CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 312 of 1992

Date of decision: 24.4.92.

Nikunja Kishore Parija : Applicant

-Versus-

Union of India and others : Respondents

For the applicant : M/s P.Palit,
B.Mohanty,
D.Mohanta,
M.Mohapatra,
D.P.Dhalsamant,
Advocates.

For the Respondents : Mr. K.C.Mohanty, Government Advocate for the State of Orissa.

CORAM:

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

A N D

THE HONOURABLE MISS. USHA SAVARA, MEMBER (ADMINISTRATIVE)

J U D G M E N T

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash Annexure-A/1 dated 25.6.1990 placing the Petitioner under suspension and further more to direct the Respondents to allow the applicant to immediately resume his duties and also to pay all the monthly emoluments to which the applicant is entitled to during the period of suspension.

2. Shortly stated, the case of the applicant is that initially the applicant was a Member of the Orissa State Police Force and in course of time he was promoted to the cadre of Indian Police Service and had served in the State of Orissa in various capacities. While the applicant was serving as the Assistant Inspector General of Police(Planning) at Cuttack), on 12.5.1990 some officers of the Vigilance Department conducted a raid in the official residence of the applicant at Cuttack(Tulasipur) as a result of which some house-hold articles, ornaments, cash etc. were seized. On 17.5.1990 the official residence of Superintendent of Police-Dhenkanal(which had not been vacated by the applicant) was also searched and some properties were seized. Subsequent to the search and seizure, the Vigilance Department registered a case bearing Vigilance P.S. Case No. 40 of 1990 dated 19.6.1990 on an allegation that the applicant was in possession of assets disproportionate to his known sources of income. Thereafter the Secretary to the Government of Orissa in Home Department, Respondent No.3, vide his letter No. IPS/ 2-6/90-3174/P dated 25.6.1990 conveyed the order of the Government placing the applicant under suspension. Thereafter the applicant had made a representation to the Chief Minister of Orissa to cancel the order of suspension. It did not yield any fruitful result. According to the applicant as yet neither any Departmental proceeding has been initiated against him nor charge-sheet has been filed in the above mentioned vigilance

case. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Respondents maintained that as per Rules the applicant has been placed under suspension in view of the fact that a criminal case involving moral turpitude was initiated against the applicant and the impugned order was passed in public interest. In such circumstances suspension order should be allowed to remain in force till the finality of the criminal proceeding. In a crux, it is maintained that the case being devoid of merit, is liable to be dismissed.

4. We have heard Mr. P. Palit learned Counsel for the Applicant and Mr. K.C.Mohanty learned Government Advocate for the State of Orissa(Respondent Nos.2 to 5).

5. At the outset we must say that we do not feel inclined to express any opinion regarding the averment finding place in the pleadings of both the parties to the effect thatthe applicant was not in possession of assets disproportionate to his known sources of income because it involves the merits of the case which is under investigation and ultimately to be decided by the Learned Special Judge under the Prevention of Corruption Act if chargesheet is filed. Any observation made by us may embarrass or adversely affect either parties and therefore we refrain ourselves from expressing any opinion on those issues. We say so because some arguments were advanced touching the merits of the case under investigation.

6. Before we deal with the merits of this case, we would like tod ispose of the preliminary objection raised by the learned Government Advocate who submitted that in view of the provisions contained in Section 20 of the Administrative Tribunals Act, 1985, this applicationis not maintainable as no appeal has been preferred to the appropriate authority against the order of suspension.

Section 20 of the Administrative Tribunals Act, 1985 runs thus:

> "(1) A Tribunal shall not'ordinarily'admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. xx xx "

The word 'ordinarily' has a significance. The above quoted provision does not wholly create a bar for the Bench to admit a case even though other remedies have not been availed.This question came up for consideration in the case of K.C.Pattanayak V. State of Orissa and Others reported in ATR 1987(2)CAT 401. In the said case one of us (Acharya J.) was a party to the judgment. While expressing opinion on the maintainability of the application filed by Shri Kishore Chandra Pattanayak, I.P.S. for not having exhausted other remedies, the word 'ordinarily' was interpreted according to the dictum laid down by Their Lordships of the Hon'ble Supreme Court in the case of Kailash Chandra V. Union of India reported in AIR 1961 SC 1346.At paragraph 8 of the judgment, Their Lordships have been pleased toobserve:

> " 'Ordinarily' means in the larger majority of cases but not 'invariably'".

7. This eventually means that the Tribunal may make a departure from the general rule in appropriate cases. Legislature has also vested discretion with the Tribunal while using the word 'ordinarily' in section 20 of the Act. The Legislature has intended that as a general rule every case cannot be thrown out merely on the ground that other remedies have not been exhausted. There might be cases where emergent situation may need immediate interference and therefore, the Parliament in its wisdom has intentionally used the word 'ordinarily' having in its mind that there may be cases in which an aggrieved person should not wait to exhaust other remedies but would prefer to immediately seek for the interference and protection of a Court. Therefore, each case has to be decided according to its own facts and circumstances.

8. The next important question arises for consideration as to what would be an emergent situation? In answer to this question we have no hesitation in our mind to say that if immediate relief is not given to the person aggrieved, which he is entitled under the law to so receive, then either substantial loss or irreparable injury would be caused to him. Applying this test to the facts of the present case one has to look into the emergent situation existing in the present case. Here is a member of the Indian Police Service who has been placed under suspension and he feels aggrieved in regard to the order of suspension which according to the applicant is not justifiable in the eyes of law. The immediate relief asked for

if permissible to be granted under the law to the Petitioner should be awarded to him and if denied to him merely on the technical ground then it may cause substantial loss and irreparable injury which would clearly come within the wholesome principle "Justice delayed Justice denied and Justice buried". Therefore, keeping in view the peculiar facts and circumstances of this case, it cannot but be said that emergent situation exists in this case. Considering all these aspects the Bench by its order dated 12.9.1991 admitted the case for hearing thereby waiving the bar created under section 20 of the Act.

9. Apart from the above, it is found from the records that the applicant had made a representation to the Chief Minister, Orissa for revoking the order of suspension which formed subject matter of Annexure-A/2. Later the applicant also addressed a representation to the Chief Secretary to the Government of Orissa, making the same prayer. This finds place in Annexure-5. The fact of filing of these representations is admitted in the counter. Of course, under the Rule 16 of the All India Services (Discipline & Appeal) Rules, 1969 an appeal has to be preferred to the Central Government against the order of suspension made or deemed to have been made under Rule 3. The applicant cannot directly send the appeal memo to the Central Government. It has to be routed through proper channel and therefore, the applicant had vide Annexure-A/5 addressed a representation to the Chief Secretary to the Government of Orissa, Bhubaneswar. Be that as it may, at the cost of

repetition ,we may say that there was an emergent situation prevailing in this case for which the Bench had waived the Bar created under section 20 of the Administrative Tribunals Act, 1985 and therefore, we find no merit in the aforesaid contention of the learned Government Advocate.

10. Now we would proceed to consider the justifibility or otherwise in keeping the applicant under suspension till now.

11. While opening his arguments Mr Palit learned Counsel for the Petitioner submitted on instructions that the Director General of Police had recommended to the Government to revoke the impugned order of suspension and that the investigation of Vigilance case has practically reached its finality because State Government has requested the Central Government to accord sanction of prosecution under section 197 Cr.P.C. We had called upon the learned Government Advocate to take necessary instructions and tell us the correctness or otherwise of this statement of fact.The Learned Government Advocate filed a Memo stating that the Review Committee consisting of the Chief Secretary to Government of Orissa, Secretary to Government in Law Department and Director-Cum-I.G. of Police, Vigilance, Orissa as members looked into the case of the present Petitioner relating to suspension and ultimately did not recommend the release of the Petitioner from suspension.Further more it was stated in the said memo that the investigating agency has completed the investigation and the State Government has moved the Central Government to accord sanction for prosecution of the Petitioner under Section 197 Cr.P.C.

12. All Civil Servants are placed under suspension because if he or she is allowed to still remain in office there

may be a chance for the concerned Officer to exercise his influence and make attempt to either tamper with the evidence or create a hurdle in the fair investigation. Therefore, to enable the concerned authority to conduct the investigation smoothly so as to establish the allegations against the Civil Servant, such officer is placed under suspension. This court is now required to address itself as to whether in the facts and circumstances of the present case the order of suspension should be allowed to continue, keeping inview the fact that the investigation has already been completed and the only matter which remains for completion of investigation, according to sanction under section 197 Cr.P.C. for prosecution of the Petitioner. Incidentally, it may be mentioned that the order of suspension contained in Annexure-1 was passed on 25th June, 1990. The Government of India in the Ministry of Home Affairs and Ministry of Personnel have issued several instructions on the subject of suspension. One such instruction is contained in Office Memorandum dated 14th September, 1978 issued by the Ministry of Home Affairs which runs thus:

> "Inspite of the instructions referred to above, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension, while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It is, therefore impressed on all the authorities concerned that they should scrupulously observe the timelimit laid down in the preceding paragraph and review the cases of suspension in all cases is really necessary. The authorities superior to the disciplinary authority should also give appropriate directions to the disciplinary authority keeping in view the provisions contained above."

13. A case similar to the present case came up for consideration before the Central Administrative Tribunal,

Principal Bench. It is reported in 1989(10)Administrative Tribunal Cases 75(C.L.Bakolia vs. Union of India and others). Hon'ble Mr.Justice Madhava Reddy,Chairman speaking for the Bench observed that since no charge sheet was filed either in Criminal Court or any disciplinary proceeding was initiated after Bakolia was placed under suspension and due to the inaction of the competent authority in this regard, and after taking notice of the aforesaid instructions of the Ministry of Home Affairs, the Tribunal quashed the order of suspension. Similar view was also expressed int he case of Brajakishore Singh vrs. Government of Bihar and others by the Central Administrative Tribunal, Patna Bench reported in 1990 (12) Administrative Tribunals Cases 501. In this case, Officers of the Central Bureau of Investigation had raided the house of Brajakishore and had seized some properties. A case under section 5(2) of the Prevention of Corruption Act was registered and thereafter Brajakishore was placed under suspension. Such order of suspension was also quashed onthe ground that it was violative of the guidelines laid down by the Central Government and State Government that the Civil Servants shall not be placed under suspension for a protracted period.Besides the above, there are pronouncements of similar nature in several other judgments of different Benches of the Central Administrative Tribunal which need not be quoted in extenso, but the views of High Courts on this subject should also be mentioned. In the case of J.S.Chauhan vrs. State of U.P. reported in 1978 S.L.J.421,High Court of Allahabad observed

as follows:

> " If a Government servant is placed under suspension for an indefinite period of time, it would certainly be against public interest and is liable to be struck down".

In the case of State of Madras Vs. K.A.Joseph reported in AIR 1970 Madras Their Lordships observed as follows:

> " There is a very clear and distinct principle of natural justice that an officer is entitled to ask if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence and that charges should be framed against him within a reasonable period of time. If such a principle were not to be recognised, it would imply that the Executive is being vested with a total arbitrary and unfettered power of placing its officer under disability and distress for an indefinite duration".

14. All the above mentioned observations of different Benches of the Central Administrative Tribunal and the High Courts have received approval of Hon'ble Supreme Court in the case of O.P.Gupta Vs. Union of India and others reported in AIR 1987(4)SCC 328. At paragraph 15 of the judgment Their Lordships were pleased to observe as follows:

> " An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of suspension as explained by this Court in Khem Chand V. Union of India is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance- which is normally less than the salary instead of the pay and allowances which he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the Departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. In the case of Board of Trusteees of the Port of Bombay V. Dilip Kumar Raghavendranath Nadkarm the Court held that the expression 'life' does not

> merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. The condition of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceeding should be concluded with reasonable diligence and within a reasonable period of time. If such a principles were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officer under disability and distress for an indefinite duration".

15. We also feel tempted to mention another judgment of importance having a great bearing to cases of suspension of Government servants and i.e. the case of P.P.Biswas Vs. State of West Bengal reported in 1980(1)SLR 611. In this case, the Petitioner before the Hon'ble HighCourt of Calcuta was a member of Indian Police Service posted as Superintendent of Police, Midnapur. Since Mr. Biswas did not carry out the orders of the Government to hand over charge of the office of the Superintendent of Police, Midnapur despite repeated directions having been given by the Government, Mr. Biswas was placed under suspension. He invoked the extra ordinary jurisdiction of the High Court praying to quash the order of suspension. Hon'ble Mr. Justice Sabyasachi Mukherjee of Calcutta High Court (as my Lord, the Chief Justice of India then was) at paragraph 20 of the judgment was pleased to observe as follows:

> " Discipline really generates from a sense of justice based on confidence. If a Government servant feels that before his case is heard he is put under suspension unnecessarily then in my opinion the morale is more shaken and indiscipline more engineered than by creating an atmosphere that the Government servants are given to understand that while the Government will not permit insubordination and disobedience of the Government order but the penalty will be visited only

after due process of law and without victimization. If that sense can be created and that confidence generated, in my opinion, then the true basis and foundation of discipline would be laid within the administration who will be incharge of the maintenance of the law and order. Therefore, the very fact that the Petitioner was being charged with insubordination and yet allowed to continue in service pending the enquiry in my opinion, would generate more confidence in the administration and create more sense of discipline among the Police force who, as I said must be maintained ina highly disciplined manner if law and order in this country has to be maintained."

16. This view was adopted and followed inthe case of Abullaish Khan V. The State of West Bengal and Others decided by the Calcutta Bench in which one of us(namely Acharya J.) was a party to the judgment and following the dictum laid down by Hon'ble Mr. Justice Sabyasachi Mukherjee, the suspension order of Abullaish Khan was quashed. The case of Abullaiash Khan has been reported in ATR 1986(2)CAT 97.

17. Applying the principles laid down in the above mentioned judgments to the facts of the present case, we are convinced that there is no scope for the petitioner at all for the present to either tamper with the evidence or create any hurdle in the matter of smooth investigation of the case, and that there is no chance of causing disappearance because of the evidence over which the prosecution proposes to rely upon to bring home the charge as all the evidence has been collected. Nothing remains to be collected.

18. In their counter, the Opposite Parties have nowhere averred that there is any chance or scope for the Petitioner to tamper with the evidence even after closure of the investigation. The only averment in regard to this aspect

finds place in paragraph 7 of the counter in which it has been stated that in the case of Babulal Vs. State of Harayana reported in 1991(1)SLJ 221, it has been held that if a person is suspended on the ground of pendency of Criminal proceeding against him he is entitled to be reinstated in service only on being acquittal of the Criminal charges. We have very carefully gone through the judgment pronounced by the Hon'ble Supreme Court in the case of Babulal. No where we find in the judgment that Their Lordships have observed that a person suspended on the ground of pendency of criminal proceeding against him, is entitled to be reinstated in service after acquittal of the criminal charge. Babulal was placed under suspension and a criminal case was initiated against him. Babulal's services was terminated before the disposal of the criminal proceeding which would be evident from paragraph 7 of the judgment which runs thus;

> " The pivotal question that poses itself for consideration before this court is firstly whether during the period of suspension in view of the criminal proceeding which ultimately ended with the acquittal an order of termination can be made against the appellant by the respondents No.2 terminating his adhoc services without reinstating him as he was acquitted from the charge u/s 420 IPC and secondly whether the impugned order of termiation from his service can be made straightaway without reinstating him in the service after he earned acquittal in the criminal case and thereafter without initiating any proceeding for termination of his service as the impugned order of termination was of penal nature having civil consequences.xx x"

19. Such being the limited question for consideration by Their Lordships it was further observed in the same paragraph

> " xxx. It is the settled position of law that the appellant who was suspended on the ground of pendency of criminal proceeding against him, on being acquitted of the criminal charge is entitled

> to be reinstated in service.His acquittal from the criminal charge does not debar the disciplinary authority to initiate disciplinary proceedings and after giving an opportunity of hearing to the appellant pass an order of termination on the basis of the terms and conditions of the order of his appointment. xx xx".

20. Again we repeat thatthere has been no observation made by Their Lordships in the judgment that the order of suspension could be revoked only after the criminal proceeding is finalised. Such an averment, in our opinion finds place in paragraph 7 of the counter by not going through the entire judgment but by noting the placitum which runs thus:

> " A person suspended on the ground of pendency of criminal proceeding against him is entitled to be reinstated in service on being acquitted of the charge".

21. There has been a clear misreporting in the placitum which does not find place in the judgment which is nothing but misleading. We are sorry to note that the officer who drafted this counter did not care to go through the judgment and an attempt was made to mislead the Court.In such circumstances, the ground taken in paragraph 7 of the counter is not borne out from the judgment and therefore it has no application to the principle advanced in the counter. We also feel persuaded to state here that the orders of suspension which were under challenge in the casesof C.L.Bakolia , 1987(10)ATC 75,D.Mangaleswaran Vs. Commissioner of Incometax, 1987(2)ATC 828, Brajakishore Singh, (1990)(12)ATC 501 and P.Satya Harnath 1988(7)ATC 548 were cases before the Courts resulting from initiation of criminal proceeding under section 5(2) of Prevention of Corruption Act on an allegation that the Petitioners in those cases were in

possession of assets disproportionate to their known sources of income. In all those cases orders of suspension were quashed because of the delay in submission of the charge-sheet. Therefore, it is futile to contend that the order of suspension passed in connection with the initiationof criminal proceedings cannot be challenged and should not be revoked till the finalisation of the criminal case.

22. Last but not the least, the State Vigilance authorities had conducted a raid in the house of one Superintending Engineer of the Public Works Department and had recovered certain incriminating articlesfor which a criminal proceeding under the Prevention of Corruption Act was registered against the said Officer and he was placed under suspension. Because of the delay in filing of the charge-sheet, the Officer had moved the State Administrative Tribunal, to quash the order of suspension which formed the subject matter of O.A.1253 of 1991. A Division Bench of the State Administrative Tribunal quashed the order of suspension because of the delay in submission of the charge-sheet and for other reasons. The State of Orissa carried the matter in appeal to the Hon'bleSupreme Court which formed the subject matter of S.L.P.(Civil) No.19528 of 1991. Their Lordships of the Supreme Court dismissed the special leave petition. Though strictlyspeaking the order passed by the Hon'ble Supreme Court may not

come within the purview of Article 141 of the Constitution but it can safely be presumed that the view of the State Administrative Tribunal quashing the order of suspension because of the aforesaid reasons has been upheld by the Hon'ble Supreme Court and we are all bound by the views expressed by the Hon'bleSupreme Court.

23. It was next contended on behalf of the Opposite Parties that investigation of cases under section 5(2) of the Prevention of Corruption Act would take long time for completion and on that account the order of suspension should not be quashed. We do contribute to the view that investigation into disproportionate asset cases would take more time than investigation of cases of murder or any other offence of the like nature. But that doesnot necessarily mean that an unfettered discretion has been vested on the investigating agency to complete investigation of such cases according to its will and pleasure. Needless for us to mention that the Criminal Procedure Code is being amended from 1955 and 1974 onwards to expedite the investigation in criminal cases and its disposal incriminal courts. It is for the first time in the amended Cr.P.C. of 1974 Section 468 was introduced prescribing limitation for taking cognizance of certain types of offences. An offence under section 5(2) P.C.Act does not come within the ambit of Section 468 Cr.P.C. but by introducing such a provision, intentionof the Parliament is to give speedy justice to an accused in the criminal investigation and trial. Be that as it may, the fact that the investigation

is already completed and sanction of the Central Government for prosecution under section 197 Cr.P.C. is awaited, and that there being no scope for the Petitioner to exercise his official influence for tampering of evidence or causing any evidence to disappear, we do not find any justifiable reason to keep the petitioner out of service thereby not only causing hardship to the Petitioner but it will unnecessarily tell upon the State Exchequer to pay to the Petitioner subsistence allowance without rendering any service to the State. Hence we find that continuance of the order of suspension of the Petitioner would not be justifiable both on questions of fact and law. Hence we do hereby quash Annexure-1 placing the Petitioner under suspension and direct his reinstatement into service forthwith.

23. Thus, the application stands allowed leaving the parties to bear their own costs.

24.4.92

MEMBER (ADMINISTRATIVE)

VICE CHAIRMAN

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