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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

Original Application No. 59/1992

Date of Decision : September 12, 1997.

Arun Kumar Upadhyaya S/o Late Sh.Chandra Sekhar Upadhyaya,  
Sr.Staff Officer, Home Guards, Orissa, Office of the Director  
General and Special Inspector General, Home Guards and Fire  
Services, Orissa, At/PO/District-Cuttack.

..... Applicant.

Vs.

1. Union of India represented by Secretary, Department of Home Affairs, Ministry of Home Affairs, New Delhi.
2. Government of Orissa, through the Chief Secretary to Government, General Administration Department, At/PO-Bhubaneswar, District-Puri.
3. Secretary to Government of Orissa, Home Department, At/PO-Bhubaneswar, District-Puri.

..... Respondents.

...

For the Applicant

Vs..... Mr.Devanand Misra,  
Mr.B.S.Tripathy,  
Mr.R.N.Naik &  
Mr.A.Deo

For the Respondents

..... Mr.K.C.Mohanty,  
Government Advocate(State)  
and Mr.U.B.Mohapatra,  
Additional Standing Counsel  
(Govt. of India).

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C O R A M :

THE HONOURABLE MR. SOMNATH SOM, VICE CHAIRMAN  
THE HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

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PER HONOURABLE MR. A.K. MISRA :

The Applicant, in this Application, has prayed that the impugned order passed by the respondent No.3 vide its letter dated 3.2.1992 (Annex.A-3), regarding proposed action under Rule 8 of the A.I.S. (Discipline & Appeal) Rules, 1969, be set aside.

2. Briefly stated the facts of the case are that the applicant is an I.P.S. Officer (Selection Grade). Previously, he was transferred to many places in a short spell of time. Lastly, vide order dated 24.7.91, he was transferred from the post of S.P., Computer, Bhubaneswar, to the post of Commandant, Fifth Battalion, O.S.A.P., Rangamatia, Mayurbhang, vide order dated 24.7.1991. The details of transfer orders passed from time to time find place in the previous O.A. (O.A.No.233/1991), which the applicant had filed against the order dated 24.7.1991. Copy of that O.A. is Annex.A-1. The said O.A. filed by the applicant, was decided by this Tribunal vide its order dated 31.10.1991 (Annex-A-2) and it was held that the transfer of the applicant was not based on mala fides as alleged by him. Consequently, his O.A. was dismissed. Thereafter, the applicant was served with a letter dated 3.2.1992 (Annex.A-3), by which he was called upon to explain the allegations levelled by

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him against the Senior Police Officers in Paras 3 and 4 of his O.A. (Annex.A-1) and also to Show Cause why action be not taken against him under the relevant Rules. It is against this letter calling the explanation of the applicant, he has come in this O.A.

3. The respondents have filed their Counter stating therein that applicant is not entitled to any relief. No action has been taken by the State Government against the applicant, therefore, the O.A. is premature. Vide order at Annex. A-3, the State Government has only called upon the applicant for his explanation as to why action under the Disciplinary and Appeal Rules, be not taken against him. The applicant was to give his explanation and justify all what he has stated in his previous O.A. Instead of giving explanation to the State Government, the applicant has approached this Tribunal in this O.A. They have submitted that the O.A. is not maintainable as it is premature and the same deserves to be dismissed.


4. We have heard the learned counsel for applicant Mr.Tripathy and the learned counsels for respondents and have gone through the record.

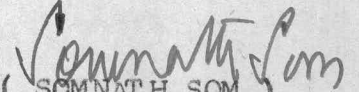
5. Vide letter dated 3.2.1992, the State Government has asked the applicant to explain in respect of allegations levelled by him in the previous O.A. and also to explain why disciplinary action be not taken against him. In fact, this is an opportunity given to the applicant, to justify and explain the allegations of so called malice which he has

levelled against the higher authorities. This letter cannot be said to be an independent action against which the applicant may seek Tribunal's interference. All that the applicant is supposed to do is to give his explanation to the concerned authorities and convince them that whatever he has said earlier, is correct. After considering the explanation of the applicant, the concerned authorities may come to a conclusion appropriate to the situation. Thus, it is for the applicant, to give his explanation to the Government before action is taken in the matter. The Respondent Government being the employer of the applicant, has got right to ask for explanation from him in respect of his conduct or a particular action of the applicant. Calling an explanation being the prerogative of the employer, no interference is justified on the part of the Tribunal. If such notices seeking explanation of the employees, are interfered with, the same may cause immense administrative problems. In our opinion, this is not a fit case in which any interference is required.

6. The O.A., in our opinion, deserves to be dismissed and is hereby dismissed. Consequently, the interim order passed by the Tribunal on 14.2.1992 stands vacated.

7. No order as to costs.

  
 ( A.K.MISRA )  
 Member (Judicial)

  
 ( SOMNATH SOM )  
 Vice Chairman  
 12.9.97