(39)

26

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

O.A.No.611 of 1992.

DATE OF DECISION: July 9 ,1993.

Sangram Keshari Mishra ... Applicant.

Versus

State ofOrissa and others ... Respondents.

(For Instructions)

1. Whether it be referred to the Reporter or not ? Yes

2. Whether it be circulated to all the Benches of the Central Administratige Tribunal or not ? Yes.

(H.RAJENDRA PRASAD)
MEMBER(ADMINISTRATIVE)
9.7.93.

9.7.93.
(K.P.ACHARYA)
VICE-CHAIRMAN.

(48)

27

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK.

Original Application No.611 of 1992.

Date of decision : July 9 ,1993.

Sangram Keshari Mishra ... Applicant.

Versus

State of Orissa and others ... Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy,&
P.Panda, Advocates.

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

For the respondent No.3 ... Mr.U.B.Mohapatra,
Addl. Standing Counsel
(Central).

C O R A M:

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

A N D

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN)

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J U D G M E N T

K.P.ACHARYA, V.C., The applicant is a member of the Indian Administrative Service and has been allotted Orissa Cadre. From August, 1990 to July, 1992, the applicant was posted as Project Officer, District Rural Development Agency, Koraput and thereafter in August, 1992 the

applicant had been transferred and had joined the post of Project Co-ordinator and Ex-officio Joint Secretary to Government of Orissa, Panchayat Raj Department, Bhubaneswar. Some allegations were levelled against the applicant touching his integrity. A departmental proceeding was contemplated against the applicant and he was placed under suspension by the Government of Orissa. Hence, this application has been filed to restrain the Respondents namely State of Orissa represented through its Chief Secretary; Union of India represented through its Secretary, Department of Personnel and the Collector and District Magistrate, Koraput(Respondent No.2) to make the order of suspension operative and to declare that the impugned decision in placing the applicant under suspension is without jurisdiction, bad and illegal and violative of Articles 14, 16 and 300A of the Constitution of India with certain ancillary benefits which are not relevant for the present purpose.

2. Counter has been filed on behalf of Respondent No.1(State of Orissa). Therein it is stated that the case should be in limine dismissed because the applicant has not complied with the provisions contained in Section 20 of the Administrative Tribunals Act, 1985. It is furthermaintained that the order of suspension does not infringe the fundamental rights of the applicant and therefore, Articles 14, 16 and 300 A of the Constitution of India are not attracted.

It is also maintained by the Respondents that Rule 3(1) of the All India Services(Discipline and Appeal) Rules, 1969 authorises the Government to place its Officer under suspension on a contemplated proceeding where it is found by the Government that the officer deserves to be suspended especially when there are allegations of misappropriation to the tune of rupees fifty lakhs against the applicant and that a criminal case has been initiated against the applicant vide Koraput Town P.S.Case No.127 dated 25th October, 1992 under section 365/342/506 of the Indian Penal Code alleging that the applicant had abducted the complainant Shri K.C. Patnaik while on duty, wrongfully confined him, caused physical assault, pressurising him to change his version before the Special Audit Party and threatened him with a knife and caused mental torture to him on 23rd October, 1992 in the Railway Guest House, Koraput. It is also maintained that the applicant had taken some four numbers of Steel Almirahs of the Government from Koraput while he was transferred to Bhubaneswar. The matter is under enquiry and therefore, for the interest of the administration and for the interest of justice, the applicant has been placed under suspension which should not be unsettled- rather it should be sustained.

3. We have heard Mr.Deepak Misra, learned counsel appearing for the applicant, Mr. K.C.Mohanty, learned Government Advocate for the State of Orissa and Mr. Uma Ballav Mohapatra, learned Additional Standing Counsel

(Central) at a considerable length.

4. No doubt, Mr. Uma Ballav Mohapatra learned Addl. Standing Counsel(Central) had argued on behalf of the Respondent No.3 urging to sustain the order of suspension but in our opinion, the real contesting rewspondent is Respondent No.1. Respondent No.2 i.e. the Collector Cum District Magistrate, Koraput has no role to play in the matter of suspension of the applicant which is apparent from the evidence on record.

5. Learned Government Advocate(State) confined his arguments to the objection taken in the counter that the case is not maintainable as the applicant rushed to the Tribunal before exhausting other remedies as contemplated under Section 20 of the Administrative Tribunals Act, 1985 and that the order of suspension was necessary in the interest of administration and in the interest of justice to be passed which should not be quashed - rather it should be sustained. We propose to confine ourselves to the above mentioned arguments and we would also express our opinion on a legal question mooted at the Bar which has arisen during the pendency of the application as to whether the order of suspension is liable to be declared invalid because charge-sheet was not submitted within fortyfive days from the date on which the applicant was placed under suspension. Incidentally it may be mentioned that the order of suspension has been passed on a contemplated proceeding.

6. We propose to first deal with the contention

31

(447)

of the learned Government Advocate(State) appearing forthe Respondent No.1 regarding the provisions contained inSection 20 of the Administrative Tribunals Act, 1985 which provides as follows:

> "(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 before this Bench in the case of K.C. Pattanayak versus State of Orissa and others reported in ATR 1987(2) CAT 401. This aspect was also considered by this Bench in Original application No.524 of 1991 (Baidyanath Jena vrs. Union of India and others) disposed of on 13th October, 1992 and in Original Application No.312 of 1991(Nikunja Kishore Parija vrs. Union of Indiaand others) disposed of on 24th April, 1992. In all these judgments, one of us(Acharya,J) was a party to the judgments. Shri Kishore Chandra Pattanayak, a member of the Indian Police Service hadbeen superseded and not promoted to the rank of Director General cum Inspector General of Police. Without exhausting other remedies available to him Shri Pattanayak filed an application under section 19 of the Administrative Tribunals Act, 1985 toquash the order of promotion granted to the Respondent in the said case. M/s.B.N.Jena

and N.K.Parija are also members of the Indian Police Service and without exhausting other remedies, they had filed their applications with a prayer to cancel/ quashthe order of suspension passed against them for being in possession of assets disproportionate to their known sources of income. While expressing opinion, on the maintainability of the applications filed by each of the officers mentioned above, 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 vrs. Union of India and others reported in AIR 1961 SC 1346. At paragraph 8 of the judgment, Their Lordships have been pleased to observe as follows:

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

7. This eventually means that theTribunal may make a departure from the general rule in appropriate cases. Parliament in its wisdom has also vested discretion with the Tribunal while using the word'ordinarily' in Section 20 of the Act, with the intention that every and each case, as a general rule, 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 word'ordinarily' has been provided in the Statute.

8. The next important question that arises for consideration is 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, if he is entitled to 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 Administrative Service who has been placed under suspension and he feels aggrieved in that regard. The applicant in the present case would be deprived of his pay and allowances and would be given a paltry amount towards his subsistence allowance. That apart, the embarrassment which the officer would face, is most important. Filing a representation, against the order of suspension, before the Administrative authority, would no doubt, take a good bit of time for disposal and during the intervening period, the applicant would suffer from the difficulties stated above. Therefore, the applicant decided to approach the portals of the Court without exhausting other remedies and rightly because of the emergent situation existing in this case. Considering all these aspects, it was held that the bar created under section 20 of the Administrative Tribunals Act, 1985, would have no application to the peculiar facts and circumstances of the cases mentioned above and at first we felt inclined to apply the same principle to the peculiar facts and circumstances of this case but while preparing the judgment of this case, a judgment of the Hon'ble Supreme

Court came to our notice which is reported in 1993 AIR(SCW) 362(S.A.Khan vrs. State of Haryana and ohhers). In the said case a member of the Indian Police Service serving as Deputy Inspector General of Police under the Government of Haryana was placed under suspension. He filed a petition under Article 32 of the Constitution of India praying before the SupremeCourt to quash the orde of suspension on various grounds including malafide etc. Their Lordships were pleased to hold that Articles 14 and 16 of the Constitution were not attracted and fundamental right was not infringed and statutory appeal was not availed. Hence the petitionw as dismissed. Provisions contained under section 20 of the Administrative TribunalsAct,1985 were not placed before Their Lordships because it had no relevanteto the petition under Article 32 of the Constitution and therefo-re there was no occasion for Their Lordships to interpret and express an opinion on the word' ordinarily' and the discretion vested with the Tribunal in this regard; yet the latest pronouncement of the Supreme Courtbeing that the statutory appeal not having beem availed by t he petitioner, the courts should not entertain the appli-cation has a binding authority over all subordinate courts including theTribunal a nd we are bound by it. In the premises of the aforesaid facts and circumstances we would hold that the applicant not having availed the statutory remedy avai lable to the applicant in preferring an appeal, this application is not maintainable so far as

the order placing the applicant under suspension is concerned but a mixed question of law and fact having arisen during the pendency of the application andconsiderable emphasis having been laid over that aspect, the Bench is required to address itself on the said question of law and express its opinion.

9. We would now proceed to discuss the question of law mooted at the Bar. Mr.Deepak Misra, learned counsel appearing for the applicant contended that the order of suspension is liable to be quashed because provisions contained under Rule 3(1) of the All India Services(Discipline and Appeal) Rules, 1969 have not been complied. Rule 3(1) of the All India Serviees(Discipline and Appeal)Rules, 1969 provides as follows:

> " Suspension(1), If, having regard to the circumstances in any case, and where articles of charge havebeen drawn up, the nature of the charges, Government of a State of the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending, that Government may-
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> (a) If the member of the Service serving under that Government, pass an order placing him under suspension, or,
> (b) If the member of the Service is serving under another Government request that Government to place him under suspension,
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> pending the conclusion of the disciplinary proceedings and the passing of the final order in the case :
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> Provided that , in cases, where there is a deference of opinion,-
>
> (i) between two State Governments, the matter shall be referred tothe Central Government for its decision;
> (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail :

Provided further that, where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of fortyfive days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government."

10. Before we proceed further, admitted case of the parties, before us, is that, charge-sheet has been delivered to the applicant in the disciplinary proceeding on 1st March, 1993. The further admitted case of the parties is that the relevant file containing the allegations against the applicant was placed before the Chief Minister on 2nd December, 1992 and on the same day, the Chief Minister, ordered that the officer (namely the applicant) be placed under suspension. Vide Memo No. 41441 dated 3rd December, 1992, the order of suspension was issued. It was served by affixture at the residential quarters of the applicant on 16th January, 1993. Therefore, the moot question that needs determination as to the date from which 45 days should be computed namely whether the date on which the officer was placed under suspension or from the date of issue or from the date of service of the suspension order over the officer by affixture. In order to determine, this important issue, it should be borne in mind that the Statute provides that the suspension order shall not be valid unless, before the expiry of a period of forty-five

days from the date from which the member is placed under suspension. (Emphasis is ours) either the disciplinary proceeding is initiated or the order of confirmation by the Central Government is passed. Though the learned Government Advocate for the State of Orissa, Mr.Mohanty and Mr.Uma Ballav Mohapatra, learned Additional Standing Counsel(Central) strenuously urgedbefore us that period of 45 days should be computed with effect from 16th January, 1993 which is the date of service of the order of suspension on the applicant by affixture, but we are unable to subscribe to this view because the Statute provides that the disciplinary proceeding must be initiated within 45 days with effect from thedate on which the applicant was placed under suspension and in case the charge-sheet is not filed within 45 days from such date, report must be submitted to the Central Government explaining the reasons for which disciplinary proceeding could not be initiated against the delinquent officer and on receipt of the confirmation from the Central Government, the charge-sheet should be filed within a period not exceeding 45 days. It is specifically provided in the proviso to Rule 3(1) that the order of suspension shall be invalid if within a period of 45 days, the disciplinary proceeding is not initiated. Though we have held that 45 days has to be computed from the date on which an Officer is placed under suspension yet a judgment of the Madhya Pradesh High Court reported in 1986(1)SLJ 132(Onkar Chandra Sharma vrs. State of M.P. and others) cannot go unnoticed. The petitioner before

the Madhya Pradesh High Court was posted as Deputy Inspector General of Police, Special Armed Force, Jabalpur. The petitioner was placed under suspension with immediate effect vide order dated 22.3.1983. The first charge-sheet was not served within 45 days but it was served on the 46th day i.e. on 5.5.1993 and the second charge sheet was served on the petitioner on 25.10.1983. The High Court held that disciplinary proceeding if not initiated within 45 days from the date of suspension order, the whole of the enquiry which is sought to be built up around the petitioner like a house of cards collapses and ultimately, the suspension order becomes invalid in law. Therefore, in the present case, we have least iota of doubt to hold that within 45 days from the date on which the officer was placed under suspension the disciplinary proceeding would either be initiated or report has to be sent to the Central Government for confirmation and within 45 days therefrom the proceeding must be initiated failing which the suspension order is bound to be declared as invalid. Admittedly, a report was not been sent to the Central Government within 45 days. Now it remains to be considered what is the deemed date of initiation of the disciplinary proceeding. In the case of K.V.Jankiraman vrs. Union of India and others reported in AIR 1991 SC 2010 Their Lordships of the Hon'ble Supreme Court have held that the date of initiation of the disciplinary proceeding is the date of delivery of the charge-sheet to the delinquent officer. In the case of Delhi Development Authority vrs. H.C.Khurana reported in

Judgments Today 1993(2)SC 695 Their Lordships of the HOn'bleSupreme Court while considering the observations of Their Lordships in the case of K.V.Jankiraman(supra) came tothe conclusion that the date of issue of the charge-sheet is the date of initiation of the disciplinary proceeding. At paragraph 15 of the judgment,Their Lordships havebeen pleased to observe as follows:

> " Themeaning of the word' issued', on which considerable stress was laid by the learned counsel for the respondent, has to begathered fromthe context inwhich it is used. Meaning of the word' issue' given in the Shorter Oxford English Dictionary include : ' to give exit to; to send forth, or allow to pass out; to let out.... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a charge-sheet, therefore means its despatch tothe government servant, and this act is completely the moment stepsare taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service onthe government servant not being necessary part of its requirement. This is the sense in which the word' issue' was used in the expression 'chargesheet was already been issued to the employee', in para 17 of the decision in Jankiraman".

11. The chargesheet has beenissued by theSpecial Secretary to the Government of Orissa inGeneral Administration Department tothe applicant vide Memo No.5036 dated 1st March,1993. We have already held that 45 days has to be computed fromthe date onwhich the applicant was placed under suspension and therefore, the disciplinary proceeding should have been initiated on or before January 15,1993. If the date(2nd December, 1992) is excluded and period of 45 days will be computed from 3rd December,1992 then the disciplinary proceeding should havebeen initiated on or before January 16,1993.

On 4th December, 1992 order of suspension was stayed by the Bench. This was vacated on 23.12.1992 and again on 4th January, 1993 the order of suspension was stayed and the stay order stood vacated on 15th January, 1993. Under such circumstances, the stay ordér was in force from 4.12.1992 to 22.12.1992 and then again from 4.1.1993 to 15.1.1993 covering a period of 30 days. This period of 30 days has to be added and therefore, the disciplinary proceeding should havebeen initiated on or before 14th February, 1993 or a report should havebeen submitted to the Central Government for confirmtion. Admittedly, the Government of India hasbeenmoved on 1st March, 1993. That means 14 days after the expiry of 45 days. We have purposely added 30 days more (the period during which the stay order was inforce) in order to give maximum advantage to Respondent No.1. Such being the situation, there is no escape from the conclusion that the disciplinary proceeding not having been initiated within the period fixed in the proviso to Rule 3(1), the order of suspension is bound to be held to be invalid.

12. At this point it is also important to note that in the case of S.A.Khan vrs. Stateof Haryana(supra) charge-sheet was not issued or delivered within 45 days and still then Their Lordships held that the petitioner before Their Lordships was guilty of not having availed th statutory remedy available to him. So far as this aspect is concerned the facts are clearly distinguishable from the facts of the case at hand. In the case of S.A.Khan

non-filing of charge sheet within 45 days had accrued to the benefit of the petitioner before petition under Article 32 of the Constitution was filed and Their Lordships haveheld that before approaching the Supreme Court this aspect of thecaseof the petitioner shouldhavebeen placed before the appellate authority for redressal of his grievance. Such step not having been taken petition under Article 32 of the Constitution was notmaintainable but in the present case, the questionof non-submission of charge-sheet within 45 days arose during the pendency of the original application and therefore there was no scope for the applicant to take recourse to and exhaust other statutory remedies available to him. Therefore, in our opinion, the principles laid down by Their Lordships in the case of S.A.Khan(supra) is clearly distinguishable and not applicable to the issue at hand. In the circumstances stated above, we are of the view that the order of suspension, due to the aforesaid facts and circumstances of the case, especially due to the violation of themandatory provisions quoted above, cannot butbe declared as invalid and accordingly, we do hereby hold that the order of suspension is invalid.

13. Apart from the question of law discussed above, one cannot brush aside the questions of fact. An officer is placed under suspension with the sole intention that keeping him out of office would enable the authorities to conduct a clean and fair investigation to ascertain the truth or otherwise of the allegations levelled against

the concerned officer. The evidence on thebasis of which it is proposed to bring home the charge against the delinquent officer has been collected. There is no further scope for the delinquent officer to manipulate the evidence or cause any obstruction for conducting a fair investigation. Therefore, no fruitful purpose would be achieved by keeping the officer under suspension any longer. 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. "

This was in accordance with the instructions issued by the Government of India in the Ministry of Home Affairs vide Office Memorandum dated 14th September, 1978 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 time limit laid down in the prescribed paragraph and review the cases of suspension all cases is readly necessary. The authorities superior to the disciplinary authority should also give appropriate directions to the disciplinary authority keeping in view the provisions contained above. "

43

56

14. In the case of State of Madras vrs. K.A.Joseph reported inAIR 1970 Madras 155, 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 distressfor an indefinite duration."

15. In the case of O.P.Gupta vrs. Unionof India and others reported in1987(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 vr. Union of India is that he continues to be a member of theGovernment 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 theDepartmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. In the case of Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni 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 conditions 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 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 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. "

16. We are of opinion that principles laid down by Their Lordships in the above quoted judgments apply in full force to the facts of the present case.

17. Apart from the above, it should be noted that in the charges framed and delivered to the applicant, there is no mention of any misappropriation of Government money. The first charge framed against the applicant is that he had unauthorisedly taken away six almirahs from Koraput while he was transferred to Bhubaneswar and the second charge is that the applicant had abducted an employee namely Shri K.C.Patnaik and had pressurised and physically assaulted him to change his statement before the Audit party. If the serious allegations regarding misappropriation wouldhavebeen the subjectmatter of charge we might have taken a different view but in view of the aforesaid nature of charges, we are of opinion that the applicant should not be allowed to remain under suspension any further.

18. Last but not the least, we feel tempted to quote the observations of Hon'ble Mr.Justice Sabyasachi Mukherjee of Calcutta High Court(as my Lord, the Chief Justice of Indian then was) in the case of P.P.Biswas

Vrs. State of West Bengal reported in 1980(1) SLR 611. In this case, the applicant before the Hon'ble High Court of Calcutta was a member of the Indian Police Service posted as Superintendent of Police, Midnapur. Since Mr. Biswas did not carry out the orders of the Government to hand over the charge of the office of the Superintendent of Police, Midnapur, despite repeated directions havingbeen given by the Government, Mr. Biswas was placed under suspension. He invoked the extraordinary jurisdiction of theHigh Court praying toquash the order of suspension. Hence Lordship observed 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 willbe visited only after due process of law and without victimisation. 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 in charge 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 inmy opinion, would generate more sense of discipline among the police force who as I said must be maintained in a highly disciplined manner if law and order in this country has to be maintained. "

19. In view of the facts and circumstances discussed above, we are of opinion that both the questionsof law andfact, theorder of suspension passed against applicantis

46

(59)

no longer sustainable and therefore, the order of suspension passed against the applicant is hereby quashed.

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

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MEMBER(ADMINISTRATIVE)
9.7.93.

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 9 ,1993/Sarangi.