

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.78 of 1991.

Date of decision : December 24, 1991.

Birendra Kumar Shukla ... Applicant.

Versus

State of Orissa and others ... Respondents.

For the applicant ... M/s. J. Das,
B. S. Tripathy, K. P. Misra,
B. K. Sahoo, S. Mallik,
Advocates.

For the respondents 1, 2 & 4 .. Mr. K. C. Mohanty,
Government Advocate (STATE)

For the respondent No. 3 Mr. S. Biswal,
Addl. Standing Counsel
(Central)

C O R A M :

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

A N D

THE HONOURABLE MR. J. C. ROY, 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 ? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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(24)

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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 applicant prays to quash the order suspending him from service on a contemplated proceeding dated 13th March, 1991 contained in Annexure-1 along with other ancillary reliefs.

2. Shortly stated, the case of the applicant is that the applicant is a member of the Indian Forest Service and while he was functioning as Working Plan Officer, Bhanjanagar, in the district of Ganjam, he was placed under suspension on a contemplated proceeding contained in Annexure-1 which is sought to be quashed.

In their counter the Opp. parties maintained that

the competent authority has passed the order of suspension and therefore the case of the applicant that the impugned order had been passed by an authority not having been vested with powers under the law to suspend the applicant from service is baseless and devoid of merit. The allegations against the applicant being of very serious nature, he was rightly suspended from service which should not be unsettled - rather it should be sustained.

4. We have heard Mr. Jayant Das, learned counsel for the applicant and Mr. K. C. Mohanty, learned Government Advocate (State) appearing for the State of Orissa at a considerable length.

5. Before dealing with the questions of law mooted at the Bar, we think it appropriate to state, at this stage, that we do not feel inclined to look into the questions of fact relating to the seriousness of the charges and express any opinion as the charges are yet to be established. ~~respectably because~~ Expression of any opinion on questions of fact relating to charges may embarrass the concerned authority or may adversely affect the interest of either parties. We, therefore, refrain ourselves from expressing any opinion on ~~the~~ questions of fact relating to the seriousness of the charges. However, the charge may be serious but a person aggrieved is entitled to protection if the law travels in his favour. Needless to be stated that the well established principle is that even a prostitute is entitled to protection of law if an allegation is made by her against a particular person for having committed an offence

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under section 376 of the Indian Penal Code. Keeping in view this long well established principle of law we would now proceed to consider the questions of law agitated at the Bar regarding the legality or otherwise of the impugned order of suspension.

6. It was submitted on behalf of the applicant by Mr.J.Das that without obtaining the approval of Hon'ble Chief Minister, the applicant has been suspended from service which is illegal and inoperative keeping in view the provisions contained under the Orissa Government Rules of Business. Before we deal with the provisions contained in the Rules of Business in this regard, it should be noted that the Rules of Business of the Government of Orissa issued under Rule 14 of the Rules have been framed under Article 166 of the Constitution of India which was not disputed before us - rather admitted.

7. It was also admitted before us that Hon'ble Chief Minister is the Minister in charge of the General Administration Department. So far as allocation of business of different departments are concerned, in the first schedule of the Rules of Business, 'All matters affecting the Indian Services and Posts' have been allocated to the General Administration Department. By the words "all matters affecting the Indian Services and Posts", necessarily All India Services (Discipline & Appeal) Rules is included. Therefore, it was contended by Mr.Das that admittedly no orders having been obtained from Hon'ble Chief Minister (who is admittedly the

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Minister incharge of the General Administration Department), the order of suspension is illegal and inoperative under the law. While repudiating the aforesaid contention of Mr.J.Das, the learned Government Advocate Mr.Mohanty emphatically relied upon the provisions contained under Rule 14(1) (xxx). Rule 14(1) runs thus:

" The following classes of cases shall be submitted to the Chief Minister before the issue of orders, namely:- "

" Sub-rule xxx -

All cases in which the conduct of Officers of the All-India Services and State Services is involved and which the Secretary to Government in the Department concerned considers to be of sufficient importance to be submitted to the Chief Minister."

Relying on the above quoted provisions, it was contended by learned Government Advocate that it was well within the powers of the Secretary to the Government in Forest Department to order suspension of the applicant but as an abundant precautionary measure the Secretary endorsed the file to the Minister incharge for approval and therefore, it was contended that neither the impugned order is illegal nor without jurisdiction. The provisions relating to sub-rule xxx quoted above, completely goes against the contention of learned Government Advocate. The only interpretation which could be made is as follows:

While classifying the cases which are to be submitted to the Chief Minister before issue of any orders it has been stated against sub-rule xxx that all cases in which the conduct of Officers of the All India Services and State Services is involved shall be submitted to the Chief Minister for necessary orders and in addition to the same the Secretary to the Government in the concerned

Department considers any other matter to be of sufficient importance ^{then} only the such matters shall be submitted to the Chief Minister for orders which eventually means that matters other than conduct of Officers of All India services and State Services are to be submitted to the Chief Minister and this part alone has been left to the discretion of the Secretary ^{of} to the concerned Department. The mandatory provision is that matters relating to conduct of Officers of All India Services has to be submitted to the Chief Minister. This does not arise only the case of General Administration Department in respect of which the Chief Minister is the Minister in charge but this is applicable to all the Departments of the Government in which conduct of All India Officers is connected. Therefore, taking into consideration the provisions contained in the first schedule relating to allocation of business in regard to different Departments, all matters affecting the India Services and Posts read with the provisions contained in Rule 14(1), sub-rule (xxx), there is no escape from the conclusion that approval of Hon'ble Chief Minister has to be taken in respect of the proposal for suspending the applicant from service. Admittedly, no orders to the above effect having been taken from Hon'ble Chief Minister, it cannot but be held that there is a violation of mandatory rules framed under Article 166 of the Constitution of India which has a statutory force. In support of this contention Mr. Das, learned counsel appearing for the applicant relied upon a judgment reported in AIR 1952 Orissa 200 (Shyamghan Ray and

others v. State). Ofcourse this ^{case} was one under the Preventive Detention Act, 1950 in which Their Lordships were dealing with a habeas corpus petition. The Secretary to the Government of Orissa in the Home Department had passed the detention order which was under challenge before the Hon'ble High Court of Orissa and while challenging the same it was contended before Their Lordships that approval of the Hon'ble Chief Minister not having been taken, the orders passed by the Secretary to Government of Orissa, Home Department was without jurisdiction and hence illegal and inoperative under the law. Their Lordships while considering the provisions contained in Rule 14 of the Rules of Business, of the Government of Orissa along with subsidiary Rules of Business-Rules(2)-8(b)(iii), at paragraph 5 were pleased to observe as follows:

" There is also another difficulty in the reliance on Rule 2 of the Subsidiary Rules. This rule is in terms, subject to the provisions of Rules 6, 8 and 14 below. Clause (iii) of Sub-Rule(b) of Rules 8 below taken with the said (b) indicates that all cases which affect or are likely to affect the peace and tranquility of the State have to be submitted to the Governor and the Chief Minister, presumably, before the issue of the orders. If, as we are 'prima facie' inclined to think the orders of preventive detention fall under C.(iii) of Sub-rule(b) of Rule 8 of the Subsidiary Rules, it would follow that even though the Secretary deals with such cases they have to be submitted to the Chief Minister and Governor, and since there is no proof of the same, the orders are invalid. "

In paragraph 6 of the same judgment it has been observed by Their Lordships that since the rules of business has been framed under Article 166 of the Constitution of India it to be strictly interpreted and there cannot be any delegation of powers to the Secretary by the Chief

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Minister. Of course in the present case there is no pleading of the parties that there was a delegation of powers and therefore, we are not called upon to express any opinion on this issue but following the principles laid down by Their Lordships in the above judgment, it cannot but be held that the rules of business has to be strictly interpreted and matters covered under Rule 14 sub-rule(xxx) are to be placed before the Hon'ble Chief Minister for orders. In the present case, the proposal for suspending the applicant admittedly not having been placed before the Hon'ble Chief Minister for orders the impugned order of suspension is bound to be held as illegal and inoperative and accordingly we hold that the impugned order of suspension is illegal, void ab initio and hence inoperative.

Before we part with this case we would fail in our duty if we do not mention another important fact. Long after the arguments were concluded, learned Government Advocate submitted a file bearing No.IF(Con) 39/89 read with IF(Con)17/90 including the minutes at page-65/n and filed a memo stating that the approval of the Chief Minister in regard to the suspension of the applicant had been obtained. On a careful perusal of the minutes one would find that a proposal was given to serve certain additional charges on the applicant in furtherance of the allegations levelled against the applicant and pursuant thereto it was incidentally mentioned in the notesheet that previous to [redacted] date the applicant had been placed under suspension. [redacted] no stretch of imagination one can conceive that this

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proposal was given for obtaining approval of the Hon'ble Chief Minister to the order of suspension already passed by the Minister-in-charge/Secretary to the Government.

Conceding for the sake of argument that post-facto approval of the Hon'ble Chief Minister was obtained in regard to the order of suspension already passed against the applicant it is worthwhile to note that the proposal in question was initiated on 7.9.1991 by the Additional Secretary of the Forest Department and it was endorsed to the Chief Minister by the Additional Chief Secretary on 13.9.1991 and the Hon'ble Chief Minister approved the proposal on 18.9.1991. The present case was filed on 19.3.1991 challenging the illegality of the order of suspension dated 13.3.1991. In our considered view, the irregularity/illegality already committed cannot be cured by the post-facto approval if accorded by the Hon'ble Chief Minister, since the irregularity/illegality cuts ^{at} short ₂ the route of the matter. We may repeat that just because there is a reference in the note-sheet regarding the previous order relating to the suspension of the applicant it is far beyond our comprehension that the minutes related to approval of the order of suspension by the Hon'ble Chief Minister. Another important fact cannot go unnoticed. Our conclusion relating to the fact that the matter involving the conduct of an Officer belonging to the Indian Forest Service ^{is} bound to be placed before the Hon'ble Chief Minister for orders stands fortified by the opinion expressed by the Additional Secretary to the Forest Department. At paragraph 4 of his note dated

7.9.1991 finding place at page 65/n, which runs thus :

" Approval of the Chief Minister may kindly be obtained as it relates to the conduct of an officer belonging to All India Service."

If it was found to be necessary to obtain the approval of the Hon'ble Chief Minister for incorporating the additional charges in the pending departmental proceeding, we fail to understand as to how it was not thought fit and proper, as per rules, to obtain the approval of the Chief Minister in regard to the same Officer belonging to the Indian Forest Service relating to the proposal of the departmental authorities to place the applicant under suspension. Matters quoted above, firmly militates against the concept and contention of learned Government Advocate (State) appearing for the State of Orissa that the Secretary to Government of Orissa in the Forest Department and the Minister in charge of the Forest Department were competent to pass orders suspending the applicant who is a member of the Indian Forest Service.

8. In view of the aforesaid discussions, without least hesitation in our mind we would hold that the impugned order of suspension contained in Annexure-1 bearing No. IF(Con)17/90(Pt) 5184 /F&E dated 13.3.1991 placing the applicant Shri Birendra Kumar Shukla under suspension is not sustainable and hence quashed.

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

MEMBER (ADMINISTRATIVE)

VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack.
December 24, 1991/Saranghi.

