

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 367 of 1999.
Cuttack, this the 6th day of November, 2000.

Dukhishyam Routray.

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Applicant.

Versus

Union of India & 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.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR.G.NARASIMHAM, MEMBER(JUDL.).

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Sri Dukhishyam Routray, Aged about 50 years,
S/o.late Damburudhar Routray, of At/Po-Mundaiilo,
Dist. Jagatsinghpur, at present working as Jr.
Telecom Officer, Office of the Director, Trans
installation, Fourth Block, Door Sanchar Bhawan,
Bhubaneswar.

Applicant.

By legal practitioner: M/s.S.S.K.Subudhi,
K.C.Sahoo,
S.P.Misra,
D.K.Patra,
B.Panda,
D.Narendra,
Advocates.

-Versus-

1. Director General,
Department of Telecom,
New Delhi.
2. Chief General Manager,
Telecommunication,
Orissa Circle, Bhubaneswar.
3. Director,
Trans Installation,
Telecom Administrative Building,
Bhubaneswar-7.

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Respondents.

S.Jom
By legal practitioner: Mr.S.B.Jena,
Additional Standing Counsel.

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O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 13-7-1999 (Annexure-2) placing the applicant under suspension under sub-rule(1) of Rule-10. He has also prayed for reinstatement with consequential financial and service benefits. By way of interim relief he had prayed that pending hearing of this Original Application, Respondents should be directed to reinstate the applicant. On contest, in order dt. 25.8.1999, the prayer for Interim relief was rejected. Respondents have filed counter opposing the prayer of the applicant.

2. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case.

3. We have heard Mr.S.S.K.Subudhi, learned counsel for the Applicant and Mr.S.B.Jena, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

4. The admitted position is that the applicant has been working as Sub-Divisional Engineer from 20.10.1997 having joined the Department originally as telephone operator in 1973. In 1997, Central Bureau of Investigation, initiated a case against him under the Prevention of Corruption Act. Applicant has stated that the C.B.I. has filed chargesheet before the learned Special Judge(CBI), Bhubaneswar. In obedience of the summons, the applicant appeared before the learned Special Judge on 21.6.1999 and was released on bail. Thereafter in the impugned order dated 13.7.1999, the applicant has been placed under suspension. For the reasons indicated by the applicant in his petition and submitted by learned counsel for the applicant

S. Som

which will be referred to at the time of considering the submissions, the applicant has come up with the prayers referred to earlier.

5. Respondents have stated that a criminal case has been instituted against the applicant on a serious charge and on the basis of the departmental instructions, the departmental authorities are obliged to place him under suspension. On the above grounds, they have opposed the prayer of the applicant.

6. The first point urged by the learned counsel for the applicant is that in this case FIR was recorded sometime in 1997 and after a long passage of long two years only in July, 1999, the applicant has been placed under suspension. Before placing him under suspension no show cause notice has been issued to him. The gap of two years from the recording of FIR and suspension of the applicant will not in any way invalidate the order of suspension as the applicant has himself mentioned in the Original Application that after recording the FIR, the CBI conducted and completed the investigation and filed charge-sheet. It is only proper that the Departmental Authorities have taken up the question of suspension of the applicant after charge sheet has been filed. There is also no legal requirement that before placing an officer under suspension a show cause notice is to be issued to him. This ground of the learned counsel for the applicant is therefore, held to be without any merit and is rejected.

7. The second ground urged by the learned counsel for the applicant is that from the order of suspension it is clear that the suspension has been ordered solely on the ground of institution of criminal case against him. It has been alleged by the learned counsel for the applicant that in that case Respondents should have explore the possibility of transferring the applicant

to some other post where he would not be in a position to influence the trial and would not also in a position to commit such misconduct which has been alleged against him in the criminal proceedings but without exploring this possibility, the Respondents have placed him under suspension in order at Annexure-2. In support of his contention, learned counsel for the applicant has relied on a decision reported in 1991 (3) SLR 326 - K.C. Agad v. State of Himachal Pradesh. Facts of that case are widely different from the present case before us. In that case, the applicant was the Director of Horticulture of Himachal Pradesh was alleged to have misconducted himself in the matter of making certain Govt. purchases. The Tribunal noted that in that case chargesheet was filed against 26 officers including the applicant and 16 officers of Indian Forest Service cadre but as the sanction of prosecution did not come from the Govt. of India, in respect of I.F.S. Officers, Departmental Authorities bifurcated the chargesheet and issued a separate chargesheet in respect of applicant alone and placed him under suspension. On this ground, the Tribunal held that the applicant was discriminated against. The applicant in that case has also alleged mala fide in the matter of his suspension and was borne out ^{by the} haste with which a junior person was promoted and placed in the position vacated by him because of his suspension. There is no requirement under the Rules that before an officer is suspended on account of certain lapses alleged against him which may be the subject matter of a disciplinary proceedings or a criminal trial, the departmental authorities must necessarily explore the possibility of transferring the officer to a post where there would be no scope on his part to repeat the lapses which are alleged against him. On the other hand, the Respondents

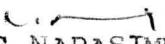
in their counter have placed reliance on the circular dated 20-6-1986 issued by the Department of Personnel and Training which inter alia provides that where a chargesheet accusing a Govt. servant of specific acts of corruption of any other offence involving normal turpitude has been filed in a criminal court, immediately after filing of the chargesheet, the Govt. servant has to be placed under suspension. In view of this, we find no merit in the prayer of the applicant that the order of suspension should be quashed. This prayer is accordingly rejected.

8. It is submitted by learned counsel for the applicant and to our mind with some justification, that in this case chargesheet has been filed in May, 1999 and it will take many years before the trial is concluded. In this connection, Learned counsel for the applicant has relied on a decision of the Hon'ble High Court of Rajasthan in the case of A. Mukherji v. State of Rajasthan reported in 1995 (1) SLR(103) at page 575 and in which the suspension order of the applicant was quashed. In that case FIR was lodged on 29.7.88 and another FIR in August, 1989 and with the filing of FIR, the applicant was suspended. In that case, the Hon'ble High Court noted that it took five years to file chargesheet in the trial court. Hon'ble High Court also took note of the fact that by very nature of the case, the trial will take years and in consideration of the factors, amongst others, the Hon'ble High Court revoked the order of suspension. In the instant case the applicant has been suspended in July, 1999 and a little over one year has passed after his suspension. Departmental instructions provide six months review of suspension cases. From the pleadings of the parties it is not clear if the petitioner's case is reviewed in the meantime.

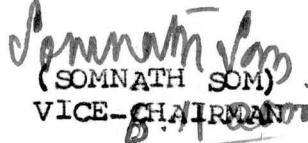
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Learned A.S.C. is also not in a position to indicate if any review has been taken place. As we have already noted that there is some justification in the submission of learned counsel for the petitioner that in the instant case trial will take a number of years, in consideration of this, we direct the Departmental Authorities to take up the periodical review of the case of the applicant. Departmental instructions also provide that where criminal case has been initiated at the instance of the CBI then CBI authorities have to be consulted if removal of such suspension order would be detrimental to the public interest. Applicant has been suspended in July, 1999. Review of his case is already due, if not already done. In view of this, while rejecting the prayer of the applicant in the O.A., we direct the Departmental Authorities to take up a review of the case of the applicant with regard to his continued suspension within a period of 60 days from the date of receipt of a copy of this order strictly in accordance with the Departmental Rules and Instructions which however, have not been produced before us in this case.

9. In the result, therefore, the Original Application is disposed of with the observations and directions made above. No costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/QM.


(SOMNATH SOM)
VICE-CHAIRMAN