

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Miscellaneous Application No. 249 of 1997
(Arising out of Original Application No.706 of 1995)
Cuttack, this the 4th day of May, 1998

Sri Sangram Keshari Mishra ... Applicant

Vrs.

State of Orissa and others ... 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*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN, S.98

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CORAM:

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

...

Sri Sangram Keshari Mishra,
aged 37 years,
son of late Dr.G.C.Mishra,
at present serving as Additional
Secretary, Science & Technology Department,
Bhubaneswar, District-Khurda

....

Applicant

-versus-

1. State of Orissa, represented through
the Chief Secretary,
Orissa Secretariat Buildings,
Bhubaneswar.
2. Special Secretary to Government of Orissa
in the Department of General Administration,
At/PO-Bhubaneswar, District-Khurda.
3. Union of India, represented through its
Secretary, Department of Personnel,
North Block,
New Delhi-i

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Respondents

Advocates for Applicant

- M/s Bipin Bihari Ratho,
Biswanath Rath, B.Senapati,
S.N.Mohapatra, S.Mohapatra,
K.R.Mohapatra, S.Ghose,
M.K.Panda, J.N.Rath, S.K.Jethy
& P.K.Nanda.

Advocate for respondents

- Mr.K.C.Mohanty, Govt. Advocate
(For Respondents 1 & 2)
Mr.Akhaya Ku.Misra, ASC
(For Respondent 3)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

This MA No. 249/97 has arisen out of OA No.706/95.

For appreciating the points raised in course of hearing of
this MA, some facts, as alleged in the OA, and the interim

orders passed from time to time on the OA will have to be referred to.

2. The applicant in the OA is a direct recruit of I.A.S. officer of 1985 batch of Orissa Cadre. From August 1990 to July 1992 he was working as Project Director, D.R.D.A., Koraput. From the above post he was transferred to the post of Project Coordinator and Ex-Officio Joint Secretary, Panchayati Raj Department, Government of Orissa. While he was working as such, in order dated 3.12.1992 (Annexure-7) he was placed under suspension. The applicant came up before the Tribunal in OA No.611/92. In order dated 9.7.1993 disposing of this OA, the Tribunal quashed the order of suspension. Meanwhile, on 1.3.1993 draft charges were issued to him. It has been submitted by the applicant that he approached the authorities to drop the charges against him, but his prayer was not considered by the authorities. As such, he moved the Tribunal in OA No.333/94 for quashing the disciplinary proceeding initiated against him. The matter was taken up on 6.6.1994 for admission and after admission of the OA, an interim order was passed staying further enquiry in connection with the disciplinary proceeding. It has been submitted by the applicant that he was advised by the departmental authorities that in case he withdrew OA No.333/94 and made a representation, the proceeding might be dropped, and accordingly the applicant prayed on 25.4.1995 for withdrawing the OA. In order dated 25.4.1995 (Annexure-12) permission was granted and OA No.333/94 was dismissed as withdrawn. The applicant has urged in OA No.706/95 that the draft charges were pasted on the gate of the quarters of the applicant and the charges were not accompanied by the statement of imputation and the list of witnesses and documents. Thereafter, the applicant approached

Jom.

in the present OA No.706/95 praying for quashing the disciplinary proceeding initiated against him and the decision to enquire into the charges as also the order of appointment of Enquiring Officer and Presenting Officer. He also prayed for a direction from the Tribunal for disposal of his representation dated 19.10.1995 (Annexure-13) addressed to Hon'ble Chief Minister, Orissa, praying for dropping of disciplinary proceeding against him. As an interim relief, the applicant prayed for staying of disciplinary proceeding against him pursuant to the charges at Annexure-9. The OA came up for admission before the Tribunal on 6.12.1995 on which day notice regarding admission was issued and it was directed that the representation made by the applicant (Annexure-13) to Hon'ble Chief Minister should be disposed of by Hon'ble Chief Minister within fortyfive days from the date of receipt of copy of the order dated 6.12.1995 and till expiry of fortyfive days, further proceeding with regard to the charges against the applicant was stayed. Apparently, the applicant's representation addressed to the Chief Minister was rejected in order dated 17.1.1996 and the applicant came up in MA No.134/96 praying for staying of further proceeding in the enquiry against him. On the same day on which MA No.134/96 was filed, the applicant filed another MA No.135/96 praying for production of the file relating to initiation of disciplinary proceeding against him. The respondents filed counters to MA Nos.134 and 135 of 1996 opposing the prayers for grant of stay in their counter to MA No.134/96 and in the counter to MA No.135/96 opposing the prayer for calling for files ^{from} ~~xxx~~ the office of respondent no.1 ^{stating that this} ~~xxx~~ was merely a ploy for delaying the disciplinary proceeding. From the ordersheet of

the case record, it appears that in order no.2 dated 8.2.1996 copies of these two M.As. were served on the learned Government Advocate who promised to file counters by 13.2.1996. On the same day, as an ad interim measure, it was ordered by the Single Bench that no sitting in the departmental proceedings shall be held on or before 15.2.1996. On the next day, 14.2.1996, the learned Government Advocate asked for four weeks time to file counters and the matter was ordered to be listed after 15.3.1996. Stay earlier granted was ordered to be continued until further orders. Thereafter, the matter did not come up even though counters to MA Nos.134 and 135 of 1996 were filed by the learned Government Advocate in April,1996. The learned Government Advocate did not ask for consideration of the MAs. The applicant also did not press for consideration of his MAs, because, as earlier noted, in order dated 14.2.1996 the stay earlier granted was ordered to be continued indefinitely. The matter came up once again on 24.4.1997 on filing the present MA No.249/97. In the present MA, it has been submitted by respondent nos. 1 and 2 that under the Rules the State Government have the jurisdiction and authority to hold enquiry into the article of charges issued to the applicant. At this stage, the applicant has not been visited with any penalty. As such, he can have no grievance against Government. As there is no punitive order against the applicant, the stay of sitting of disciplinary proceedings is unsustainable in law and the stay order should be vacated. Respondent nos. 1 and 2 have also submitted in this MA that the main prayer about quashing of departmental proceedings is without any merit and in view of this, his interim prayer for staying the departmental proceedings should not have been granted.

S.J.M.

3. I have heard the learned Government Advocate as also the learned Senior Counsel appearing on behalf of the applicant and the learned Additional Standing Counsel, Sri Akhaya Ku. Mishra, appearing on behalf of Union of India. The learned Government Advocate has submitted that there are several pronouncements of the Hon'ble Supreme Court regarding the power of Court to stay departmental proceedings and according to the law as laid down by the Hon'ble Supreme Court, the Tribunal has not been right in its orders dated 8.2.1996 and 14.2.1996 to stay the disciplinary proceedings indefinitely. In reply, the learned Senior Counsel appearing on behalf of the applicant has taken me through the charges and the various attendant circumstances. These are briefly mentioned making it clear that no comment is being made on the merits of the case of the Government as also the applicant with regard to the proceedings and the O.A. to which the respondents are yet to file counter in spite of passage of almost one and half years. The learned Senior Counsel for the applicant has made three important points. Firstly, the Tribunal had taken all the facts and circumstances into consideration before granting stay of the proceedings in the enquiry against the applicant and in the present MA No. 249/97 the respondents 1 and 2 have urged no new circumstances which would merit a change in the order of stay already passed. Secondly, it has been submitted by the learned Senior Counsel for the applicant that the facts and circumstances of the case would clearly show that the applicant has a strong *prima facie* case for getting the proceedings quashed and therefore, the stay earlier granted should be continued till the disposal of the O.A. Thirdly, it has been urged that the cases cited by the learned Government Advocate

are not applicable or in any case are distinguishable from the facts and circumstances of the present case.

3. The second point urged by the learned Senior Counsel for the applicant is taken up first as that will give the background of the facts of this case in the context of which it would be easier to consider the other submissions of the learned Government Advocate as also the learned Senior Counsel for the applicant. It has been submitted on behalf of the applicant that after joining of one P.K.Nayak as Collector, Koraput-cum-Chairman, D.R.D.A., Koraput, ill-feeling developed between the applicant and the Collector as, according to the applicant, the Collector was motivated by various pecuniary considerations and as the applicant did not oblige him, the Collector tried to instigate the subordinate staff against him and also sent reports against him to Government. The charges against the applicant, which, according to him, were the direct outcome of the prejudice of the then Collector, were that while going away on transfer from Koraput to Bhubaneswar, he had unauthorisedly taken away four steel almirahs and a large number of library books worth Rs.20,732/- and some important files and registers. This was referred to Government by Collector, Koraput, and the Secretary to Government, Panchayati Raj Department had written to the applicant in letter dated 19.8.92 (Annexure-2) to confirm about unauthorised removal of files/documents/registers, etc. by him while he was going on transfer from Koraput to Bhubaneswar. But instead of admitting removal of steel almirahs and books, the applicant cast aspersion and attributed mala fide to the Collector. As such the first

charge against the applicant is for unauthorised removal of almirahs, files and registers by the applicant without knowledge and authority of his superior officer. The second charge against him is that during his visit to Koraput on 23.10.1992, he abducted one K.C.Patnaik, Junior Clerk, office of D.R.D.A., Koraput, confined him at Railway Guest House, Koraput, assaulted and pressurised him to change his version before the Special Audit which was being conducted on the accounts of D.R.D.A., Koraput, for which K.C.Patnaik had filed an F.I.R. before Koraput Town Police Station and a criminal case was registered in Koraput P.S. Case No.127 dated 25.10.1992 under Sections 365, 342 and 506 Indian Penal Code. It is also alleged that the applicant forcibly obtained an unsigned statement from K.C.Patnaik and sent it to his superior officer for misrepresenting facts. The learned Senior Counsel for the applicant has submitted that all these charges have been brought about because of machination of the then Collector, Koraput. He further submitted that at the time of transfer of the applicant from Koraput to Bhubaneswar, his wife was suffering seriously and as such, he had in fact taken away four almirahs packed with his personal belongings and certain books on Rural Development which he was consulting for some academic work on Rural Development, his alleged field of specialisation. It has been submitted that the books and almirahs have since been returned and have been duly acknowledged. As regards the missing files, it has been submitted that the files have ultimately been traced out in a very neglected heap of files in the office itself and to

that extent, a newspaper item was published and my attention has been drawn to the newspaper item which is at Annexure-11. As regards the second charge of abducting, assaulting and pressurising one Kali Charan Patnaik, it has been submitted that the person concerned had himself written to the Collector submitting that he had made a false complaint against the applicant. The police case was also enquired into and a final report noting the complaint as false was also returned by the Investigating Officer with an indication that prosecution under Section 212 I.P.C. would be started against the complainant. It has also been submitted by the learned lawyer for the applicant that the applicant worked to the best of his ability and in a dedicated fashion as Project Director, D.R.D.A., Koraput, in implementing the poverty alleviation programme and the Members of Legislative Assembly of undivided Koraput District had written to the Government lauding the achievement of the applicant. In view of this, the learned Senior Counsel for the applicant submitted that the charges have been proved to be without any basis and therefore, till the Original Application is disposed of, the further enquiry into the charges has been rightly stayed. The second submission of the learned Senior Counsel for the applicant is that no new circumstances have come about necessitating re-consideration of the stay order earlier granted and of vacating the same. Learned Government Advocate has drawn my attention to the decision of the Hon'ble Supreme Court in the case of Union of India and others v. K.K.Dhawan, AIR 1993 SC 1478, in which the Hon'ble Supreme Court

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considered certain earlier decisions on the question of propriety of initiation of departmental proceedings. This decision along with an earlier decision in the case of Govinda Menon v. Union of India, AIR 1967 SC 1274, was on the issue whether disciplinary proceedings can be taken in regard to acts or omissions done or purported to be done in course of judicial or quasi-judicial proceedings. This decision is of no relevance to the facts and circumstances of this case as the applicant was not working in a judicial or quasi-judicial capacity while the acts of commission and omission with which he has been charged have been done by him. Much more to the point is the case of Union of India and others v. Upendra Singh, (1994) 27 ATC 200. While considering this matter, their Lordships of the Hon'ble Supreme Court have also considered their earlier decision in the case of Union of India v. A.N.Saxena, (1992) 3 SCC 124. The following observation from A.N.Saxena's case can be quoted with advantage:

"In the first place, we cannot, but confess our astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrongdoer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated 13.3.1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal."

In paragraph 6 of the judgment in the case of Union of India v. Upendra Singh (supra) their Lordships of the Hon'ble Supreme Court held that in the case of charges framed in a disciplinary inquiry the tribunal can interfere only if on the charges framed along with imputation and particular of charges, no misconduct or other irregularity alleged can be said to have been made out and the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Even after conclusion of the disciplinary proceedings, if the matter comes up before the tribunal, the function of the tribunal would be limited. The tribunal cannot function as the appellate authority.

As has been noted by the Hon'ble Supreme Court in H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons, 1992 Supp.(2) SCC 312, judicial review is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. According

to the Hon'ble Supreme Court. In the above case, it would be erroneous to think that the Court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself. I have quoted these decisions to bring out the point that even after the departmental proceedings are concluded and the aggrieved Government servant comes before the Tribunal, the role of the Tribunal is not that of an appellate authority but a limited role of examining if in the hands of the disciplinary authority and the appellate authority he has received fair treatment, whether adequate opportunity has been given to him to defend himself, whether proceedings have been started mala fide, and if the findings are based on no evidence at all. The position of law in this regard is well settled and it is not necessary to make reference to other decisions in support of the above contention.

4. The next point which arises is when the role of the Tribunal is held to be a very limited one, if it is proper for the Tribunal to stay proceedings of departmental enquiry. This question has also come up before the Hon'ble Supreme Court in several decisions mostly in the context of a person being proceeded against both in criminal proceedings and departmental proceedings simultaneously for the same lapses. In such cases, the law, as has been well settled, is that while no general principle can be enunciated if continuation of disciplinary proceedings results in causing prejudice to the Government servant in putting forward his defence in the criminal case, then it would be proper to stay the disciplinary proceedings till the criminal case is disposed of. In other words, the only valid

ground for staying disciplinary proceedings in such cases is that "defence of the employee in the criminal case may not be prejudiced". The circumstances under which disciplinary proceedings can be stayed by the Tribunal have been recently considered by the Hon'ble Supreme Court in the case of State of Rajasthan v. B.K.Meena and others, AIR 1997 SC 13. The facts of that case were that the respondent before the Hon'ble Apex Court was a member of Indian Administrative Service and was working as Additional Collector (Development)-cum-Project Director, D.R.D.A., Jaipur, in 1989. After his transfer, his successor lodged an F.I.R. against him alleging misappropriation of public funds by him to the tune of Rs.1.05 Crores. Accordingly, the criminal case was started. The officer was suspended and on the advice of Government of India, disciplinary proceedings were initiated against him. The Government servant submitted his explanation to the charges reserving his right to file fuller explanation after receipt of documents on which the charges were based. On an application before the Jaipur Bench of the Tribunal, Central Administrative Tribunal stayed the disciplinary proceedings against him. In the criminal case chargesheet was filed in the meantime. The State of Rajasthan came up before the Hon'ble Apex Court challenging the order of stay passed by the Tribunal. While quashing the order of the Tribunal, the Supreme Court held that in the interests of administration and good Government, disciplinary proceedings should be concluded expeditiously. The disciplinary proceedings are not merely for punishing the guilty, but also for keeping the administrative machinery unsullied by getting rid of bad elements. In the interests

of the delinquent officer, prompt conclusion of disciplinary proceedings is necessary. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. While making the above observation, their Lordships of the Hon'ble Supreme Court have also noted that not all the disciplinary proceedings are based upon true charges. Some of these may be unfounded. In some cases the charges are levelled with oblique motive. But these possibilities do not detract from the desirability of early conclusion of these proceeding. Delay in such cases really works against ^{the Government servant} ~~xxxx~~ in this case; I have noted the facts of the charges and the circumstances as alleged by the applicant about initiation of departmental proceedings against him. The applicant has admitted the fact of removing four almirahs and certain books, but he has stated that this has been done with the knowledge and permission of the official authorities at Koraput and he has in the meantime returned the almirahs. As regards the files, he has denied removing the files and has submitted that the files, according to the newspaper items, have been recovered from the office itself. On the second charge of kidnapping, intimidating and pressurising the Junior Clerk, K.C.Patnaik, he has submitted that the concerned Clerk has gone back upon the allegation made against the applicant and the FIR filed by the Clerk against him has also been enquired into and found false by the police authorities. While, as earlier mentioned, I do not make any comment on the merits of the applicant's submissions regarding validity or otherwise of the charges levelled against him, his defence may be

perfectly valid, but whether ~~xxxxxx~~ the grounds urged by him are correct or not are matters to be decided in the disciplinary proceedings. The Tribunal cannot take a view on that, moreso while considering the interim prayer. In consideration of that, as laid down by the Hon'ble Supreme Court, it is in the interests of the applicant, if he is really not guilty of the charges, to have the enquiry concluded expeditiously. If, on the other hand, it is found in the enquiry that he is indeed guilty of the charges against him, then in the interest of administration, it is proper that his guilt should be expeditiously established and he should be suitably dealt with. This course of action has been held up because of the stay order passed by the Tribunal and I see no justification in law or in fact for continuing the stay in view of the position of law as settled by the Hon'ble Supreme Court in the cases referred to earlier.

5. The other point raised by the learned Senior Counsel for the applicant is that for moving M.A.No.249/97 the learned Government Advocate has urged no changed circumstances warranting vacation of stay. The argument though attractive must be rejected because there has been a change of circumstances and that is the long pendency of the ^{inchoate} ~~xxxxxxxxxx~~ disciplinary proceedings against the applicant. The Hon'ble Supreme Court have gone to the extent of holding that even when on the ground of possible prejudice to a Government servant in a criminal case started against him, the disciplinary proceedings started against him on the same grounds have been rightly stayed, if the criminal case is not concluded expeditiously, then the disciplinary proceedings can be revived and continued. To quote from

the decision of their Lordships in the case of State of Rajasthan v. B.K.Meena and others (supra), "If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage". Their Lordships have further noted, as I have mentioned earlier, that in the interest of good Government and in the ultimate interest of charged Government servant, the disciplinary proceedings should be finalised quickly. In this case, there is no criminal case pending. The charges have been served. Whether or not with or without necessary document on which the charges have been levelled is a matter for the disciplinary authority to decide. The Enquiring Officer and Presenting Officer have been appointed. Therefore, in fairness to both the Government servant and also to Government, it is proper that the stay should be vacated. I order accordingly.

6. In the Original Application counter has been filed by the State Government with copy to the other side. In view of this, let the O.A. be listed for hearing early.
7. In the result, therefore, M.A.No.249/97 is allowed and the stay granted stands vacated.


(SOMNATH SOM)
VICE-CHAIRMAN
S.98