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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO:358 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 reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? NO
3. Whether His Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K. P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the adverse remarks contained in Annexure-1 dated 7th July, 1990 passed against the present Petitioner.

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. Before the posting of the Petitioner as Chief Conservator of Forest, he was functioning as Managing Director, Orissa Forest Corporation with effect from 20th December, 1989. Vide Annexure-1 dated 7th July, 1990, Shri P.K. Mohanty, I.A.S., Commissioner cum-secretary to the Government of Orissa in the Department of Forest, Fisheries and Animal Husbandry addressed a letter to the Petitioner conveying the orders of the Government cautioning the Petitioner and expecting the Petitioner to improve in future. This adverse remarks is sought to be challenged . Hence this application has been filed with the aforesaid prayer.

3. This case was admitted on 10th October, 1991 calling upon the Opposite Parties to file counter within four weeks. The matter again came up on 7th November, 91 and on the prayer made by the learned Government Advocate

(State) time was allowed till 22nd November, 1991 to file

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counter and it was further directed ^{that} the case should be heard on 25th November, 1991. On the said day the Learned Government Advocate (State) was on accommodation and therefore, the case is listed for hearing today. The learned Government Advocate (State) again prays for an adjournment to file counter which was seriously opposed by the Learned Counsel for the Petitioner on the ground that the Petitioner expects his case to be considered for promotion during the 1st week of December, 1991 and these remarks may stand on the way of the Petitioner and therefore, the case needs expeditious disposal. Apart from the above objection raised on behalf of the Petitioner, I do not feel it just and expedient to grant any further adjournment because sufficient opportunity was given to ^{the} ~~Opp's~~ to file Counter for filing of counter. Therefore, the prayer of the learned Government Advocate (State) was rejected.

4. I have heard Mr. S.S.Das learned Counsel appearing for the Petitioner and Mr. K.C.Mohanty learned Government Advocate (State) at ^a great length. In order to appreciate the contention raised on behalf of both sides, it would be convenient and profitable to quote the contents of Annexure-1 dated 7th July, 1990 forming subject matter of letter No.15828. It runs thus;

"I am directed to say that serious financial irregularities have been committed in the sale of bamboo in Potero Division, Malkangiri of Orissa Forest Corporation Limited in gross

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violation of existing Rules and Regulations while giving tenders. This has caused huge loss to the tune of Rs. 2,61,000/- to the Orissa Forest Corporation Ltd. as a result of your lack of supervision.

In another instance Divisional Manager, Potteru Division, Malkangiri virtually leased out a Saw Mill owned by the Orissa Forest Corporation to a Private party in utter disregard to all rules and regulations. This was also due to your lack of supervision.

Government have therefore, been pleased to caution you and expect you to improve in future."

5. A representation ~~vide~~ Annexure-2 was filed by the Petitioner which is dated 16th July, 1990 stating the reasons for which he should not be held liable for the alleged irregularities because the alleged occurrence is said to have been taken place much prior to 20th December, 1989 and further more it is asserted that no such Saw Mill is in existence in Potteru Division and therefore the question of leasing out the said Saw Mill does not arise.

6. In paragraph-5 of the Petition, it is stated as follows:

"It is manifest from Annexures-2 and 3 that the applicant joined as Managing Director, Orissa Forest Corporation Ltd., on 20th December, 1989 and the incident alleged was previous to his taking charge of the office.

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It is worth while to notice that the applicant has not ratified any sale of either bamboo or timber farless he has given any instructions to any General Manager for ratification of sale causing loss to the Corporation".

It is further stated as follows:

"In these letters (Annexures-2 and 3) the applicant has also mentioned that the General Manager's of the concerned zone are empowered and competent to sell bamboo and timber according to the sale policy of the Corporation. In this back-ground the Managing Director is in no way responsible for the sale ratified by the General Managers of concerned Zones".

It is further stated as follows:

"It is rather strange as to how the applicant is to be cautioned when the matters occurred prior to his coming to the office and when the sale was ratified by the G.M.".

7. In pragraph-7, it is further stated as follows:

" It is submitted by this applicant that besides other facts mentioned above that Potteru Division was under the Administrative control of General Manager, Bolangir Zone of the Corporation and Sri A. Nath, I.F.S., General Manager, Bolangir Zone had conducted/ratified the sale of bamboos in Potteru Division causing loss to the Corporation. Sri Math was placed under suspension for causing loss to O.F.C., Ltd. in sale of bamboo in Potteru Division vide FF & AH Department order No.17701 dated 25.7.1990 but for the reasons best known to the authorities, Govt. were pleased to order cancellation of the suspension order of Sri A. Nath vide order No.8617/F & E dated 1st May, 1991".

It is further stated as follows:

"Further, Govt. even dropped the article of charges together with the statement of imputation of misconduct levelled against Shri A. Nath vide Office order No.8624/F&E dated 1.5.1991".

VN

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8. All these facts mentioned in the Petition and the representation made by the Petitioner (Annexure-2) have not been contradicted by the Opposite Parties and therefore, with least hesitation ~~in~~ my mind, I find that the alleged occurrence took place much prior to the date of joining of the Petitioner as Managing Director of 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~~ occurred much prior to 20th December, 1989 as from the averments in the pleadings and the Annexures 1 and 2 it is crystal that the alleged occurrence took place in the year 1989. I am of further opinion ^{in the contention} that there is substantial force ~~of~~ of Mr. Das that issuance of the cautioning order and the observation of the Government directing the Petitioner to improve in future is without application of mind. To add to all this one can find that the alleged irregularities/illegalities for which article of charges were framed against Mr. A. Nath and placing him under suspension was recalled by the Government and ultimately the charges were dropped. This fact also ^{for} ~~caused~~ uncontradicted. The Petitioner has given the details of the order number and the letter number which cannot possibly be an imaginary one. Once, the Government has recalled the suspension order and has ordered dropping ^{up} the ~~up~~ articles of charge against Shri Nath, I failed to

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understand as to what ^{done} ~~to~~ have been done by the Petitioner
who ~~has~~ ^{has} no right to sit ^{by} over the judgment of the
Government.

9. In such circumstances, I am of opinion that there is no justifiable reason to caution the Petitioner and to direct him to improve in future. Therefore, the contents of Annexure-1 cautioning the Petitioner and expecting the Petitioner to improve in future is hereby quashed and to be treated as nonexistent and consequently, this cannot stand as a bar while considering the case of the Petitioner for promotion.

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



26/11/91
26-11-91
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VICE CHAIRMAN

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