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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 244 OF 1994  
Cuttack this the 9th day of July, 1999  
August

Rabinarayan Das

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
9.8.99

*G. Narasimham*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

RIGINAL APPLICATION NO. 244 OF 1994  
Cuttack this the 9<sup>th</sup> day of July, 1999  
August,

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)  
...

Rabinarayan Das,  
aged about 45 years,  
Son of Late Udayanath Das, at present  
working as Junior Telecom Officer,  
Khurda Telephone Bhawan, Khurda

...

Applicant

By the Advocates : M/s.P.V.Ramdas  
R.N.Naik  
A.Deo  
B.S.Tripathy,  
P.Panda

-Versus-

1. Union of India represented by the  
Chairman, Telecom Commission,  
Sanchar Bhawan  
New Delhi-110011
2. Chief General Manager,  
Telecommunications, Orissa Circle,  
Bhubaneswar, Dist: Khurda
3. Director, Telecommunications  
Office of the Chief General Manager,  
Telecommunications, Orissa Circle,  
Bhubaneswar, Dist: Khurda
4. Telecom District Manager,  
Bhubaneswar

...

Respondents

By the Advocates : Mr.B.Das  
Addl.Standing Counsel  
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, a Junior Telecom Officer, seeks to quash departmental charges framed against him by Respondent No.4 in Memo No.1294 (Annexure-4).

Facts are not in dispute.

A C.B.I. case under Sections 420/468/471 was registered against him on the allegation that he forged the mark-sheet of B.Sc. examination of the year 1967 and he utilised this forged mark-sheet in securing post of Engineering Supervisor in the year 1971. He was convicted by the learned Addl.Chief Judicial Magistrate, Bhubaneswar in judgment dated 11.8.1986, which was set aside by the learned Appellate Court in judgment dated 24.11.1987 (Annexure-1). On conviction by the Trial Court, he was dismissed from service under Rule-19 of CCS(CCA) Rules, 1965 on 11.12.1988. On acquittal by the Higher Court, he was reinstated with an order of suspension to run retrospectively from 11.12.1988 on the ground that further enquiry would be held under the provisions of CCA Rules (Annexure-2). This order under Annexure-2 was challenged by the applicant before this Tribunal in Original Application No.153/88. This Original Application was allowed and consequently order under Annexure-2, i.e. order of suspension in contemplation of enquiry was quashed (Annexure-3 - judgment). Thereafter the applicant was reinstated on 21.3.1991. As full backwages were not paid and benefit of revision of pay scale was not sanctioned, he preferred Original Application 36/93 before this Tribunal.



The case of the applicant is that despite the order of this Tribunal in O.A.153/88, <sup>and</sup> no further inquiry was necessary ~~and that~~ memo of charges under Annexure-4 have been framed on the self-same grounds leading to initiation of criminal case which ultimately ended in acquittal. Hence charges, according to applicant, are not maintainable and need to be quashed.

3. In the counter, the stand of the Department is that the present disciplinary proceeding arises out of misconduct which is completely different from the criminal offence and that the Tribunal has not barred the Department from conducting inquiry against the applicant for misconduct.

On 28.4.1994 this application was admitted and on which date further progress in the proceeding had been stayed. This order of stay has been modified in order dated 1.7.1999 with a direction to the Department that they can proceed with the proceeding, but without the leave of this Bench no final order can be passed.

The main point for consideration is whether on the basis of uncontroverted facts as stated above, charge framed under Annexure-4 can be quashed as being not maintainable.

4. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri B.Das, learned Addl.Standing Counsel appearing for the respondents. Also perused the records of this case as well as disposed of O.A. 153/88. There is no dispute that the applicant was dismissed on account of his conviction by the learned Trial Court. The learned Appellate Court set aside the conviction and acquitted the applicant of the charges. Hence order of

dismissal passed pursuant to the order of conviction has subsequently been rendered void in consequence of the decision of the learned Appellate Court. Under Rule-10(4) of C.C.A. Rules, disciplinary authority, under such circumstance, can hold a further inquiry against the concerned employee on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed and under such circumstances, the concerned Govt. employee shall be deemed to have been placed under suspension by the appointing authority from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. However, proviso to this Sub-rule.4 lays down that no such inquiry shall be ordered unless it is intended to meet the situation where the Court has passed an order purely on technical ground without going into the merits of the case.

It comes to this that any of the charges under Annexure-4 leading to the prosecution by the C.B.I. cannot further be enquired in a disciplinary proceeding, after the learned Appellate Court acquitted the applicant on merits and not purely on technical ground. This aspect of the matter was elaborately considered in O.A.153/88. The then Division Bench of this Tribunal in last portion of paragraph-3 of the judgment held as follows :

".....On going through it, it would be found that the learned Judge dealt with the case on merits and he examined the evidence and gave his comments on the evidence adduced in the trial court. By no standards can the judgment of the learned Additional Sessions Judge be said to be a judgment on purely technical grounds. Therefore, the embargo of the proviso to Rule-10(4) of the C.C.S.(CCA) Rules, 1965 would apply."

In other words it was held by <sup>the</sup> then Division Bench that no further departmental inquiry in regard to facts constituting offence involved in C.B.I. case ~~was~~ <sup>could be</sup> legally <sup>permissible</sup> and/or <sup>admissible</sup>, because the learned Appellate Court, i.e., learned Additional Sessions Judge, dealt the case on merits and acquitted the applicant.

Hence we are not prepared to accept the contention raised on the side of the Department during hearing that since in the ordering portion of the judgment in O.A.153/88, there is no specific mention that prayer No.2 of the applicant to issue direction to the Department not to conduct inquiry on the self same allegation <sup>having</sup> ~~has~~ been allowed, it is presumed that <sup>the</sup> ~~a~~ prayer has been disallowed and as such in this application the applicant is estopped from making the very same prayer <sup>even</sup> ~~but~~ in the ordering portion of the judgment there has been clear mention that the order under Annexure-3 had been quashed. Annexure-3 in that case is order dated 6.4.1988 which contains direction that further enquiry shall be held under the provisions of CCA(CCS) Rules, 1965 against the applicant on the allegation which led to dismissal from service.

We have therefore, no hesitation to hold that the respondents cannot further proceed against the applicant on the very same facts leading to <sup>his</sup> ~~this~~ prosecution and <sup>ultimate</sup> ~~ultimate~~ acquittal by the learned Appellate Court.

Question then arises whether Annexure-4, the <memo of charges in its entirety can be quashed. Annexure-4 ~~is~~ dated 1.2.1994 <sup>5</sup> ~~1~~ consisting of charges under



four heads. Only Charge No.1 relates to the facts involved in the C.B.I. case ultimately ended in acquittal, i.e., the applicant ~~the~~ submitted false marksheet of the B.Sc. final examination of the year 1967 and got himself selected and appointed as Engineering Supervisor. In view of discussion held above, the department cannot proceed with the enquiry in regard to this particular charge and as such Annexure-4 in so far as it relates to this specific charge has to be quashed.

Other three charges do not relate to the facts in the prosecution <sup>as</sup> submitted by the C.B.I. Allegation with regard to charge No.2 that he gave a false statement before the Vigilance Officer, Office of the Chief General Manager, Telecom, Orissa that he submitted the original B.Sc. certificate and original mark-sheet thereof before the Divisional Engineer, Telegraph, Bhubaneswar. Charge No.3 relates to his alleged refusal to receive letter dated 5.9.1986 and order of suspension dated 6.4.1986. The remaining charge contains an allegation giving false declaration dated 3.6.1988 to the effect that he did not leave the headquarters at Bhubaneswar during the period of suspension.

In view of our above discussion, we quash the charge memo vide Annexure-4 in so far as it relates to only charge No.1, i.e., allegation that the applicant submitted false marksheet of the final B.Sc. of the year 1967 in the year 1973 and got himself selected and appointed as Engineering Supervisor. The Department, if so advised, may proceed with other three charges in which even the proceeding shall be completed within a period of 120 days from the date of receipt of this order.

In the result the application is allowed in part, but without any order as to costs.

Interim order dated 1.7.1999 accordingly stands vacated.

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*Somnath Som*  
(SOMNATH SOM)  
9.8.99  
VICE-CHAIRMAN

*G. Narasimham*  
(G. NARASIMHAM)  
9.8.99  
MEMBER (JUDICIAL)

B.K.Sahoo