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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.486 OF 1998

Cuttack, this the 1st day of March, 1999

Rabindra Mohan Senapati, 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)
VICE-CHAIRMAN

2-3-99
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.486 OF 1998
Cuttack, this the 18th day of March, 1999

CORAM:

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

.....
Rabindra Mohan Senapati, IAS
(Under suspension), Qr.No.IV-C,
Unit-I, At/PO-Bhubaneswar,
District-Khurda

Applicant

Advocates for applicant - M/s G.B.Jena
S.Das
Jagannath Das
S.Mohapatra.

Vrs.

1. State of Orissa, represented
through the Chief Secretary,
Government of Orissa,
Bhubaneswar, Dist.Khurda.
2. Chief Secretary,
Government of Orissa,
Bhubaneswar,
Dist.Khurda.
3. Principal Secretary to Government
General Administration Department,
At/PO-Bhubaneswar, Dist.Khurda.
- *4. Chief Minister of Orissa, Notice not issued as
At/PO-Bhubaneswar, Dist.Khurda. per order dated
6.11.1998.
5. Union of India,
represented by the Secretary,
Department of Personnel & Training,
Government of India,
New Delhi.....

.....Respondents

Advocates for respondents - M/s K.C.Mohanty
A.Routray
A.Ku.Misra
J.Sengupta
D.K.Panda
PRJ Dash
C.Mohanty

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL)

This Application has been argued in detail by learned counsels of both sides. But for the purpose of considering the relief claimed by the petitioner, it is not necessary to go into too many details of the facts of this case. The facts which are not at controversy in this case are the following.

2. The applicant is an IAS officer of Orissa Cadre and belongs to 1965 batch. In order dated 12.2.1997 (Annexure-1) he was appointed as Agricultural Production Commissioner. While he was working as such, the post of Agricultural Production Commissioner was declared equivalent in status and responsibility to the post of Member, Board of Revenue in the I.A.S. cadre of the State in order dated 10.2.1998 and on promotion from the post of Principal Secretary, the applicant was allowed to continue in the upgraded post of Agricultural Production Commissioner in the same order at Annexure-3. In order dated 19.4.1998 (Annexure-7) the petitioner was appointed as Director General, Training Co-ordination, Gopabandhu Academy of Administration, Bhubaneswar. In the same order the post of Director General, Training Co-ordination, Gopabandhu Academy of Administration, Bhubaneswar, was declared equivalent in status and responsibility to the post of Member, Board of Revenue, Orissa, in the IAS Cadre of the State. On getting this order dated 19.4.1998 the petitioner filed a representation dated 20.4.1998 (Annexure-8) to the then Chief Minister, Orissa, praying that his transfer to Gopabandhu Academy of Administration, the post of Director General, Training Co-ordination, /

be
Cancelled. In response to this representation dated 20.4.1998 at Annexure-8, he was informed in letters dated 23.4.1998 (Annexure-9) and 27.4.1998 (Annexure-10) that his transfer has been done because of administrative necessity and that his representation to the Chief Minister has been rejected. The applicant was requested in the letter dated 27.4.1998 to make over charge/relinquish immediately and join his new assignment. Thereafter the applicant filed a memorial dated 27.4.1998 (Annexure-11) to the Governor of Orissa praying for cancellation of the transfer order. He also asked for a personal hearing. On the same day, i.e., 27.4.1998, in a letter addressed to the then Special Secretary, General Administration Department (Annexure-12) he informed the Special Secretary that he has received the letter dated 27.4.1998 at Annexure-10 intimating him about rejection of his representation by the Chief Minister. He also stated that against this rejection, he has filed a memorial to the Hon'ble Governor of Orissa and he will abide by the final orders to be passed on his memorial by His Excellency. In reply to this letter dated 27.4.1998 (Annexure-12) addressed to the then Special Secretary, General Administration Department, the Special Secretary, G.A. Department, sent a reply to the applicant in his letter dated 28.4.1998 (Annexure-13) in which the applicant was informed that his memorial dated 27.4.1998 has been considered and rejected and Government have been pleased to direct the applicant to join his new assignment by 29.4.1998 positively, failing which the Government will be under the painful necessity of taking appropriate action against the applicant. The applicant thereafter sent dated 29.4.1998 another letter/ to Special Secretary, General

Administration Department at Annexure-14 (wrongly typed as 29.8.98) in which the applicant stated that he had sent a FAX message to the Hon'ble Governor at Hyderabad to call for his memorial and pass appropriate orders. He also enclosed a copy of the FAX message and indicated that question of taking appropriate action against the applicant does not arise till he hears from the Hon'ble Governor at Hyderabad. Thereafter in order dated 30.4.1998 at Annexure-15 the applicant was placed under suspension. On 25.5.1998 (Annexure-16) the applicant filed an appeal to Government of India under Rule 16 of All India Services (Discipline & Appeal) Rules against the order of suspension and this appeal was rejected by Government of India in their order dated 31.8.1998 (Annexure-18). In between, in the order dated 29.7.1998 (Annexure-17) the State Government, after taking into consideration the recommendation of the Review Committee, extended the period of suspension of the applicant beyond 29.7.1998 until further orders.

3. Respondents 1 to 3 representing Government of Orissa have filed a voluminous counter contesting various submissions made by the petitioner in his OA as also the points taken by the applicant in his representation and memorial and have opposed the prayer of the applicant. Government of India (respondent no.5) have also filed a counter praying that the application is devoid of merit and should be rejected.

4. While stating the above facts we have deliberately not referred to the various averments on merits made by the applicant in his OA and its enclosures and have also not referred to the various averments in opposition made by the respondents in their counters. At this stage it is necessary to take notice

of the relief claimed by the applicant in this OA. At page 17 of the OA in paragraph 8, which is extracted in full below, the applicant has asked for the following relief:

"8. RELIEF(S) SOUGHT:

In view of what has been stated in paragraphs 4 and 5, the Hon'ble Tribunal may kindly be pleased to:

- (i) direct the respondents to revoke the order of suspension passed on 30.4.1998 and which was allowed to continue beyond 90 days until further orders, on 29.7.1998;
- (ii) and may grant any other or further relief in favour of the applicant to which he may be found entitled to."

5. As earlier mentioned, this matter has been argued at length before us. We have heard Shri Jagannath Das, the learned counsel appearing for the applicant; Shri Aswini Kumar Mishra, the learned Special Counsel and Shri K.C.Mohanty, the learned Government Advocate appearing for the Government of Orissa; and Shri A.Routray, the learned Additional Standing Counsel appearing for Union of India. The applicant has filed a rejoinder to the counter filed by respondents 1 to 3. Respondents 1 to 3, i.e., Government of Orissa have filed counter to the rejoinder and the applicant has filed a further rejoinder. Besides, written note of submission and supplementary written note of submission have been filed by the applicant along with a memo of citations with copies to the other side. Learned counsel for the petitioner has filed a memo enclosing certain documents and this has been kept on record and has been looked into by us.

6. Hearing in this matter was closed on 2.2.1999 and the learned Special Counsel appearing for the Government of Orissa wanted seven days time to file certain documents and therefore, the matter was brought up on 9.2.1999 under the heading "TO BE MENTIONED", on which date the learned Special Counsel appearing for the State Government filed a Memo with certain documents with copy to the other side. The learned counsel for the applicant also filed a memo of citations giving copy to the other side.

7. While the matter was pending for delivery of orders, the learned Special Counsel appearing for the Government of Orissa filed a Memo on 22.2.1999 with copy to the other side enclosing a notification dated 15.2.1999 in which the State Government reinstated the applicant with immediate effect pending finalisation of disciplinary proceedings against him and on reinstatement the applicant was appointed as Special Relief Commissioner, Orissa, Cuttack and in the same notification the post of Special Relief Commissioner was declared equivalent in status and responsibility to the post of Member, Board of Revenue, Orissa, provided in the IAS Cadre of the State. The learned counsel for the applicant filed a memo on 23.2.1999 with copy to the other side stating that this notification dated 15.2.1999 has been issued after the arguments were over in this case and judgment was reserved and therefore, this notification has no relevance to the dispute pending before us inasmuch as the original cause of action for filing the OA is not extinguished even though the judgment has not been delivered. It is further stated that the notification dated 15.2.1999 reinstating the applicant in service

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and appointing him as Special Relief Commissioner is in the nature of lis pendens as observed by the Hon'ble Supreme Court in the case of Rajendar Singh and others v. Santa Singh and others, AIR 1973 SC 2537, and on the basis of law as laid down by the Hon'ble Apex Court in that case, the applicant in this memo dated 23.2.1999 prayed that the notification dated 15.2.1999 which was filed on 22.2.1999 should be ignored.

8. We have considered ^{the} / large number of submissions made by the learned counsel for the applicant with the seriousness they deserve. But these submissions have to be considered in the context of the relief claimed by the applicant in this OA. We have quoted the relevant paragraph of the OA in which the applicant has spelt out the relief prayed for by him. The first relief prayed by the applicant is for a direction to the respondents to revoke the order of suspension passed on 30.4.1998 (Annexure-15) which was allowed to continue beyond ninety days by order dated 29.7.1998 at Annexure-17. As against this relief, we note that the Government of Orissa have already revoked the order of suspension in their notification No.4832 dated 15.2.1999. As such , this prayer for a direction to the respondents to revoke the order of suspension no longer survives. The learned counsel for the petitioner has made a large number of submissions in support of his contention that in the facts and circumstances of the case, the impugned order of suspension should not have been passed. These submissions, as we have noted, must be understood in the context of his prayer for a direction to the respondents to revoke the order of suspension. The order of suspension having already been revoked, it is not necessary for us to consider these submissions. It is to be noted that the applicant has

not asked for quashing the order of suspension and his prayer is only for a direction to the respondents to revoke the order of suspension which has already been done. The learned counsel for the petitioner in his memo dated 23.2.1999 has submitted that this notification should be ignored and this notification reinstating the applicant in service is in the nature of lis pendens in the light of the law as laid down by the Hon'ble Apex Court in **Rajendar Singh's case (supra)**. We have gone through this decision carefully and we are unable to agree with the above submission. The relevant portion of the observations of their Lordships of the Hon'ble Supreme Court in **Rajendar Singh's case (supra)** is quoted below:

"15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."

For the present purpose, it is not necessary to go into the facts of **Rajendar Singh's case (supra)**, but that related to the question of title over some immovable property. The observations of the Hon'ble Supreme Court make it clear that the doctrine of lis pendens which owes its statutory foundation on Section 52 of Transfer of Property Act deals with disputes, or rights, or interests in immovable property. Therefore, this doctrine has no application to the present dispute before us. This contention of the learned counsel for the petitioner is therefore rejected.

9. In the relevant portion of the application, the petitioner has also prayed for granting of any other or further relief in favour of the applicant to which he may be found entitled. The relief claimed by him in this paragraph 8(ii) must be understood to mean some relief which is consequential to the main relief claimed by him in the preceding paragraph 8(i). As the main relief claimed by the applicant no longer survives, no other relief can be granted to the applicant under paragraph 8(ii) of the O.A.

10. In the result, therefore, this Original Application is disposed of in terms of the observations made above but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)