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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.666 OF 1998

Cuttack, this the 18th March, 1999

Panchanan Singh 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
(SOMNATH SOM)
VICE-CHAIRMAN *8.399*

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CORAM:

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

Panchanan Singh, aged 50 years,
son of late Akhaya Narayan Singh,
Senior Accountant (Under Suspension),
Office of the Accountant General (A&E),
Orissa Applicant

Advocates for applicant - M/s G.K.Misra
G N Misra

Vrs.

1. Union of India, represented through the Principal Accountant General (A&E), Orissa, Bhubaneswar.
2. Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Orissa, Bhubaneswar

..... Respondents
Advocate for respondents - Mr.B.K.Nayak
A.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 22.7.1998 at Annexure-4 placing him under suspension. In the order of suspension it was indicated that the applicant is debarred from entering the office premises excepting the day he has to receive his subsistence allowance for which he has to obtain prior permission. The applicant had prayed by way of interim relief that the order of suspension be stayed. The prayer for interim relief was disposed of in order dated 2.2.1999 after hearing both sides and after the respondents had filed showcause

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opposing the prayer for interim relief. In the order dated 2.2.1999 respondent no.2 was directed to modify the prohibition mentioned above permitting the applicant to enter the office premises with prior permission of a designated authority for the purpose of pursuing legitimate matters of his individual service interests. It was also made clear in that order that the above relaxation would not permit the applicant to take up meetings, discussions, etc., within the office premises even during lunch hour with regard to his Association activity, and a finding on that must await adjudication of the Original Application.

2. The applicant's case in the Original Application is that he is the General Secretary of All India Audit & Accounts Association formed in 1923 by the employees under the control of Comptroller & Auditor General of India. According to him, this Association has as many Branches as there are State headquarters in the country having office of Accountant General (Audit), Accountant General (A&E), Director of Audit, Deputy Director of Audit and so on. According to him, All India Audit & Accounts Association (Accounts Wing), Bhubaneswar Branch is an accredited Branch of All India Audit & Accounts Association. In 1993 Government of India framed a set of statutory rules called Central Civil Services (Recognition of Service Association) Rules, 1993, some provisions of which have been challenged by All India Association before the Hon'ble High Court of Delhi in Civil Writ Petition No.2128 of 1995 which is pending adjudication. According to him, the administrative authorities wanted to create a new local Association in the name and style of Orissa Accounts Association. The applicant being the

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General Secretary of the Association referred to earlier had to hold meetings of the Association off and on during lunch hour. For this, an explanation was called from him in letter dated 17.7.1998 (Annexure-3) in which it was stated that on three occasions on 2.7.1998, 15.7.1998 and 16.7.1998 the applicant held General Body meeting of the Association which, according to the respondents, is an unrecognised Association in spite of denial of permission by the authorities and declaration of the said meetings as unauthorised. He also used microphones and slogans within the office premises during normal working hours. For this, he was directed to show cause by 27.7.1998 as to why action will not be taken against him. The applicant's case is that even though showcause was called for by 27.7.1998, he was placed under suspension on 22.7.1998, pending initiation of disciplinary proceedings against him. Charges were issued in letter dated 16.10.1998(Annexure-5). The applicant states that the charge and the attendant papers enclosed by him as enclosures to Annexure-5 show that the charges are totally unconnected with his service conditions and are connected with his association activity and therefore, he states that the charges have been initiated against him to discourage him to take up association activity. He has also stated that according to rules he is entitled to review of his suspension and enhancement of subsistence allowance after three months, but this has not been done. That is how the applicant has come up in the present O.A. with the aforesaid prayer.

3. Respondents in their counter have submitted that no association named All India Audit & Accounts Association (Accounts Wing), Bhubaneswar

Branch is functioning in the office of Principal Accountant-General, Orissa, at any time. All India Audit and Accounts Association has lost its recognition. They have also indicated that the Bhubaneswar Branch is not an accredited Branch of All India Association which itself is unrecognised. It is further stated that a new Association under the name and style of Orissa Accounts Association got recognition in the month of July 1998 as per Rules. The respondents have referred to an earlier OA No.554/98 filed by one Ajoy Kumar Swain and others in which allegations similar to the allegations made by the applicant in the present petition, were made and were also considered in the order disposing of that OA. It is stated that the applicant's so-called recognised Association has no locus standi to conduct any meeting in the office premises and therefore, permission was not granted to conduct the meeting. But the applicant did not pay heed to such restriction and continued to conduct meeting. The petition of the applicant asking for permission to hold a meeting on 15.7.1998 is at Annexure-R/3 and the order of refusal is at Annexure-R/4. It is further stated that notwithstanding refusal of permission the applicant kept on holding such meetings and went on submitting to the Administration the resolutions as passed which were full of insubordinate language. It is further stated that conducting meeting without permission is violative of Rule 7 of Central Civil Services (Conduct) Rules, 1964 and therefore, action was contemplated against him. Initially showcause was issued to him asking him to reply by 27.7.1998. But notwithstanding this the applicant held another meeting unauthorisedly on 22.7.1998 and then it was felt that the applicant should be placed under suspension for his continued violation of Conduct Rules and that is how the

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applicant has been placed under suspension in the order dated 22.7.1998 at Annexure-4 of the O.A. The respondents have also strongly denied that they have ever bothered about the association activity of the applicant or interfered in the mustering of members for the two Associations. Further submissions have been made by the respondents with regard to deduction of subscription for the Association which do not concern us in the present case. Lastly, it is stated that against the order of suspension the applicant has not filed appeal before the appellate authority and as he has not exhausted the statutory departmental remedy, the application is not maintainable. On the above grounds the respondents have opposed the prayers of the applicant.

4. The applicant has filed a rejoinder which has also been taken note of.

5. We have heard Shri G.K.Misra, the learned counsel appearing for the applicant and Shri B.K.Nayak, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. We were inclined to dispose of the O.A. at the preliminary stage of hearing. But in view of large number of submissions made by the learned counsel of both sides, it is necessary to deal with some of them.

6. The admitted position is that in the order dated 17.7.1998 at Annexure-3 the applicant was asked to show cause by 27.7.1998 for conducting meetings on 2.7.1998 15.7.1998 and 16.7.1998 unauthorisedly even after permission to hold such meetings was refused. The applicant was asked to show cause by 27.7.1998. But in order dated 22.7.1998 at Annexure-4 the applicant was placed under suspension even before he could submit his showcause and before

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the same could be considered by the respondents. The respondents have stated that the applicant was placed under suspension because notwithstanding the fact that explanation was called from him for holding meetings in the office premises on 2.7.1998, 15.7.1998 and 16.7.1998 even after refusal of permission, he continued with his insubordinate conduct and held another meeting on 22.7.1998. This may be factually correct. But we notice from the charge that the fact that the applicant held a meeting on 22.7.1998 is not a part of the charge which is at Annexure-5. It is submitted by the learned Additional Standing Counsel appearing for the respondents that even though in the statement of articles of charge the meeting held by the applicant on 22.7.1998 has not been mentioned, in the statement of imputation the fact of holding such meeting on 22.7.1998 has been mentioned. This is not very relevant because the statement of imputation is for the purpose of explaining the articles of charge. What is not there in the article of charge cannot be imputed in the statement of imputations. The applicant is answerable for the charge which is mentioned in the article of charge and not what is mentioned in the statement of imputation but not included in the article of charge. Secondly, it is submitted by the learned Additional Standing Counsel that by holding meetings on 2.7.1998, 15.7.1998 and 16.7.1998 when permission for holding such meetings has been refused, the applicant has violated Rule 7 of Central Civil Services (Conduct) Rules, 1964. It would not be correct for us to get into this aspect of the matter because the charges are pending against the applicant and these are yet to be enquired into. But this contention of the respondents is considered only in the context of the applicant's

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prayer for quashing the order of suspension. We would like to make it clear that anything said by us in this context should not be taken to have any bearing on the disciplinary proceedings and enquiry into the charges which is yet to take place. We are considering this aspect only from the point of view of determining whether the alleged violation is of such magnitude which would merit the suspension of the applicant. Rule 7 of the Central Civil Services (Conduct) Rules, 1964 deals with demonstration and strike and inter alia lays down ^{that} no Government servant shall engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence. Clause (ii) of this Rule does not concern us in this case and therefore, is not being referred to. The respondents' case is that as the Association of which the applicant is alleged to be the General Secretary is unrecognised, the applicant has no right to hold a meeting inside the office premises. Obviously, only portion of clause (i) of Rule 7 which if at all would be attracted in the applicant's case is the words "public order". The meaning of these words in another context has been considered by the Hon'ble Supreme Court in the case of O.K.Ghosh and another v. E.X.Joseph, AIR 1963 SC 812. That case deals with Central Civil Services (Conduct) Rules, 1955 which has been replaced by Central Civil Services (Conduct) Rules, 1964. That was also a case relating to Accountant General's office in Bombay. The respondent in that case was Secretary of Civil Accounts

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Association which consisted of non-gazetted staff of Accountant General's office. That Association was affiliated to All India Non-Gazetted Audit and Accounts Association. Recognition of that Association was withdrawn in May 1959. Rule 4-B of 1955 Conduct Rules provided that no Government servant shall join or continue to be a member of any Service Association of Government servants which has not, within a period of six months from its formation, obtained the recognition of the Government under the rules prescribed in that behalf or recognition in respect of which has been refused or withdrawn by the Government under the said rules. The respondent in that case was charged for having violated this Rule along with Rule 4-A of the 1955 Conduct Rules which provided that no Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his condition of service. Hon'ble Supreme Court held in that case, going by their decision in an earlier case, Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166, that Rule 4-A of the 1955 Conduct Rules prohibiting any form of demonstration is violative of Government servant's rights under Article 19(1)(a) and (b) of the Constitution and should, therefore, be struck down. Coming to the question of recognition and public order, the Hon'ble Supreme Court held that it is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of, the members of the said association. Similarly, it is difficult to see any connection between recognition and public order. In the instant case, in the notice dated 17.7.1998 calling for the applicant's explanation, it

has been mentioned that he held meetings in the office premises during normal working hours and used microphones. Such actions are *prima facie* not allowable and whether the Association is recognised or unrecognised has no bearing on this. Even a recognised association cannot be allowed to hold meetings inside office premises during normal working hours and use microphones disturbing the work of the office. At the time of hearing of the prayer for interim relief and briefly at the time of hearing of the O.A., some submissions have been made about recognition, but, to our mind, this aspect of recognition of association is not a relevant factor for the present purpose. As we have already mentioned, even a recognised Association obviously should not be permitted by any Head of Office to hold meetings inside office premises during normal working hours and to use microphones, which is the allegation in the letter dated 17.7.1998 at Annexure-3. As we have already mentioned earlier, we are not expressing any opinion about the applicant's liability or lack of it vis-a-vis the charge framed against him. But it is to be noted that there is only one simple charge against him and even though the applicant was placed under suspension on 22.7.1998, the charge was issued only on 16.10.1998, i.e., almost after a lapse of three months. We also see that review was made of the suspension of the applicant and his subsistence allowance was increased only in order dated 21.1.1999 which is at Annexure-8 of the rejoinder. In this order, it has been specifically mentioned that the period of suspension has been prolonged for reasons which are not directly attributable to the applicant. The learned counsel for the applicant has submitted that the

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petitioner has already filed his explanation to the charge, but no Inquiring Officer has been appointed. It has been submitted by the learned Additional Standing Counsel that this fact has been mentioned by the learned counsel for the petitioner at the time of hearing only and therefore, it has not been possible for the learned Additional Standing Counsel to obtain instructions on this point. Be that as it may, the charge against the applicant is only one and this charge is also sought to be proved through documentary evidence as it appears from the enclosures to the charge. In view of this, we direct the departmental authorities to complete the enquiry within a period of 60(sixty) days from the date of receipt of copy of this order. The applicant is directed to co-operate in the enquiry. But in case he does not co-operate without sufficient reason to the satisfaction of the Inquiring Officer, then the enquiry should be held ex parte and completed within the period so indicated. Final orders on the enquiry report should be passed within a period of another 30(thirty) days.

7. The next question which remains for consideration is whether the applicant should remain under suspension during this period. As we have already mentioned, the main reason for suspension, i.e., holding of meeting on 22.7.1998 has not been included in the charge. The applicant has no doubt held three meetings on 2.7.1998, 15.7.1998 and 16.7.1998. But this is a matter to be decided in the disciplinary proceedings. We also take note of the fact that resolution passed in the meeting held on 22.7.1998, which was sent to Principal Accountant General

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(respondent no.1) in applicant's letter dated 22.7.1998 at Annexure-R/5 is couched in highly intemperate, discourteous and insubordinate language. But neither the meeting held on 22.7.1998 nor the discourteous and intemperate language is the charge against him. In our interim order, we had directed that during the pendency of the O.A., the applicant is not permitted to take up meetings and discussion within office premises even during lunch hour with regard to his association activity. It has been submitted by the learned counsel for the petitioner that the applicant would not organise any meeting or take part or attend any meeting in connection with his association activity during the pendency of the disciplinary proceeding. In view of this undertaking given by the learned counsel for the petitioner on his behalf, we feel that the continued suspension of the applicant requires review. Hon'ble Supreme Court has laid down in several cases the grounds on which during pendency of disciplinary proceedings a delinquent officer can be or should be placed under suspension. It is not necessary to refer to those cases. We would like to refer to an old case before the Kerala High Court, decided by his Lordship, Hon'ble Mr.Justice V.Balakrishna Eradi (as he then was) reported in 1973(1)SLR 521 (Subramonian v. State of Kerala and others). It is not necessary to go into facts of that case. In paragraph 9 of the judgment, his Lordship has made the following observation:

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".....It is also necessary to remember that the power of suspension is to be sparingly exercised and that is not meant to be used as a mode of giving expression to any displeasure felt by the appointing authority or the Government in respect of any act of commission or omission on the part of the officer."

(Emphasis supplied)

In view of the law as laid down in the above case, we direct the departmental authorities to consider reinstatement of the applicant, pending finalisation of the disciplinary proceeding against him, within a period of 15 (fifteen) days from the date of receipt of copy of this order, in view of the undertaking given by the applicant through his counsel before us. It is needless to point out that in case the applicant chooses to violate the undertaking given by him, the respondents will be free to proceed against him under the law.

8. In the result, therefore, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN 18.3.99