

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.502 OF 1994

Cuttack, this the 17th day of February, 1998

Baidyanath Jena

.....

Applicant.

Vrs.

Union of India and others

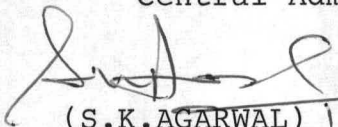
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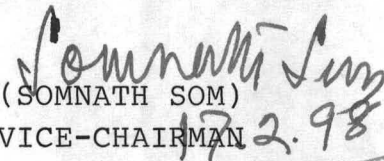
Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?

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


(S.K.AGARWAL) 17/2/98
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 17.2.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.502 OF 1994

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

.....

Baidyanath Jena,
aged about 56 years,
Cantonment Road,
Cuttack

Applicant.

By the Advocates -

M/s N.C.Panigrahi &
S.Patra.

Vrs.

1. Union of India, represented through its Secretary, Home Affairs, New Delhi.
2. State of Orissa, represented through its Secretary, General Administration Department, At/PO-Bhubaneswar, District-Khurda.
3. State of Orissa, represented by Secretary, Home Department, Orissa, Secretariat, Bhubaneswar, District-Khurda

Respondents.

By the Advocates -

Mr.Akhaya Ku. Misra
(for Respondent 1)
Mr.K.C.Mohanty
(for Respondent
no.2)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a declaration that the departmental proceedings drawn up

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against him are illegal and for a direction to the State Government to drop the proceedings referred to in paragraph 1 of the application.

2. For adjudication of this application, it is not necessary to go into all the facts averred by the petitioner in his application. It will only be necessary to state that the applicant is an officer of Indian Police Service appointed to the service in 1985 in the promotion quota. While he was working as a member of Indian Police Service, Government of Orissa, Home Department in their letter dated 8.3.1988 (Annexure-1) drew up departmental proceedings against him. It is alleged in Annexure-1 that the applicant filed an Original Application under Section 19 of Administrative Tribunals Act, 1985, before this Bench on 3.12.1987 alleging that an illegal order of his transfer has been passed in the Home Department's file in the later half of August, 1987 before completion of his normal tenure in the present post. As the applicant did not have any access to the official file in which orders of Government were passed about his transfer, it is alleged that he obtained information surreptitiously and passed on the same to his advocate and thereby the applicant was charged to have violated Rule 9 of All India Services (Conduct) Rules, 1968. It further appears from Annexure-2 that the applicant did not submit any explanation and Government of Orissa appointed an inquiring

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authority. In Annexures 3,4 and 5 Government of Orissa in Home Department changed and appointed inquiring officer to enquire into the charge against the applicant. Ultimately, in letter dated 7.1.1994 at Annexure-6, a copy of the enquiry report was sent to the applicant and it was indicated to him that Government have tentatively decided to impose the minor penalty of censure on him and he was asked to submit his showcau against the proposed penalty. The applicant has challenged the departmental proceedings against him and the order of proposed penalty on various grounds which would be referred to later.

4. Respondent no.2, who is Secretary, General Administration Department, Government of Orissa, filed counter in which the stand was taken that the application should be rejected as being not maintainable because the Home Department, Government of Orissa, has not been made a party. Thereupon the applicant amended the petition under orders of Court and impleaded Secretary, Home Department, as respondent no.3. Respondent no.3 has filed a counter in which the prayer of the applicant has been opposed. The applicant has also filed a rejoinder.

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5. We have heard the learned lawyer for the applicant and the learned Government Advocate, Shri K.C.Mohanty appearing on behalf of respondent nos. 2 and 3. Learned Additional Standing Counsel, Shri Akhaya Kumar Misra

appearing on behalf of Union of India (respondent no.1) has adopted the counter and the stand taken by the Government of Orissa.

6. Learned lawyer for the petitioner has urged only one point in support of his prayer. He has stated that under Rules of Business issued by Government of Orissa under Article 166 of the Constitution of India, the departmental proceedings against the applicant should have been initiated by the General Administration Department of Government of Orissa and not the Home Department, as has been the case here. In view of this, he has urged that the proceedings and the order of proposed punishment should be quashed. Learned Government Advocate has filed Government of Orissa Rules of Business in which it is seen that Rule 4 of the Rules of Business enjoins that the business of the Government shall be transacted in the Departments specified in the First Schedule and shall be classified and distributed between those Departments and their Branches as laid down therein. According to the First Schedule, all matters affecting the All India Services and Posts were the subjects of General Administration Department coming under serial No.1 under the heading "Union Subjects". In the subjects listed under Home Department, originally matters relating to the posting, leave

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and deputation of the I.P.S. officers were the subjects of the Home Department coming under serial No. II at page 15 of the Rules of Business. This entry was substituted in Notification No. 21400, dated 27.9.1994. In this notification, the First Schedule to the Rules of Business was changed and under General Administration Department, matters relating to Indian Police Service and Indian Forest Service officers regarding recruitment, promotion, confirmation, determination of seniority, creation of temporary and ex-cadre posts, triennial review, maintenance of C.C.Rs. and property statements and framing of rules thereon were kept. Under serial II relating to Home Department, ^{under} a new heading "Union Subjects", matters relating to Indian Police Service Officers, such as posting, transfer, leave, General Provident Fund, pay and allowances, advances, etc., including initiation and disposal of disciplinary proceedings were included. From this, it is clear that it is only from 27.9.1994 that Home Department had the authority to initiate disciplinary proceedings against officers of Indian Police Service. Respondent no. 3 in their counter has relied on a resolution dated 3.3.1970 issued by defunct Political and Services Department, which later on was reconstituted as General Administration Department, wherein Home Department was authorised to initiate disciplinary proceedings against Indian Police Service officers. A copy of this resolution is at Annexure-R-3/1 attached to the counter

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of respondent no.3. In this resolution, it is mentioned that in respect of Indian Police Service, matters relating to disciplinary cases may be dealt with by Political & Services (Vigilance) and/or Home Department in consultation with Political & Services Department. On the basis of this resolution, it has been submitted that the Home Department was authorised to initiate disciplinary proceedings against the applicant.

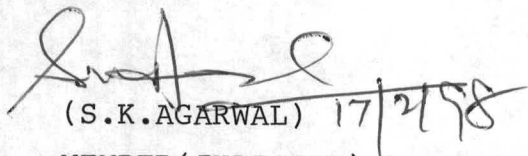
7. The applicant has filed a rejoinder in which it has been stated that Home Department got the authority to initiate departmental proceedings against Indian Police Service officers only by virtue of resolution dated 27.9.1994 which did not have any retrospective operation. The Rules of Business are Rules issued under Article 166 of the Constitution of India and thus the Rules of Business cannot be superseded by the resolution dated 3.3.1970.

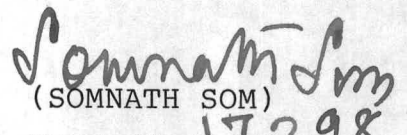
8. We have considered the above submission of the learned counsels of both sides. It is clear from the above that Home Department, Government of Orissa, got the authority to initiate disciplinary proceedings against Indian Police Service officers only after amendment of the Rules of Business with effect from 27.9.1994. We also note, as has been mentioned by the petitioner in the rejoinder, that in case of another departmental proceeding which was the subject-matter of O.A.No.430/95, the Home Department had suo motu cancelled

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the proceeding and accordingly that O.A. was disposed of. It is also seen that resolution dated 3.3.1970 states that matters relating to disciplinary cases against Indian Police Service officers may be dealt with by Home Department in consultation with the erstwhile Political & Services Department. In the instant case, the orders at Annexures 1,2, 3 and 4 have not been issued by the Home Department in consultation with the erstwhile Political & Services Department. There is no mention of such consultation in these orders and therefore, the orders initiating disciplinary proceeding against the applicant by the Home Department cannot be sustained on this ground as well.

9. In the result, therefore, the Application succeeds and is allowed. The proceeding initiated vide Annexure-1 and subsequent actions taken by the Home Department are quashed. There shall be no order as to costs.


(S.K. AGARWAL) 17/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 17.2.98