaneswar. Between the two employees Association since some time prior to August, 1989 there were differences. On 13.4.1989 the Silver Jubilee Ceremony of RRL, Bhubaneswar was celebrated but the members of SWA abstained from taking part in the celebrations alleging that their demands had not been fulfilled but the members of RRLEA took part in the function. On 7.8.1989 the applicant in OA 401 of 1989 along with other members of RRLEA, was sitting in the Departmental Canteen and was sipping tea. At that time Dr. Ashutosh Parida and Dr. B.S.Acharia, both scientists, came and Dr. Parida began abusing Narayana Panda in filthy language and gave a slap on the head of Shri Panda. Dr.Acharia also hurled some abuses. Of this incident a report was made to the Authority by the members of the RRLEA and a counter report by the two scientists.

After that, Respondent No.2 constituted a fact finding committee to make a preliminary enquiry about the allegations made by the two sides, the persons constituting the committee did not include any member

*Ans/*  
*Ans/*

of R.R.L.E.A. For this reason a representation was made but it yielded no result. Thereafter two Disciplinary Proceedings were started against the applicants and a scientist working in Delhi has been appointed as the Enquiry Officer. No disciplinary proceeding has been initiated, for the incident of 7.8.1989 either against Dr. Parida or against Dr. Acharya. The applicants have alleged that besides reporting the incident to the Respondent No.2, the two scientists filed FIRs in Sahidnagar Police Station of Bhubaneswar and the police took up investigation. This substantially represents the case of the applicants. The applicants have prayed for quashing the disciplinary proceedings alleging that they have been discriminated against in as much as no such proceeding has been started against the two scientists and as in the preliminary enquiry no person of RRLEA was associated and the enquiry officer being himself a scientist is bound to be biased against them (the applicants), and further that the two disciplinary proceeding against the applicants should be stayed as the criminal case is

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pending against them.

3. The written reply of the Respondents is mostly a denial of the allegations contained in the application, they need not be set out in detail and the stand of Respondents can be found from the submissions made on their behalf at the hearing. The - Learned -  
Hearing Counsel for the parties were heard in part on 16.10.1990 but Mr. Mohanty has not appeared on 19.2.1991, the adjourned date of hearing, so we have proceeded to dispose of on merits after perusing the relevant documents and the averments made in the applications and the counters filed by the Respondents in the two cases and also hearing Mr. Murty, learned Counsel for the Respondents.

4. As has been stated above, the applicants have prayed for a stay of the disciplinary proceedings against them on the ground that a criminal case on the self same allegations is pending against them. It has been ruled by the Hon'ble Supreme Court that there is

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no legal bar for simultaneous proceeding of a disciplinary action by the Department and a criminal case but if the two cases are grounded on the same set of facts in appropriate cases an order of stay of the Departmental action may be passed. We, for the present, would assume that the FIR and the Memorandum of charge contain the self same allegations of facts but that would <sup>be of -</sup> not avail to the applicants.

In order to apply that dictum of the Honourable Supreme Court, it is necessary that the criminal case must be pending; from the averments made in paragraph-4(R) of the application, it would be clear that no charge sheet had been submitted by the police atleast till the date of filing of the applications and no information has been given to this Tribunal as to if infact any charge sheet has been placed by the police in the criminal Court competent to take

*Neeraj Singh* cognizance of the offences alleged to have been committed.

At the stage of investigation, a case cannot be said to be pending, a criminal case pends only from the date the competent magistrate, takes cognizance of the offence or offences. Therefore, in the circumstances

of the instant case it cannot be said that a criminal case is pending against the applicants. Therefore, this ground in support of the prayer for stay of disciplinary proceeding is not tenable.

5. The allegations of discriminatory behaviour may now be examined. The applicants have alleged that only they are being proceeded against in disciplinary proceedings whereas the two scientists involved in the incident have been let off without a proceeding against them. This ground is based on a misconception of law. This Tribunal is not to act as an appellate or revisional authority to direct initiation of the disciplinary proceeding as at times is done in a criminal case where a Magistrate refuses to take cognizance of an offence. The disciplinary authority is the best judge to decide who is to be proceeded against in a disciplinary proceeding. This Tribunal can interfere only when there is no material for a disciplinary proceeding or the proceeding is started in violation of principles of natural justice. Undoubtedly there was an incident in which the

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applicants were involved, so it can not be said that there was no basis for a disciplinary proceeding.

6. The grievance that in the fact finding enquiry no person belonging to RRLEA was associated is also equally untenable. By making a preliminary fact finding enquiry, the disciplinary authority desires to know whether it would be proper to proceed against an employee or not, of course any material so collected behind the back of the charged official cannot be utilised unless they are properly proved during the stage of enquiry.

7. The last of the grounds alleged in the applications for quashing the disciplinary proceeding is the appointment of a scientist as the Enquiry Officer. From the averments in the applications it would be clear beyond doubt that the employees in RRL belong to either to one or the other of the rival factions or association and in the scheme of the RRL the staff is to constitute of scientists and other belonging to Class-III or Class-IV. In the Departmental

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proceeding it is not possible to appoint an outsider as the enquiry officer, therefore, the best that the authorities could do was to appoint some person who is unconnected with the two rival factions at Bhubaneswar. Such being the position, we would say that the appointment of a scientist working in Delhi cannot be said to be improper. We would make it clear that we do not mean to say that if after the conclusion of the enquiry any adverse order is passed against the applicants, they will be precluded from proving any bias of the Enquiry Officer against them.

8. In view of what has been stated above, we would direct that the disciplinary proceedings should be concluded within four months from the date of receipt of a copy of this judgment.

9. This case is accordingly disposed of leaving the parties to bear their own costs.

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VICE CHAIRMAN

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MEMBER (JUDICIAL)



Central Administrative Tribunal,  
Cuttack Bench, Cuttack. K. Mohanty.