

19
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 94 OF 1999
Cuttack, this the 31st day of August, 2000

Mahendra Pratap, IPS ...

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
31.8.2000

20
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 94 OF 1999
Cuttack, this the 31st day of August, 2000

CORAM:

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

.....
Mahendra Pratap, IPS, aged about 38 years, son of Shri
Shravan Kumar, at present posted in the office of DIG of
Police, Bhubaneswar Range, Dist.Khurda....

..... Applicant

Advocates for applicant - M/sGAR Dora,
J.K.Lenka
G.Rani Dora

Vrs.

1. Union of India, represented through Secretary, Ministry
of Home Affairs, Government of India, New Delhi.
2. Principal Secretary to Government of Orissa, Home
Department, At/PO-Bhubaneswar, District-Khurda

..... Respondents

Advocates for respondents - Mr.A.K.Bose
Sr.CGSC for R-1
&
Mr.K.C.Mohanty,
Govt. Advocate for
R-2.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.M.
In this application the petitioner has prayed
for quashing his order of suspension dated 14.12.1998
(Annexure-1) and for reinstatement with consequential
benefits. By way of interim relief he had prayed for a
direction to the State Government for his reinstatement as an
interim measure. The prayer for interim relief was disposed
of in order dated 12.4.1999 with a direction to the State
Government to reinstate the applicant within a period of
seven days from the date of receipt of copy of that order.
Accordingly, the applicant has been reinstated in service and

his present prayer is only for quashing the order of suspension. It has been explained by the learned counsel for the petitioner that if the order of suspension is quashed, he will be deemed to have been on duty althrough from the date of his suspension till the date of reinstatement and therefore this prayer survives even after his reinstatement. For the purpose of considering this OA it is not necessary to go into too many facts of this case. It is only necessary to note that the applicant is an Indian Police Service officer in Orissa cadre. While he was working as Superintendent of Police, Gajapati District, at Parlakhemundi there was a big law and order incident the details of which as mentioned by the applicant can be briefly noted. Some tribal labourers of R.Udaygiri area were travelling in a bus to Arunachal Pradesh. They were robbed by two anti-socials, one Jaya Singh and Trisank Dalabehera. On 2.12.1998 the tribals detained the bus and demanded the robbed amount from the bus owner. The conductor lodged FIR naming the said two persons. The applicant has stated that he was informed of the incident in a routine manner. As he was busy in connection with visit of His Holiness Dalai Lama who left the District on 5.12.1998, the applicant deputed the D.S.P. to R.Udaygiri for supervision and for ensuring that the bus was not permitted to leave and on 4.12.1998 the applicant and the Collector of the District visited R.Udaygiri in the evening and the Collector asked the Tahasildar to make the payment. Despite strict instructions the bus was released by the Officer-In-Charge at the instance of the Tahasildar who was negotiating with the tribals and the bus owner regarding payment. On 5.12.1998 on the orders of the applicant, the two criminals were arrested and produced in Court on 6.12.1998

J. Jom.

and remanded to custody. The applicant was informed on 6.12.1998 in the evening by the Officer-In-Charge, R.Udayagiri P.S. that a protest meeting was likely to be held on 7.12.1998 by the tribals. He was informed by the Circle Inspector that the situation was not serious and he would be able to manage. Even then the applicant directed the Officers-in-charge of Mohana and Adava Police Stations to reach R.Udaygiri with striking force and requisitioned Forest Protection Force also. About 150 tribals gathered on 7.12.1998 and demanded their money back. The applicant was informed about this at about 12 noon over telephone by a private person. The applicant met the Collector, and the Collector sent the Additional District Magistrate along with D.S.P. to R.Udaygiri to ensure payment of the agreed amount. These officers reached R.Udaygiri at 4 P.M. But the tribals waited till 3 P.M. and left, and the efforts of these officers to contact the tribals failed. The applicant sent one Section OSAP from Parlakhemundi. On 7th evening the tribals held a meeting in the jungle about which the applicant had no information. Thereafter they blocked both the approaches to R.Udaygiri by felling trees and putting huge stone boulders covering about 30 K.Ms. The additional District Magistrate and D.S.P. who were camping at R.Udaygiri sent message at 6 P.M. regarding blockage. The applicant realised the gravity of the situation, met the Collector and informed D.I.Gs. (Administration), Range D.I.G. of Police, Special I.G. of Police, Director (Intelligence) and also Director General of Police and requested for sending one platoon on 7th night who could not reach due to blockade. The applicant deputed one section of Force with Inspector and the Collector asked three Block Development Officers to arrange

S. J. M.

labour to clear the blockade. The labour could not be arranged and the clearance of the blockade started at 1.30 A.M. The applicant and the Collector started for R.Udaygiri in the morning and found the clearance going on. The blockade could not be cleared till 2 P.M. and by that time the unfortunate incident was over. The applicant has not mentioned about the unfortunate incident except saying that the two persons earlier mentioned were killed by the tribals on 8.12.1998. The applicant has stated that the Revenue Divisional Commissioner and I.G. of Police in their report held the local officers including the Additional District Magistrate and Deputy Superintendent of Police directly responsible and referred to complete failure of intelligence and refusal of firing order by Additional District Magistrate and Tahasildar as a blunder. The applicant was busy from 2nd December to 5th December 1998 in looking after the security and safety of His Holiness Dalailama and thereafter busy with hunger strike of Parlakhemundi College students. The applicant has stated that he could not have done anything more than what he had done. But even then in order dated 14.12.1998 he was placed under suspension on the allegation that he failed to discharge his duties and failed to assess the gravity of the situation and did not visit the spot personally. The Revenue Divisional Commissioner submitted report relating to the incident and he stated in his report that the Collector and Superintendent of Police, i.e., the applicant have failed to discharge their duties and there was total failure of district administration. The applicant has stated that the Collector was also placed under suspension on the same day as the applicant. He moved the State Administrative Tribunal, being an officer of the State Civil Service in OA No. 2367 of 1998

J. J. M.

and in order dated 15.1.1999 the State Administrative Tribunal relying on a decision of the Hon'ble Supreme Court, quashed the suspension order. The petitioner has stated that according to the judgment of the Hon'ble Apex Court, failure to take effective preventive measures against wide spread disturbances, failure to visit the spot of disturbance personally, lack of foresight and capacity to take quick and firm decision which resulted in complete breakdown of law and order would not constitute misconduct for the purpose of disciplinary proceedings. The State Government in their letter dated 23.12.1998 at Annexure-2 sought for approval of Government of India regarding suspension of the applicant. In this letter it was mentioned that Shri Rabindra Kumar Mohapatra, OAS(Sr), District Magistrate and Collector of Gajapati District has also been placed under suspension for the same reason. After Collector's suspension was set aside by the Tribunal, the matter was referred to the Law Department and after obtaining opinion of the learned Advocate General, the Law Department advised not to move the Hon'ble High Court and the Collector has been reinstated and no charge has been framed. Local Circle Inspector of Police has also been reinstated. In the context of the above facts the applicant has come up with the prayers referred to earlier.

J. V. M.

2. The State Government have filed objection to the prayer for interim relief and have also filed a detailed counter in which it has been stated that the law is well settled that suspension pending enquiry is an administrative act within the competence of the State Government and the order of suspension pending enquiry can be passed by the authority if the authority considers that the alleged acts of

commission or omissions require enquiry and it is necessary to suspend the Government servant pending enquiry. The respondent State Government have enclosed the report dated 10.10.1998 of Revenue Divisional Commissioner, Southern Division, Orissa as also an enquiry report dated 11.12.1998 of Shri S.M.Mathur, IPS, Additional DGP-cum-IG of Prisons and DCS, Orissa. It is not necessary to record the details of the incident as mentioned in these two reports except to mention some of the points which have not been mentioned by the applicant in his petition. From these two reports it appears that the tribals alleged that the Sub-Inspector of Police, Hillari Singh, who is a Pano Christian and Kartik Sahu, the Tahasildar were giving protection to the two criminals Jaya Singh and Trishanku Dalabehera. The Additional Director General of Police reported that in course of his enquiry he found that these two criminals have been given protection by successive Officers-in-charge for terrorizing the people and collecting money. It has been also reported that S.I. of Police, Hillari Singh was unable to arrest these two criminals and the bus which was detained by the tribals was allowed to go surreptitiously on the night of 3/4th December 1998 and for this 25 litres of diesel were reportedly supplied by the Tahasildar. The tribals alleged that these two criminals have been arrested and sent to jail with a view to provide them with safety. The Additional Director General of Police pointed out in his report that the local officers kept the applicant and the Collector informed of all these developments from time to time. But in spite of all these developments the things were allowed to drift from bad to worse. The arrangements for the proposed Bundh on 8.12.1998 were found inadequate by the Additional Director General of

J.S.M.

Police. On 7.12.1998 the tribals came in a procession to Police Station armed with arrow, bow, axe and lathi and waited for the Collector and the Superintendent of Police who did not turn up. The tribals went back and before leaving told the local officers that they would come on the next day and kill the criminals lodged in the jail. By evening both sides of R.Udayagiri were blocked by felling trees and putting huge boulders. It has been mentioned in this report that D.I.G. of Police, Range mentioned to the Additional Director General of Police that at 8 P.M. on 7.12.1998 the applicant talked to the Range D.I.G. but did not mention about seriousness of the situation. On 8.12.1998 in the morning telecommunication links were disrupted by the tribals. By 10 A.M. 3000 tribals had assembled in front of the Police Station and started peling stones. It is stated that one of the Souras gave a lathi blow on the neck of Deputy Superintendent of Police who became unconscious and the Additional District Magistrate ran away from the spot and took shelter in the Tahasildar's office and remained there till the situation was over. The tribals set fire to the jeep of the Additional District Magistrate and the police vehicle. They entered the police station, destroyed all records and set fire to Circle Inspector of Police's office and damaged VHF communication. The tribals left for Christian Sahi and burnt 114 houses there. Simultaneously another 2000 to 3000 agitators reached the Sub-Jail at 11.40 A.M. They forced open the gate, assaulted the Warder, broke open the wall of the jail and ultimately reached the two criminals who were assaulted and killed. One of the criminals, T.Behera Dalai showed some signs of life at which he was again assaulted by bows and arrows and thrown into the fire which was burning in

the premises of the Police Station. The Additional Director General of Police in his conclusion has stated that the Superintendent of Police, the present applicant before us and the Collector failed to appreciate the gravity of the situation despite repeated warnings and there was complete failure of intelligence. This is also the finding of the Revenue Divisional Commissioner in his letter dated 10.10.1998. The State Government have stated that for such lapse the applicant, who was Superintendent of Police, was partly responsible. He was rightly put under proceedings and pending proceedings he has been placed under suspension which is within the power of the State Government. On the above grounds the State Government have opposed the prayers of the applicant.

3. The applicant in his rejoinder has reiterated his prayers in the OA. He has mentioned about the filing of application by the then Collector before the State Administrative Tribunal and quashing of the order of suspension by the Tribunal relying on the decision of the Apex Court. It has been further stated that the Government have set up a Judicial Commission of Inquiry and the enquiry by Hon'ble Mr. Justice K.C. Jagadev Roy is in progress. The applicant has stated that the Government have decided to initiate proceedings if any against the Collector after receiving the findings of the Judicial Commission appointed by the Home Department in their order dated 27.2.1999. The applicant is similarly placed as the Collector and therefore initiation of the disciplinary proceedings and his suspension are not sustainable.

J.P.M.

4. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner, Shri A.K.Bose, the learned Senior Standing Counsel for the Government of India, and Shri K.C.Mohanty, the learned Government Advocate for respondent no.2 State Government, and have also perused the records.

5. The first point to be noted in this connection is that in this application the petitioner has not prayed for quashing the disciplinary proceedings against him. In course of hearing it has been submitted by the learned counsel for the petitioner that the charges have already been framed and served on the applicant. The learned counsel for the petitioner has stated that as the suspension of the Collector has been quashed by the State Administrative Tribunal going by the decision of the Hon'ble Supreme Court in the case of Union of India and others v. J.Ahmed, 1979 AISLJ 308 and as the applicant is similarly situated, on the basis of law as laid down by the Hon'ble Apex Court, the applicant's suspension order should be quashed.

Jom,
6. We have considered the above submissions very carefully. The learned counsel for the petitioner has enclosed a copy of the decision of the Orissa Administrative Tribunal in OA No.2367 of 1998, decided on 15.1.1999. We have gone through this decision as also the decision of the Hon'ble Supreme Court in J.Ahmed's case (supra). As we have already noted, in this O.A. the petitioner has not prayed for quashing the disciplinary proceeding against him. He has merely prayed for quashing the suspension order. In this case the suspension order was issued on 14.12.1998. Thereafter the admitted position is that the charges have also been served on the applicant. As during the pendency of the disciplinary

proceeding it is open for the Government to suspend an officer, the order of suspension of the applicant cannot be prima facie termed illegal. Moreover, the applicant has already been reinstated in service and how the period of suspension will be treated will depend upon ultimate conclusion of the disciplinary proceeding against him.

7. The learned counsel for the petitioner has stated that going by the decision of the Hon'ble Supreme Court in J.Ahmed's case (supra) the action or inaction of the applicant cannot be termed misconduct. The disciplinary proceedings are ab initio void and therefore the suspension order should be quashed. We are unable to accept the above contention because the law as laid down by the Hon'ble Supreme Court in J.Ahmed's case (supra) is not applicable to the case of the applicant. For appreciating this point, few facts of J.Ahmed's case (supra) will have to be referred to. Shri J.Ahmed was an officer of Indian Administrative Service and at the relevant time he was working as Deputy Commissioner, Nowgong. In June 1960 there was large scale disturbance in Nowgong City and District areas due to "language disturbances". The then Additional Chief Secretary enquired into the causes of disturbances at Nowgong with a view to ascertaining the responsibility of District officials. On the basis of his report Shri Ahmed was suspended on 14.9.1960 and charges were served on him. These charges inter alia were that Shri Ahmed completely failed to take effective preventive measures against wide spread disturbances in spite of adequate warning. He showed complete lack of leadership when the disturbances actually did break

J. Jom.

out and failed to give proper direction to his subordinates, did not personally visit the the scenes of disturbances and did not keep the Government informed of the actual picture and extent of the disturbances. It was also alleged that Shri J.Ahmed showed complete inaptitude, lack of foresight, lack of firmness and capacity to take quick and firm decision and was thus largely responsible for complete break down of law and order in Nowgong town as wellas the rural areas of Nowgong District. While the proceedings were pending, Shri Ahmed reached the age of superannuation which was then 55 years on 1.2.1962. The Governor of Assam in exercise of power under Rule 16(1) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, as it was in force then, directed that Shri Ahmed who was under suspension should be retained in service for a period of three months beyond the date of his retirement or till the termination of the departmental proceedings whichever was earlier. Subsequently this order was extended and he was retained in service till the enquiry against him was concluded. At the conclusion of enquiry he was removed from service. Shri Ahmed challenged his removal from service before the Hon'ble High Court which set aside the order of removal. The Hon'ble High Court took the view that the charges ex facie did not disclose any misconduct. The matter was taken to the Hon'ble Supreme Court by the Union of India as also the Government of Assam. While dismissing the appeal, the Hon'ble Supreme Court took note of the provisions of Rule 16(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 which inter alia provided that a member of the service under suspension on a charge of misconduct shall not be required or permitted to retire from the service but shall be retained in service

until the inquiry into the charges against him is concluded and a final order is passed. Thus in the departmental proceedings against Shri Ahmed which was continued beyond his superannuation, the charges had to be one involving misconduct. In the above decision the Hon'ble Supreme Court took note of the contention of the appellants that the word "misconduct" is not mentioned in the Conduct Rules or in the Discipline & Appeal Rules, and therefore, the concept of misconduct should not be imported into the enquiry against Shri Ahmed. Hon'ble Supreme Court held that the word "misconduct" is relevant in ^{Jam} this case because he was retained in service under Rule 16(2) which specifically provided for retention in service of an officer under suspension who is under proceedings on a charge of misconduct. In the instant case the applicant is a serving officer and the charges need not necessarily involve misconduct and can also be violation of the Conduct Rules. In view of this, the law as laid down by the Hon'ble Supreme Court in J.Ahmed's case (supra) is based on completely different facts and is not applicable to the case of the applicant.

^{Jam} 8. Before parting with this case, one point has to be noted. The disciplinary proceedings have been initiated against the applicant sometime ago. In the meantime a Commission of Inquiry has also been set up. But because of setting up of Commission of Inquiry the departmental proceedings against the applicant should not be kept pending indefinitely because such pendency may adversely affect his future prospects. We, therefore, direct the respondent State Government to conclude the disciplinary proceedings without waiting for the findings of the Commission of Inquiry.

9. With the above observation and direction,
the Original Application is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
31.8.2000
VICE-CHAIRMAN

August 31, 2000/AN/PS