

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK .

ORIGINAL APPLICATION NO: 357 OF 1991.

Date of decision: November 26, 1991.

CHANDRA SEKHAR DANI Applicant

-Versus-

State of Orissa and Others Respondents.

For the applicant : M/s. S. S. Das, B. K. Panda, Advocates.

For the Respondents : Mr. K. C. Mohanty, Government Advocate (State)

C O R A M :

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

1. Whether Local papers may be allowed 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, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the remarks passed against the Petitioner contained in Annexure-1 dated 31st July, 1990.

2. Shortly stated, the case of the Petitioner is that he is a member of Indian Forest Service now functioning as the Chief Conservator of Forest (Wild Life) and Chief Wild Life Warden posted at Bhubaneswar. Previous to the posting of the Petitioner as Chief Conservator of Forest, the Petitioner was functioning as the Managing Director, Orissa Forest Corporation Ltd., and he joined the said post on 20th December, 1989. It is stated in Annexure-1 (which is a D.O. letter bearing No. 18339/FFAH dated 31st July, 1990) addressed to the Petitioner by Shri P.K. Mohanty, I.A.S., Commissioner-cum-Secretary to Government, Forest, Fisheries and Animal Husbandry Department conveying the orders of the Government reprimanding the Petitioner for his negligence in duty and lack of supervision. This order was passed by the Government alleging that one Shri Ghanashyam Pradhan, Sub-Divisional Manager, converted 4,36,000 bundles of bamboo and transported 3,10,000 bundles. The shortage was 1,26,000 bundles and it is further alleged that he had misappropriated

an amount of Rs. 2.52 lakhs due to the negligence in discharging ~~the~~ of duty and lack of supervision by the Petitioner and also the Petitioner failed to take any action against Shri Pradhan. Hence this application has been filed with the aforesaid prayer.

3. In the present case counter has not been filed for the reasons best known to the Opposite Parties. This case was admitted on 10th October, 1991 and time was granted to the Opposite Parties to file counter within four weeks. The matter again came up on 7th November, 1991 and on the prayer made by the Learned Government Advocate time for filing counter was extended to 22nd November, 1991 and it was directed that the matter should come up for hearing on 25th November, 1991. On the said date i.e. 25th November, 1991, learned Government Advocate (State) was on accommodation and therefore, the case was called today for hearing. Today, the learned Government Advocate (State) renewed his prayer for time to file counter and he had strenuously urged for time being granted. This was opposed by the learned Counsel appearing for the Petitioner as it is apprehended that the case of promotion of the Petitioner may come up during the 1st week of December, 1991 and this matter may stand on the way of the Petitioner for promotion. Ordinarily, I might have been reluctant in accepting this submission made on behalf of the Petitioner but after perusing the records and reasons assigned hereunder, could not
persuade me to accept the submission of Learned Government

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Advocate (State) to grant time to file counter which stood rejected.

4. I have heard Mr. S.S.Das learned Counsel for the Petitioner and Mr. K.C.Mohanty learned Government Advocate (State) at ^a considerable length. Before I express my opinion on the contention advanced by Counsel for both sides, in order to appreciate the arguments advanced on behalf of both sides, it would be convenient and profitable to quote the contents of Annexure-1:

"I am desired to refer to the letter No. 12521/T(sisc.)-70/90/91, dated 23-6-90 of the Orissa Forest Corporation Limited in connection with the Unstarred Assembly Question No.1309 put by Sri Jogendra Behera, MLA and to say that it has come to the notice of Government that Shri Ghanashyam Pradhan, Sub-Divisional Manager, converted 4,36,000 bundles of bamboo and transported 3,10,000 bundles. The shortage was 1,26,000 bundles. He charged vouchers for 4,36,000 bundles and thereby misappropriated an amount of Rs. 2.52 lakhs. It would have been appropriate on the part of the Orissa Forest Corporation to lodge criminal case against the delinquent besides framing draft charges to draw up disciplinary proceedings. Although the Principal Chief Conservator of Forests, Orissa was requested in letter No.3758, dated 19-2-1990 of the Orissa Forest Corporation to place Shri Pradhan, Forest Ranger under suspension, no charges have been framed and furnished to him so far. You have failed to take action against the delinquent Officer promptly.

Government have therefore, been pleased to reprimand you for your negligence in duty and lack of supervision. Government hope this will not recur in future."

5. Vide Annexure-2, the Petitioner had made

representation to the Government for expunction of these

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remarks on the ground that the alleged occurrence took place ~~which~~ prior to the joining of the Petitioner as the Managing Director of Orissa Forest Corporation. In Paragraph-5 of the Petition, it is averred as follows:

"That it is manifest from Annexure-2 that the applicant joined as Managing Director Orissa Forest Corporation Limited on 20th December, 1989 and the incident relates to 1988-89 bamboo crops and the then Managing Director did not take any action against the Sub-Divisional Manager (Muniguda) South Sub-Division under Rayagada Division for alleged misappropriation of money even though this matter was reported to the then Managing Director by General Manager, Berhampur".

It is further mentioned as follows:

"In this representation, (Annexure-2) the applicant has also mentioned that he had requested the Principal Chief Conservator of Forest vide letter dated 19.2.1990 to place Shri Ghanashyam Pradhan (S.D.M.) under suspension for serious irregularities committed by him. xx xx xx The General Manager, Berhampur was requested to submit the draft charges against Shri Pradhan vide Office letter No.5593 dated 24.3.1990 and he submitted the draft charges vide his letter No.4832 dt. 19.7.1990 after issue of several reminders".

6. All these facts mentioned in the Petition have not been contradicted by the Opposite Parties and therefore, with least hesitation in my mind, I find that the Petitioner had joined the Post of Managing Director, Orissa Forest Corporation on 20th December, 1989 and keeping in view the contents of Annexure-1, read VN

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with the uncontradicted statement made in the Petition the alleged occurrence took place much prior to the joining of the Petitioner as Managing Director, Orissa Forest Corporation. It is far beyond my comprehension as to how the Petitioner can be held responsible either directly or indirectly in regard to an irregularity/ illegality said to have been committed by one of his Sub-ordinate when the Petitioner (higher officer) was not functioning in the Office in question. Therefore, there is substantial force in the contention putforward on behalf of the Petitioner that such remarks have been communicated to the Petitioner without application of mind. It is further found that later the Petitioner has also taken all steps by addressing letters to different authorities to place the delinquent officer under suspension and therefore, by no stretch of imagination it can be said that the Petitioner was negligent in discharge of his duty and that there was lack of supervision on his part. The remarks under challenge ~~are~~ ⁱⁿ passed without application of mind.

7. In such circumstances, the adverse remarks contained in the last paragraph of Annexure-1 passed against the Petitioner are quashed and to be treated as non-existent.

VN

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



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26.11.91
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K. Mohanty/26.11.91