

(7)

Central Administrative Tribunal,
Cuttack Bench, Cuttack

Original Application No.118 of 1990

Date of decision: November 3, 1992.

Bijay Chandra Nayak Applicant

-Versus-

Union of India and others Respondents

....

For the Applicant : M/s Devanand Mishra, Deepak Mishra,
R.N.Naik, A.Deo and B.S.Tripathy,
Advocates.

For the Respondents : Mr. Aswini Kumar Mishra,
Sr. Standing Counsel (Central)

....

CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
AND

THE HONOURABLE MR. K.J.RAMAN, MEMBER (ADMINISTRATIVE)

....

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

....

JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of

the Administrative Tribunals Act, 1985, the Petitioner challenges the order passed by the competent authority contained in Annexure 2 dated 1st February, 1990 placing the Petitioner under suspension on a contemplated proceeding .

2. Shortly stated the case of the Petitioner is that while he was working as Postal Assistant a First Information Report was lodged alleging that the Petitioner had committed offences under section 409 and 467 of the Indian Penal Code which forms subject matter of G.R. Case No.15 of 1985. The learned Sub-Divisional Judicial Magistrate, Rairangpur convicted the petitioner and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 1000/-. The matter was carried in appeal to the Court of Sessions Judge, Mayurbhanj which ~~formed~~ ^{formed} subject matter of criminal appeal No. 59 of 1989. Simultaneously , the Petitioner was informed that an enquiry is to be conducted against the Petitioner and the Petitioner was called upon to have his say in the matter and the Petitioner was suspended on 1st February, 1990 which is under challenge.

3. In their counter, the Opposite Parties maintained that the petitioner was rightly suspended and the Opposite Parties, have a right, under the law, to initiate Departmental Proceeding. Therefore, the order of suspension should not be unsettled - rather it should be sustained.

4. We have heard Mr. B.S.Tripathy learned counsel appearing for the Petitioner and Mr. Aswini Kumar

Mishra, learned Senior Standing Counsel(Central) for the Opposite Parties. Mr. Tripathy learned counsel for the Petitioner invited our attention to a judgment of the Hon'ble High Court of Orissa and that of the Hon'ble High Court of Allahabad in which it has been stated that the presumption of innocence still continues even during the pendency of a criminal appeal. The facts are clearly distinguishable and therefore, we feel reluctant to accept this contention. The Criminal Appeal was filed in the year 1988. We are very sure that within the period of four years, the criminal appeal must have been disposed of by the Learned Sessions Judge of Mayurbhanja. No information could be given to us as to whether the criminal appeal is still pending or has been disposed of and if so what is the result. Therefore, we are unable to accept the submission of the learned counsel for the Petitioner that presumption of innocence still continues. Conceding for the sake of argument that presumption of innocence still continues till final disposal of the criminal case both in the appellate stage and ^{revision} ~~reviewing~~ stage, ^{by} ~~in~~ The undisputed position is that the disciplinary authority can initiate a departmental proceeding while pending disposal of a criminal case. This settled position of law was rightly and fairly not disputed at the Bar. The disciplinary authority has equally a right to suspend its ^{one of} ~~one~~ ^{own} of his employees when a disciplinary proceeding is contemplated. Therefore, we find no illegality to have been committed by the disciplinary authority in placing the petitioner under suspension, on a contemplated proceeding but

we do hereby note that the petitioner was placed under suspension with effect from 1st February, 1990. Therefore, the Democle's sword should not have been made to hang on the petitioner for such a long period. The learned counsel for the petitioner could not tell us as to whether the skeleton enquiry has been disposed of or not. In case it has not been disposed of it should be disposed of within 60 days from the date of receipt of a copy of the judgment after giving a personal hearing to the Petitioner.

5. Thus, the application is accordingly disposed of. There should be no order as to costs.

687/92
MEMBER (ADMINISTRATIVE)

3-XI-92
VICE CHAIRMAN

Central Admn. Tribunal
Cuttack Bench, Cuttack,
K. Mohanty 3.11.1992.

