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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 469 OF 1998

Cuttack, this the 25th day of August, 1999

Srinibash Rath ....

Applicant

Vrs.

Union of India and another ....

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  
*Somnath Som  
25.8.99*

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 469 OF 1998  
Cuttack, this the 25th day of August, 1999

**CORAM:**

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

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Sri Srinibash Rath, a ged about 41 years,  
son of late Ramachandra Rath,  
At/PO-Baikuntha Nagar, Berhampur,  
District-Ganjam, at present working as Public  
Relation Officer, Head Office, Regional Provident  
FundCommissioner, Bhubaneswar.... Applicant

Advocates for applicant - M/s SSK Subudhi  
S.K.Roy  
K.C.Sahoo  
S.P.Mishra  
D.Narendra

Vrs.

1. Union of India represented through Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Central Office, Business Park-25, Sivaji Marg, New Delhi-15.
2. Regional Provident Fund Commissioner, Orissa, Bhavishyanidhi Bhawan, Janpath, Unit-IX, Bhubaneswar-7, Orissa...Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

*S.Som.*

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 1.9.1998 at Annexure-9 placing him under suspension pending initiation of disciplinary proceedings against him.

2. The applicant's case is that he joined the Regional Provident Fund Commissioner's office as LDC on 13.11.1967 and in due course was promoted to the post of Assistant Accounts Officer/Enforcement Officer/Public Relation Officer in the year 1990. He was posted as Enforcement Officer at Rayagada on 6.8.1993. As Enforcement Officer he submitted report against M/s Sri Ram Rice Mill, Nowrangpur, a defaulter relating to payment of EPF dues. Accordingly, recovery proceedings were initiated against him. However, before issue of summons by Recovery Officer, M/s Sri Ram Rice Mill deposited the defaulted amount. But the proprietor and the Manager kept a grudge against the applicant under the impression that because of the applicant they were compelled to deposit the fine amount. The Manager of the Rice Mill submitted an FIR before the Vigilance authorities alleging demanding of bribe of Rs.200/- by the applicant. A case was initiated by the vigilance police and handed over to C.B.I. The C.B.I. filed a chargesheet against the applicant before the learned Special Judge, C.B.I., Bhubaneswar, under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act,1988. The applicant appeared before the learned Special Judge (CBI) and was released on bail. The applicant has stated that investigation has been completed and trial in the case, TR No. 47/94 is to commence shortly. Due to the above case, the applicant was placed under suspension in order dated 16.8.1994 at Annexure-2. Sanction of prosecution was also accorded in order dated 23.8.1994 at Annexure-3. Because of continuation of suspension the applicant filed OA No. 494/95 which was dismissed in order dated 15.4.1996 (Annexure-4) as withdrawn. The applicant has stated that he was reinstated in service and continued in service till 1.9.1998. After lapse of more than three years, in order dated 23.3.1998 at

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Annexure-5 disciplinary proceedings were initiated against the applicant and the applicant was asked to show cause against the charges which are enclosed to Annexure-5. It is submitted by the applicant that one of the charges is charge of bribery and other charges are minor in nature. It is further stated that for the same incident trial cannot be initiated before the criminal court and proceedings started by the disciplinary authority. It is stated that charge of bribery framed against the applicant in the departmental proceeding is similar to the charge in the chargesheet filed by the C.B.I. in the court of the learned Special Judge (CBI), Bhubaneswar. It is stated that the departmental authorities should have awaited the outcome of the trial before initiation of the departmental proceedings against him. It is further stated that it will take minimum three to four years for the trial in the criminal case to conclude and again all on a sudden the applicant has been placed under suspension in order dated 1.9.1998 at Annexure-9. The applicant has stated that the suspension cannot be ordered indiscriminately. The disciplinary authority has to apply his mind and exercise his discretion in deciding to suspend an employee. In the instant case suspension has been ordered mechanically and therefore it is bad due to non-application of mind. On the above grounds, the applicant has come up with the prayer referred to earlier.

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3. The respondents in their counter have stated that there is no bar to initiate departmental proceedings on the selfsame charge in respect of which criminal proceeding has been initiated and is pending trial. It is further stated that law is well settled that even in a case where a person is exonerated of the criminal charge it is open for the departmental authorities to initiate disciplinary proceeding against him. The

respondents have stated that one P.Pundarikashya filed an FIR before Deputy Superintendent of Police (Vigilance), Jeypore, on 21.5.1994 at 7.00 a.m. alleging that the applicant had demanded bribe from him. Accordingly the vigilance officers squad laid a trap and caught the applicant redhanded at Trupti Lodge, Nowrangpur, at about 4 PM on 21.5.1994 when the applicant was receiving a sum of Rs.300/- from the informant. The respondents have pointed out that as the applicant has been caught red-handed in the act of receiving bribe, the question of informant filing the FIR out of grudge does not arise. The case was later on handed over by the Vigilance Police to Central Bureau of Investigation for further investigation. It is further stated that respondent no.2 had revoked the order of suspension on 26.4.1996 which was passed during pendency of the criminal case. As demanding and receiving of bribe, apart from constituting a criminal case, also amounts to misconduct it was decided to initiate departmental proceedings against the applicant and charges were issued. The respondents have stated that in the departmental proceedings the applicant was not charged with demanding or accepting of bribe but he was charged with suppressing the fact of incident on 21.5.1994 and the fact of his arrest by the State Vigilance Squad. The other two charges relate to deviation from the approved tour programme and non-filing of prosecution against defaulting establishments. The respondents have stated that of the three charges two charges are unconnected with the incident of 21.5.1994 and the first charge only relates to his lapse in not intimating the departmental authorities about his arrest. The respondents have stated in the departmental proceedings

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the lapses which are being enquired into are different from the lapses which are on trial before the criminal court. It is also stated that the charges against the applicant are serious and touch the integrity of the applicant and therefore the competent authority has rightly decided to put the applicant under suspension during the disciplinary enquiry. In consideration of the above, the respondents have opposed the prayer of the applicant.

4. We have heard Shri Deepak Narendra, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Counsel appearing for the respondents and have perused the records.

5. In support of his contention challenging the impugned suspension order the learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Himachal Pradesh in the case of Nikha Ram Sharma v. Central Social Welfare Board, reported in 1990 (4)SLR 407. There the petitioner was the Secretary of the Himachal Pradesh State Social Welfare Board. He was placed under suspension and he was informed by the Chairman that he has been placed under suspension under the orders of the Himachal Pradesh Government. In consideration of the facts of that <sup>case,</sup> their Lordships of the Hon'ble Himachal Pradesh High Court held that Board is an independent authority and the order of suspension passed by the State Welfare Board in a routine fashion and mechanically at the instance of the State Government which had no power to give such direction cannot be sustained. In the instant case, the applicant has been proceeded against departmentally by the competent authority who has placed him under suspension. The applicant has not been suspended on the direction of any extraneous agency and therefore this case is of no relevance to the facts of the present case. The learned

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counsel for the petitioner has also relied on the case of Subramonian v. State of Kerala and others, decided by the Hon'ble High Court of Kerala and reported in 1973 (1) SLR 521. Facts of that case are widely different. In that case in paragraph 9 of the judgment the Hon'ble High Court of Kerala have laid stress that power of suspension is to be sparingly exercised and it is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority in respect of any act of commission or omission on the part of the officer. In the case of State of Orissa v. Bimal Kumar Mohanty, decided by the Hon'ble Supreme Court and reported in 1994 (2)ATT (SC) 11, Hon'ble Supreme Court have laid down that order of suspension should not be actuated by mala fide, arbitrary or ulterior purpose. It must be a step in aid to the ultimate result of the enquiry. The disciplinary authority while suspending an officer should keep in mind the public interest and the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge. From the above two decisions it is clear that an order of suspension cannot be passed in routine and mechanical fashion and has to be passed taking into account the facts and circumstances of each case. In **Bimal Kumar Mohanty's case (supra)** the Hon'ble Supreme Court have laid down that Courts and Tribunals must consider each case on its own facts and no general law could be laid down on that behalf. In the instant case the applicant has stated that on the selfsame charge in which he is facing trial in a criminal case, he is also been proceeded against departmentally. This is factually not correct. There are three charges against the applicant and two of the charges do not relate to allegation of his demanding or accepting of bribe. The first charge also does not relate to the alleged lapse of

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the applicant relating to demanding and receiving of bribe. Article 1 of the charge relates to his lapse in not intimating the fact of his being caught in a trap case and of his arrest. In other words, the first charge relates to the alleged lapse of the applicant in not informing his official superiors regarding his arrest by the vigilance organisation. According to the Ministry of Home Affairs' O.M. dated 25th February 1955, the gist of which has been printed at page 205 of **Swamiy's Compilation of CCS CCA Rules (24th Edition 1999)**, it is the duty of a Government who may be arrested for any reasons to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though he might have subsequently been released on bail. It is further laid down in this circular that on receipt of the information from the person concerned or from any other source, the departmental authorities should decide whether the facts and circumstances leading to the arrest of the person call for his suspension. Failure on the part of a Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone apart from the action that may be called for on the outcome of the police case against him. In this case therefore it cannot be said that *prima facie* the charges against the applicant are not sustainable. The applicant has also not prayed for quashing the charges. Once the charges have been framed against him, it is for the disciplinary authority to take a view whether the applicant should be suspended or not. Unless there is material on record that suspension has been done *mala fide*, the Tribunal would not interfere. In this case, it has not been alleged that the order has been issued *mala fide* and therefore this ground for interfering with the ~~punishment~~ <sup>suspension</sup> order is not available to the applicant. In the instant

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case the charges against the applicant are serious. It is alleged that he was arrested in a trap case but he failed to inform his official superiors of the fact of his arrest. The other two charges also cannot be termed as minor, as has been mentioned by the applicant in his petition. In any case whether the charges are *prima facie* serious in nature or not is a point on which the departmental authorities are to take a view. It is also to be noted that the charges are yet to be proved in the disciplinary proceedings in which the applicant would have an ample opportunity to state his side of the case. The only question for consideration is whether in the face of these charges the disciplinary authority was right in placing him under suspension. Going by the facts of this case as narrated by us earlier it cannot be said that the order of suspension is unreasonable. The departmental authorities are within their rights to decide that till the disciplinary proceeding is concluded the applicant should remain under suspension. We see no reason to interfere with that decision and the order at Annexure-9.

6. The applicant has pointed out that it may take three to four years for the criminal case to be concluded and keeping him under suspension during the pendency of the criminal case is not in public interest. In this case the applicant has been suspended not because of the criminal case but because of a disciplinary proceeding initiated against him. It is desirable that the disciplinary proceeding is concluded early. In view of this, we direct the departmental authorities to complete the disciplinary proceeding against the applicant within a period of six months from the date of receipt of copy of this order. The applicant is directed to co-operate with the departmental authorities in completing the enquiry. In case the applicant does not co-operate without reasonable

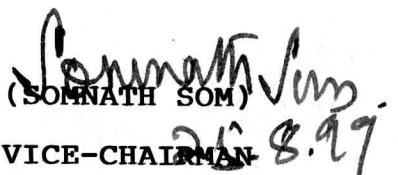
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cause, the departmental authorities are directed to conclude the departmental enquiry ex parte within the time frame indicated above.

7. In the result, the Original Application is disposed of with the observation and direction above but without any order as to costs.

  
(G. NARASIMHAM)

MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
26.8.99  
VICE-CHAIRMAN

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