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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 193 OF 1993.

Cuttack this the 4th day of June, 1999.

Sripati Mohan Biswas.

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Applicant.

-Versus-

Union of India & Others.

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Respondents.

FOR INSTRUCTIONS.

1. WHETHER it be referred to the reporters or not? Yes.
2. WHETHER IT BE CIRCULATED to all the Benches of the Central Administrative Tribunal or not? NO.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
4.6.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.) .

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Sripati Mohan Biswas, aged about 40 years,
Son of late Khagapati Biswas, at present
Clerk, Grade-I, Programme Secretary, All
India Radio, Jeypore, District-Koraput. ... Applicant.

By legal Practitioner: M/s. P. C. Kar, Jgupta, Advocates.

-Versus-

1. Union of India represented by Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan, New Delhi-1.
2. Assistant Station Director, A.I.R.,
At/Po/Ps. Jeypore, Dist. Koraput.
3. Sri D. Rajeswar Rao, Asst. Engineer,
AIR, Jeypore, Dist. Koraput (Orissa)
Enquiring Officer.
4. Sri Digambar Gamango, Head Clerk,
All India Radio, Jeypore, Koraput,
Orissa. ... Respondents.

By legal Practitioner:
For Respondents 1 to 3.

Mr. A. K. Bose, Senior Standing Counsel
(Central) .

By legal practitioner
for Respondent No. 4.

Mr. Ashok Mishra, Advocate .

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN, -

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing Annexure-1 in which draft charges were issued to him and Annexure-2 in which Inquiring Officer was appointed to enquire into the charges against the applicant.

2. Facts of this case, according to the Applicant, are that he was working as Clerk Grade-I at All India Radio, Jeypore. His daughter was ill and Medical Board recommended for her treatment at CMC-Vellore. Applicant applied for Medical advance to the Assistant Station Director, All India Radio, Jeypore, Respondent No. 2 and Head Clerk of All India Radio, Jeypore, Respondent No. 4 but medical advance was not made available to him. He ultimately, applied for GPF advance which was also not granted to him. Ultimately, his daughter passed away on 30-08-1992. His only son suffered from brain hammarage due to accident and though he applied for medical advance and repeatedly approached the Respondents 2 and 4, the same was not sanctioned in his favour. But Assistant Director, Jeypore, Respondent No. 2 who at that time one Shri Srikanta Das, instituted disciplinary proceeding in letter dated January, 1993 (Annexure-1) and appointed Res. No. 3 as the Inquiring Officer in order dated 23.2.1993 at Annexure-2. It has been stated that prior to initiation of Disciplinary Proceeding it was alleged that on 22-12-1992 at 9.45 PM and 10.05 PM, Respondents 2 and 4 were threatened by one Shri Mobarak, a stranger. Respondent No. 2 lodged a FIR in this regard before the Police Station. Petitioner was

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examined by the Police in the office as well as in the police station but according to the petitioner, it ~~xxx~~ all ended in a farce. Applicant has stated that another employee, Mr. K. P. Majumdar, Clerk, Grade II of A.I.R. Jeypore was allowed medical advance of Rs. 80,000/- for treatment at Vellore but in the case of the applicant, the advance was not sanctioned. Applicant has also denied the charges and stated that on 8.1.1993, he has submitted statement of defence denying all the allegations and his statement of defence is at Annexure-4. Applicant's grievance is that proceedings at Annexure-1 have been instituted on false pretext with mala fide intention because applicant requested for payment of advance. He has also prayed for quashing the proceedings because of long delay.

3. In their counter, Respondents 1 to 3 have stated that applicant joined in All India Radio, Jeypore on transfer from AIR, Cuttack on 17.7.1989. He was transferred from AIR, Cuttack to AIR Jeypore on compassionate ground as his wife has been serving in a State Government Office located at Jeypore. Respondents have further stated that applicant has been acting in highly indisciplined and indecorous manner during his work at Jeypore. On a number of occasions, he has created indiscipline and entered into uncalled for and unnecessary arguments with other officers, disobeyed the orders of the higher authorities, misbehaved and insulted the officers. He also brought outside pressure to bear upon the accountant, Respondent No. 4 and the then Head of Office of AIR Jeypore, Respondent No. 2 to further his interests in respect of matters pertaining to his service.

Because of this reason, disciplinary proceeding was initiated against him. Question of lapse, if any, of the applicant, will be established after conclusion of the disciplinary proceeding. As regards grant of medical advance for treatment of his daughter, Respondents have stated that medical advance can be sanctioned only on receipt of estimate of expenditure from the concerned hospital authorities but while applying for grant of medical advance, applicant did not submit the estimate of expenditure. He was accordingly, instructed to obtain the same from Vellore but he did not do the same. Therefore, medical advance could not be forwarded to the Director General, All India Radio, New Delhi for sanction. Respondents have denied the averments of applicant that no GPF advance has been given to him. In fact, applicant was granted GPF advance of Rs. 6,000/- in connection with the treatment of his daughter in April, 1992. Regarding reimbursement of medical claims, in connection with treatment of his daughter, applicant submitted the reimbursement bills after lapse of one year of completion of the treatment. In accordance with the Government of India Rules, final claim of reimbursement of medical expenses of Central Government servants in respect of a particular spell of illness should be preferred within three months from the date of completion of treatment. Respondents have stated that interim claims for the treatment of his daughter locally, were being reimbursed to him from time to time. As regards grant of medical advance to the applicant, in connection with treatment of his son at Seven Hills Hospital, Visakhapatnam, Andhrapradesh, Respondents have pointed out that this hospital is a private hospital and not recognised by the Government for the purpose of treatment of

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its employees and therefore, it is not possible for the Departmental Authorities to re-imburse this claim.

Respondents annexed a copy of the relevant circular of the Government of India with regard to the reimbursement of medical claims and payment of advance. Respondents have also denied that disciplinary proceedings were initiated against the applicant by Respondent No.2 at the instance of Respondent No.4. It has been pointed out that Respondent No.4 is a witness in GR Case No.723/86 in the Court of the learned Judicial Magistrate 1st Class, Jeypore where the applicant was the accused and the case is subjudice. Because of this, applicant has tried to implicate Respondent No.4 by making false allegations against him. Respondents have further stated that the bonafides behind the imputation of misconduct or misbehaviour by the applicant with Respondent No.4 Shri G.N.Chhotaray, Programme Executive, Shri J.K.Patnaik, he revealed Stenographer and others would only ~~be revealed~~ when the enquiry is held and completed. In the enquiry all facilities will be provided to the applicant to prove his innocence. In view of this, Respondents 1 to 3 have stated that they should be permitted to proceed with the proceeding against the applicant in the interest of Administration. On the above grounds, Respondents have opposed the prayer of applicant.

4. Respondent No.4 against whom mala fide has been alleged and who has been impleaded by name, has filed counter in which he has denied that the disciplinary proceedings have been initiated by Respondent No.2 at his instance or that he is actuated in any way by mala fide. He has mentioned the circumstances regarding nonsanction of medical advance and medical reimbursement and it is

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not necessary to repeat the same. It is specifically alleged that at the instance of applicant, one outsider came to the House of the Respondent No. 4 and threatened him in the matter of nonpayment of the personal claims of the applicant. It is also stated that the prayer of applicant should not be allowed as it would set a bad example to others, which is highly detrimental from administrative angle. Along with the counter, Respondent No. 4 has given a large number of documents which are file notings and reports against applicant by different staff who alleged misbehaviour by the applicant with them.

5. On the date of admission of the Original Application on 20.4.1993, it was ordered that the proceeding may continue but the Disciplinary Authority shall not pass any final order without the leave of the Court. It was also ordered that enquiry should be completed by recording evidence of witnesses and the evidence of witnesses recorded by the Inquiring Officer, should be placed before the Bench on 7th of July, 1993. Accordingly, Mr. A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents has filed the daily order-sheet and the statement of witnesses recorded in the enquiry. It has been stated by the learned Senior Standing Counsel appearing for the Respondents that in the meantime, enquiry in the disciplinary proceedings have been completed but in view of the above order of this Tribunal, no final order in the proceedings have been passed.

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6. We have heard Mr. P.C. Kar learned counsel for the applicant, and Mr. A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

7. It has been stated by the learned counsel for the Applicant that applicant was not sanctioned medical advance and medical reimbursement bills illegally and because he reminded Respondents 2 and 4 for sanction of the advance, Departmental proceedings have been initiated against the applicant with mala fide intention. Secondly, it has been alleged that in the disciplinary proceedings initiated in January, 1993, alleged lapses of the year 1989 have been incorporated in the charges after long delay. Thirdly it is alleged that Respondent No. 4 has prevailed upon Respondent No. 2 to issue the charges against him. On the above ground, learned counsel for petitioner has prayed for quashing the charges.

8. Well settled position of law is that in Disciplinary proceedings, Tribunal does not act as an Appellate Authority, and can not substitute its judgment and conclusion in place of judgment and conclusion arrived at by the Inquiring Officer or the Disciplinary Authority. Tribunal can only interfere if there is denial of reasonable opportunity, violation of natural justice and if the findings are based on no evidence or are patent perverse. This is the position of law with regard to a matter where disciplinary proceedings have been concluded. The scope of interference of Tribunal in pending disciplinary proceeding is still more limited. In a pending disciplinary proceeding the lapses alleged against the charged official are yet to be proved or disproved and therefore, it is not open for the Tribunal to take a view either way in the matter. Submissions made by learned counsel for the petitioner has to be examined in the context of the above well established position of law. We have looked into the

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charges which is at Annexure-I. There are eight charges against the applicant. Articles 1, 3 and 7 of the charge relate to alleged misbehaviour by applicant with other staff in the office and these alleged occurrence relate to September, 1992, May, 1992 and August, 1989. These charges have nothing to do with nonsanction of medical advance or non-reimbursement of medical bills. Article 2 of the charge relates to prohibition against smoking inside the office in May, 1992. Article 4 of the charge relates to lack of interest in the work and lack of devotion to duty ~~and~~ in connection with typing out some contract. Article 5 relates to disobedience of order by not signing the attendance register. Article 6 relates to signing Attendance register on certain dates when he was on leave and Article 8 relates to bringing out side pressure on Respondent No. 4 to further his interest in respect of matters pertaining to his service. Respondents have stated that applicant is in the habit of misbehaving with other staff. Respondent No. 4 has enclosed to his counter a series of reports given by different staff alleging that the applicant has misbehaved with them on different dates. Whether these alleged lapses are correct or not, will be determined in course of the enquiry. No case is made out by applicant that the charges should be quashed ~~ab initio~~. The ground alleged that the lapses which happened many years ago have been incorporated in the charges. It is seen that ~~only~~ only of the charges / Articles 6 and 7 relate to the earlier periods. In article 6 it is stated that during the period from September, 1989 to July, 1990 applicant signed the attendance register even though he had applied for and

availed leave during that relevant period. It can not be said that this ~~was~~ alleged lapse relates to a period so far back that on account of delay alone, these charges should be quashed. It is quite possible that initially the Departmental Authorities had tried to ignore the lapses of applicant but once it has been decided to proceed against applicant because of his continuing alleged lapses, those earlier lapses have also been incorporated in the charges. The charges, therefore, can not be quashed ^{on} the ground of delay.

9. As regards the contention that the charges have been initiated against applicant in a mala fide manner by Res.No.2 at the instance of Respondent No.4, only one of the charges relates to Respondent No.4 i.e. Article 8 of the charge. Charges have been issued by Res. No.2. Both Respondents 2 and 4 have denied the allegations of mala fide. Law is well settled that allegation of malafide has not only ~~be~~ specifically averred but also must be proved. ^{is} Burden ^{has} ~~on~~ the person who ~~alleged~~ malafide to prove the same. Besides the allegation of mala fide applicant has not given any document or made any averments to prove that the charges have been issued with mala fide intention. This contention is also held to be without any merit and is rejected.

10. We, therefore, find no reason to interfere in the proceedings at this stage which according to the learned Senior Standing Counsel have already been completed. We have already mentioned that in order dated 20.4.1993, the Tribunal had directed the Respondents to file copies of oral evidence taken from the witnesses in the course of enquiry for the perusal of the Tribunal. We are not sure,

what purpose would be served by the Tribunal going through the evidence of the witnesses at this stage but in any case we have ^{deference} in ~~xxxxxxxxxx~~ to the order of this Tribunal gone through the ^{record} verbatim / of the evidence recorded as also copies of the order sheet filed by the learned Senior Standing Counsel which have been recorded during the enquiry. Nothing in these records ~~xxxxxxxxxx~~ provide any support to the claim of the applicant to quash the proceedings. In consideration of the above, we hold that the applicant has not been able to make out a case for the reliefs claimed by him.

11. In the result, the Original Application is held to be without any merit and is rejected but in the circumstances, there would be no order as to costs.

Stay order passed on 20.4.1993 stands vacated.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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