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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 178 OF 2001
Cuttack, this the 28th day of September, 2001

Shri M.Gourinath, IFS Applicasnt

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.*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
28.1.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 178 OF 2001
Cuttack, this the 28th day of September, 2001

CORAM:

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

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Shri M.Gourinath, IFS, aged about 51 years, son of late M. Atchanna, At/PO/Dist. Rayagada, at present working as Regional Joint Director, Social Forestry Project, Orissa, Bhubaneswar, District-Khurda...Applicant

Advocates for applicant - M/s A.K.Mishra
D.K.Panda
J.Sengupta
P.R.J.Dash
G.Sinha

Vrs.

1. State of Orissa, represented through its Commissioner-cum-Secretary, Forest & Environment Department, Government of Orissa, Secretariat, Bhubaneswar, District-Khurda.
2. Union of India, represented through its Secretary, Forest & Environment Department, Government of India, C.G.O.Complex, Paryabharan Bhawan, Lodhi Road, New Delhi.
3. Shri A.P.Singh, Minister of Forest & Environment, Government of Orissa, Secretariat, Bhubaneswar, District-Khurda.... Respondents

Advocates for respondents - Mr.K.C.Mohanty, G.A.
for R-1
&
Mr.A.K.Bose, SR.CGSC
for R-2

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 11.5.2001 placing him under suspension. The impugned order of suspension has not been enclosed by the petitioner. Respondent no.1 has filed the order of suspension at Annexure R-1/2 to the

showcause. The State Government have filed counter opposing the prayer of the applicant. The applicant has filed rejoinder, and the State Government have filed counter to the rejoinder. Union of India (respondent no.2) have appeared through Shri A.K.Bose, the learned Senior Standing Counsel, but have not filed any counter. The applicant has arraigned Shri A.P.Singh, Minister of Forest & Environment, Government of Orissa, as respondent no.3. Notice was issued to him on 29.5.2001, but he did not appear or file counter. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner, Shri K.C.Mohanty, the learned Government Advocate for State of Orissa (respondent no.1), and Shri A.K.Bose, the learned Senior Standing Counsel for respondent no.2 Union of India. The learned counsel for the petitioner has filed a chart indicating points for consideration as also chronological date-chart, and the learned Government Advocate for State of Orissa has also filed a date-chart and these have been taken note of. The learned counsels of both sides have relied on the following decisions:

(i) Manak Lal v. Dr.P.C.Singhvi and others,
AIR 1957 SC 425;

(ii) S.G.Jaisinghani v. Union of India and others, AIR 1967 SC 1427;

(iii) A.K.Kraipak and others v. Union of India, AIR 1970 SC 150;

(iv) S.Parthasarathi v. State of Andhra Pradesh, AIR 1973 SC 2701;

(v) E.P.Royappa v. State of Tamil Nadu and another, AIR 1974 SC 555;

(vi) State of Punjab and another v. Gurdial Singh and others, AIR 1980 SC 319;

(vii) Express Newspapers Pvt.Ltd. and others v. Union of India and others, AIR 1986 SC 872;

(viii) Ratanlal Sharma v. Managing Committee, Dr.Hariram Higher Secondary School and others, AIR 1993 SC 2155;

(ix) S.A.Khan v. State of Haryana, AIR 1993 SC 1152;

(x) State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296;

(xi) Kumaon Mandal Vikas Niyaam v. Girja Shankar Pant and others, AIR 2001 SC 24;

(xii) State of Punjab v. V.K.Khanna, AIR 2001 SC 343; and

(xiii) State of Orissa v. Shiva Prasad Das, 59(1985) CLT 441 (SC).

We have perused these decisions.

2. In this case, pleadings are voluminous and parties have filed enclosures running into hundreds of pages. It is not necessary to refer to all the averments made by the parties in their pleadings as the facts of this case necessary for determination of dispute fall within a small compass. The applicant is an IFS officer of Orissa cadre with 1980 as year of allotment. He worked as Conservator of Forests, Koraput Circle from November 1995 to July 2000. In order dasted

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12.1.1998 Government entrusted the work of salvaging of wind fallen and uprooted trees from the forest to the Orissa Forest Development Corporation (hereinafter referred to as "OFDC"). The above order had several conditions mentioned including the stipulation that salvage operation would not cover timber logs etc. in the forest originating from illicit felling of trees and no felling of any tree, even of dead or dry, would be resorted to in the name of salvaging operation. After about two years, in order dated 23.12.1999 the Forest & Environment Department appointed M/s Keshari Traders as Raw Material Procurer (hereinafter referred to as "R.M.P.") for such salvage operation in Balimela and Chitrokonda Ranges of Jeypore Division. In this order, which has been enclosed by the applicant, it has been mentioned that M/s Keshari Traders had applied to OFDC for being appointed as R.M.P. for these two Ranges. But from a subsequent report of Shri D.S.Patnaik, Principal Chief Conservator of Forests (Annexure-10) it appears that M/s Keshari Traders filed an undated representation addressed to Minister of Forests & Environment and this representation was forwarded to Principal Chief Conservator of Forest and Managing Director of OFDC. It further appears that in the meeting of the Board of Directors of OFDC held on 12.12.1998, the Secretary, Forest Department and Special Secretary, Public Enterprise Department advised against appointment of R.M.P. Apparently, in course of such salvage operation, the R.M.P. cut and removed large number of green trees along with some wind fallen trees. In some areas checked

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up subsequently by different officers, as large as 50 to 100% of the wood removed were from induced felling. Large part of these wood so extracted were sent to Andhra Pradesh and on 19.5.2000 Divisional Forest Officer, Kakinada, informed Principal Chief Conservator of Forests, Orissa, about large scale movement of timber from Orissa to Andhra Pradesh. The applicant has stated that at the time of appointment R.M.P. he had instructed the Divisional Forest Officer, Jeypore Division, to exercise adequate supervision and control over R.M.P. The applicant personally visited the areas from 18.6.2000 to 23.6.2000 and submitted a voluminous report (Annexure-4) in which he stated that large quantity of induced felled timber have been transported by the R.M.P. He also recommended proceedings and suspension against various staff of territorial Division and O.F.D.C. On receipt of this complaint, Government directed two officers, Sri P.Singh, Chief Conservator of Forests and Sri B.K.Patnaik, Director (Commercial), O.F.D.C. to enquire into the allegation of illicit felling of trees in Jeypore Forest Division. Their report is at Annexure-8. In their report the large scale illicit felling and transportation of timber and consequent loss of revenue to Government were established. The applicant has stated that in this report no responsibility was fixed on him for any lapse. Thereafter the Government appointed a Task Force in October 2000 to enquire and build up necessary evidence so as to file prosecution against all those who are found guilty including the R.M.P. The report of the Task Force is at Annexure R-1/l enclosed to the counter of

respondent no.1. Thereafter Sri D.S.Patnaik, Principal Chief Conservator of Forests(Wildlife), Orissa, was directed by the Government in letter dated 24.11.2000, which seems to have been issued from the office of respondent no.3, to look into the matter further and the report of Shri Patnaik is at Annexure-10. Shri Patnaik fixed responsibility on different officers including the present applicant. Ultimately, Government issued the order of suspension on 11.5.2001 (Annexure-R 1/2) and on the same day issued the chargesheet which has been enclosed by respondent no.1 to their counter. In the context of the above facts, the petitioner has come up in this petition with the prayer referred to earlier.

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3. The first point urged by the learned counsel for the petitioner is that in this case respondent no.3, Sri A.P.Singh, Minister for Forest & Environment was personally biased against the applicant and that is why he has engineered the suspension of the applicant. It is necessary to note that respondent no.3 has neither appeared nor filed counter. The first question which arises for consideration is, what is the effect of non-appearance and non-rebuttal of allegation of bias against him by respondent no.3. The matter of allegation of bias against high public functionaries has come up before Courts in several cases in the past. In the case of S.Partap Singh v. State of Punjab, AIR 1964 SC 72, this matter has been dealt with. In that case, the applicant had not initially impleaded Sardar Partap Singh Kairon, the then Chief Minister, but subsequently sought to implead him as a respondent. That application was rejected by

the Hon'ble High Court. In the case of C.S.Rowjee v. State of Andhra Pradesh, AIR 1964 SC 962, allegations were made by the applicant that the then Chief Minister, Shri N.Sanjiva Reddy had got the State Road Transport Corporation to frame scheme for nationalisation of certain routes because of his malice and mala fide. It is not necessary to go further into facts of these cases. In C.S.Rowjee's case (supra) the Hon'ble Supreme Court noted that the petitioners gave all the relevant objective facts in support of the allegations in their affidavits, but there was no denial by the Chief Minister. The counter affidavit filed by the State Government formally denying the allegations on the instructions of the Chief Minister was rejected by the Hon'ble Supreme Court as hearsay. The Hon'ble Supreme Court held that the allegation of bias or personal illwill stood unrebutted. The Hon'ble Supreme Court also observed that when allegation of mala fide and improper motive on the part of those in power is made, it becomes the duty of the Court to scrutinise the allegation with care so as to avoid being in any manner influenced by it, *in cases where such allegations have no foundation in fact.* In this task which is thus cast on the Courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made come forward to place before the Court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of the authorities have discharged the burden of

proving them. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge the veracity of the allegations merely on the tests of probability with nothing more substantial by way of answer. In E.P.Royappa's case (supra), the Hon'ble Supreme Court have held that the burden of establishing mala fide is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. It has also been laid down in Manak Lal's case (supra) and Ratanlal Sharma's case(supra) that the test is whether there is real likelihood of bias, and it is not necessary that such bias must have in fact taken place. In Express Newspapers Pvt.Ltd.'s case(supra) the Hon'ble Supreme Court have held that if allegations of mala fide are not refuted, such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. In a more recent case of V.K.Khanna(supra) the Hon'ble Supreme Court have held that the test is as to whether there is a mere apprehension of bias or there is as real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias, administrative action cannot be sustained. If on the other hand allegations

pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise. From a reference to all the above cases it is clear that the manner in which Court has to treat the allegation of bias against public functionaries has been settled over the years. Several points stand out from these decisions. Firstly, there should be specific allegation of bias. Secondly, if allegations of bias are not answered, these are to be tested on the test of probability. Thirdly, the burden of proving the allegations of bias is heavy on the person making it, and lastly it is not necessary to show that bias has actually been caused if it is established that there was a real danger of bias. Looking from another angle, if a public functionary is required to take a decision, he is required to consider all the aspects relevant to the decision and decide the matter fairly and objectively. If on the other hand the public functionary has taken into account matters which are extraneous and which have no bearing on the subject matter under consideration, then he is said to be guided by what has been described as malice in law which is also bias but more impersonal than personal prejudice. The averments made by the petitioner in his O.A. have to be considered in the context of the above well settled position of law.

4. On a careful reading of the O.A. we

find that in paragraphs 28 and 29 the applicant has stated that respondent no.3 directed Shri D.S.Patnaik to enquire into the role of Conservator of Forests in the racket and whether the Conservator of Forests has made proper inspection of the affected areas. He has also mentioned in paragraph 49 that opposite party no.3 is chasing the petitioner till he gets a report against the petitioner in order to proceed against the petitioner departmentally. The petitioner has submitted that opposite party no.3 is completely biased for reasons best known to him. He has also stated that from the notings made in the file by opposite party no.3 the allegation of bias would be proved. From the above recitals it is clear that the applicant has based his allegation of bias on the action of respondent no.3 in directing D.S.Patnaik from his level to enquire into the matter. This letter dated 24.11.2000 referred to in the report of Shri D.S.Patnaik (Annexure-10) has not been produced by respondent no.1 nor has the applicant made any prayer to call for this letter or call for the file showing the instructions given to Shri D.S.Patnaik by respondent no.3 or the notings made by him in the file which, according to the applicant, show bias of respondent no.3. In course of hearing the learned counsel for the petitioner has referred to a letter written by one S.N.Mangaraj, Journalist, Rayagada, addressed to Sri S.B.Samanta, IFS, Regional Joint Director, Social Forestry, Berhampur (Annexure-19) and read out what purported to have been the observations recorded by respondent no.3 on this letter. But as that

is not a part of the pleadings it is not possible for us to take note of the fact of such recording of observation by respondent no.3. As regards of appointment of Shri D.S.Patnaik, it is always open for the Government to get a matter re-enquired and Shri D.S.Patnaik in his report has pointed out not only the lapses of the applicant but also of officers who are at levels higher than the applicant. It cannot, therefore, be said that Shri D.S.Patnaik was directed to enquire into the matter only for the purpose of harassing the applicant. As earlier noted, the applicant has also not made any prayer for production of the file in which respondent no.3 has recorded observations which, according to the applicant, show his bias. In consideration of the above, we hold that the applicasnt has failed to discharge the burden of proving bias of respondent no.3 against him. This contention is accordingly rejected.

5. The second point taken by the learned counsel for the petitioner is that in suspending the applicant the principles of natural jutice have been violated. The applicasnt has stated that several reports sent by him to theGovernment and Principal Chief Conservator of Forests regarding illicit felling of timber in those two Ranges were available. He had also prayed to Government to give him a hearing before any action is initiated against him, but this has not been done. It is necessary to note that relationship between master and servant is basically contractual in

S Jum. nature. Hon'ble Supreme Court have held in Bimal Kumar Mohanty's case(supra) that suspension is in the nature of an order forbidding the Government servant to work. The Hon'ble Supreme Court have held in Balvantray Ratilal Patel v. State of Maharashtra, AIR 1968 SC 800, quoted by the Hon'ble Supreme Court in Bimal Kumar Mohanty's case(supra), that a right on the part of the employer to forbid the servant ^{to work} is not an implied in an ordinary contract between master and servant and such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. In this case the applicant has been placed under suspension by the Government under Rule 3 of All India Services (Discipline & Appeal) Rules, 1969 and it is not necessary that before making such order the Government servant should have been heard. This contention is held to be without any merit and is rejected.

S Jum. 6. The next contention of the learned counsel for the petitioner is that he has all along been prompt and active in protecting the Government interest. He has visited the spot on receiving allegation of illicit felling and has conducted detailed enquiries. It is necessary to note that according to the applicant himself, the entire operation of R.M.P. was from 30.3.2000 to 15.6.2000. The applicant visited the site from 18.6.2000 as we have already mentioned, much after Divisional Forest Officer, Kakinada, Andhra Pradesh, brought the fact of movement of illicit timber to the notice of Principal

Chief Conservator of Forests, Orissa. We also find that the charges against the applicant are serious in nature. Whether the charges are true or false will be determined only during the enquiry. It is also to be noted that under Rule 13 of the Orissa Forest Department Code (Part I), where the duties of Conservator have been laid down, protection of the forests from injury by men, cattle, by fire, etc., and breaches of Forest Rules, is a matter which falls within the spheres of activities of Conservator. In view of this, we do not find it illegal on the part of the Government to suspend the applicant in the context of the charges issued against him. The prayer of the applicant to quash the order of suspension is, therefore, held to be without any merit and is rejected.

7. In course of hearing, it has been submitted by the learned counsel for the petitioner and to our mind, with some justification that the primary responsibility for protection of forests is on the Divisional Forest Officer and his supporting staff and the Conservator have only a supervising responsibility. It has been submitted by the learned counsel for the petitioner that in connection with the alleged illicit felling and transportation of timber in the above two Ranges, the Divisional Forest Officer and some other subordinate staff of the territorial Division were placed under suspension, but they have all been reinstated in the meantime. We also find that the Principal Secretary, Forest Department, in his order

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dated 14.6.2001 which has been enclosed to a memo filed by the learned Government Advocate on 20.6.2001, has ordered that Government would consider reinstating the applicant after the applicant files his reply to the charges. It has been submitted by the learned counsel for the petitioner that in the meantime the applicant has already filed his explanation to the charges, but so far no action has been taken to consider the charges and to decide on the question of appointment of inquiring officer or otherwise. In view of this, while rejecting the Original Application, we direct the State Government to consider reinstatement of the applicant in terms of the order dated 14.6.2001 of the Principal Secretary to Government, Forest & Environment Department within thirty days from today.

Somnath 8. In the result, therefore, the Original Application is disposed of with the above observation and direction. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
28.9.2001
VICE-CHAIRMAN

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