

9
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO. 202 OF 2001
Cuttack this the 22nd day of May/2003

Meghnad Nayak

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No.*

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

[Signature]
(M.R. MOHANTY)
MEMBER (JUDICIAL)
22.05.2003

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.202 OF 2001
Cuttack this the 22nd day of May/2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R.MOHANTY, MEMBER(JUDICIAL)

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Sri Meghanad Nayak, aged about 51 years,
S/o.Birabar Nayak, at present working as
Senior Accountant, Office of the Principal
Accountant General (A&E), Orissa,
Bhubaneswar, Dist-Khurda

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Applicant

By the Advocates

M/s.K.C.Kanungo
S.Behera
R.N.Singh

VERSUS

1. Principal Accountant General (A&E)
Orissa, Bhubaneswar, Dist-Khurda
2. Deputy Accountant,
General (Admn.) Office of the Principal A.G.(A&E)
Orissa, Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.

ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL): Applicant, who entered into Government of India services as a Clerk in the Office of the Accountant General of Orissa, was promoted as a Senior Accountant and allotted with a Quarters (No.B(H) 120) in A.G.'s Staff Colony at Unit-4 of Bhubaneswar on 01.07.1986. On 16.04.1988, on the strength of a Search Warrant issued in R.C.No.55(S)/87-BBS, C.B.I. Police caused a search and, in course of said search, they discovered, it is alleged, that the Applicant was not in occupation of the quarters in

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question and that one Hemanta Kumar Sahu to be in occupation of the said quarters and, following to the said search and investigation, the C.B.I. Police charge-sheeted the Applicant under various sub-sections of Section-5 of the Prevention of Corruption Act, 1947; for which the Applicant faced a trail (TR No.34/89) in the Court of the Special Judge at Bhubaneswar on the allegation of possessing properties disproportionate to his known source of income etc. During the pendency of the said Criminal case (No.TR-34/89) a Departmental Disciplinary Proceeding was initiated against the Applicant under Rule-14 of C.C.S.(C.C.A .) Rules,1965, on 05.05.1992, on the allegation of subletting the Government Quarters(No.B(H)120) to an outsider. Another Departmental Disciplinary proceeding was also initiated against the Applicant; on the allegation of acquiring properties without permission of his Departmental Authorities. As it appears, said Departmental Proceeding (in which allegation of acquisition of properties without permission was the subject matter of consideration) was challenged before this Tribunal in an earlier Original Application No.97/1990; in which Disciplinary Authorities were asked by this Tribunal, on 13.07.1992, not to pass any final orders(in the said Disciplinary proceeding) until final disposal of the Criminal Trail then pending in the Court of the Special Judge at Bhubaneswar. The said Criminal case (T.R.No.37 of 1989) having ended in conviction (and sentencing the Applicant to undergo rigorous imprisonment for 02 years and to pay a fine of Rs.1,00,000/- etc.) the

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Applicant has preferred a Criminal Appeal (No.302/1995) in the Hon'ble High Court of Orissa; in which he has been released on bail (by an order dated 16.11.1995 rendered in Misc. Case No.379/95) and by interim orders dated 28.11.1995 (rendered in Misc. Case Nos.391 & 392/1995) realisation of fine and operation of the Judgement of conviction(rendered by the Special Judge in TR No.34/89) has been stayed by the Hon'ble High Court of Orissa. Long five years thereafter, on 14.03.2001, the Departmental Authorities served a copy of the Enquiry Report(drawn in the Disciplinary Proceeding initiated against the Applicant on 05.05.1992) requiring the Applicant to have his say in the matter. At the said stage, the Applicant has filed the present Original Application (No.202/2001) under Section-19 of the Administrative Tribunals Act,1985 and has raised a point, at the hearing , that since the Criminal Case is still pending in Appeal before the Hon'ble High Court of Orissa, the Authorities should be estopped to pass any final orders in the Disciplinary Proceedings.

2. By interim order dated 23.04.2002, rendered in the present Original Application, Respondents have been directed not to pass any final orders in the Disciplinary proceeding initiated against the Applicant.

3. By filing a counter, the Departmental Respondents have disclosed that the charges in the Criminal case are quite different from the charges levelled against the Applicant in the Departmental proceeding in question. They have tried to explain in the counter that while the Criminal case relates to possession of properties disproportionate to the known source

7

of income of the Applicant, the Departmental proceeding relates to the allegation of misconduct said to have been committed by the Applicant by sub-letting the Government Quarters allotted in his favour etc.

4. By filing a Rejoinder and at the hearing, the Applicant has tried to explain away as to how both the matters (involved in Criminal case and also in the Departmental Proceeding) are inter linked.

5. Mr. K.C. Kanungo, learned counsel for the Applicant has disclosed that on the basis of the C.B.I. Report, the Disciplinary proceeding in question having been initiated and the C.B.I. Officer having marshalled the case in the Disciplinary Proceeding, the Departmental Proceeding have got a close nexus with the Criminal Court Proceeding.

6. A close examination of the matter goes to show that in the Criminal Case C.B.I. tried to show as to how the Applicant has acquired properties (which are disproportionate to his known source of lawful income) illegally. Income derived from Sub-letting a Government quarters, allotted in favour of a Government servant, is certainly an illegal income. In fact, the Applicant produced a person, who was alleged to have taken the quarters on sub-let, as a defence witness in the Criminal (Trail) Court; which has accepted the rental of the said sub-letting to be an income of the Applicant in the said disproportionate asset case; and, that goes to show that the Departmental Proceeding in question (pertaining to sub-letting of the quarters) has got definite relationship with the Criminal Proceeding in question. In the Departmental

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Proceeding , the above said person, who was produced as a defence witness in the Criminal Court, was cited as a Departmental witness(but he was not produced in the Departmental Proceeding); which, again, shows a close nexus between both the proceedings; especially when the C.B.I. Officer was marshalling the Departmental Proceeding.

7. However, mere existence of nexus, between a Criminal Court proceedings and Departmental Proceedings against one Government servant, is no ground to stay a Departmental Proceedings and, therefore, it is, by now, an well settled position of law that both such proceedings can go simultaneously; unless it is shown that the right of silence(as conferred under the Constitution of India) of a citizen (facing criminal prosecution) are likely to be affected. Only in such cases, the Departmental Proceedings should remain stayed till completion of Criminal Court Proceedings.

8. In the present case, it is submitted by Mr.A.K.Bose (learned Senior Standing Counsel appearing for the Government of India/ Respondents) that the Departmental Proceeding having already come to an end ; by drawal of the Enquiry Report, on which comments of the Applicant has already been sought ; and since final orders are about to be passed/issued and that the Criminal Trail having already been over, there are no question of exercising the right of silence by the Applicant any more.

9. In a case of present nature, right of silence is available to be exercised in Departmental Proceedings, because his explanations in defence/ in the explanation (in the said proceedings) are likely to be utilised against him in the Criminal

15

Case, In the said premises, we now proceed to examine as to whether any relief can be given to the Applicant.

10. In the above premises, Mr. Kanungo, learned counsel appearing for the Applicant stated that in a Criminal Appeal, the prosecution having got a right to aduce additional evidence and the Disciplinary Authority having liberty to ask for proceeding with further enquiry (where additional materials can be taken into consideration) before passing of final orders in a Disciplinary Proceedings, it can not be stated that right of silence is no more available to be exercised by the Applicant ; especially when the Enquiry Report/Final Orders to be passed in the Disciplinary Proceedings in question are liable to be produced in the Criminal Appeal as additional evidence (by the prosecution/C.B.I.Police) in order to bring home the charge to sustain the findings of the Criminal Trail.

11. On the face of what was submitted by the learned counsel appearing for the Applicant, we have examined the statutory provisions governing the field. Under Section 386 (b) (i) of the Criminal Proceedure Code (of India) 1973 in an Appeal directed against the order of conviction, the High Court has got powers to order for a retrail by the Trail Court and under Section 391 the Appellate Criminal Court has got p-owers to take further evidence. Relevant portion of Section 391(1) of Cr.P.C. -1973 reads as follows:

" 391. Appellate Court may take further evidence or direct it to be taken- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it things additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or , when the Appellate Court is a High Court, by a Court of Session or a Magistrate ."

16

The above said provisions in Sections 386, & 391 of Cr.P.C. strengthens the submissions of Mr. Kanungo. Similarly under Rule 15(i) of C.C.S.(C.C.A.) Rules, 1965, Disciplinary Authority has got powers to ask for further enquiry ; relevant portion of which reads as follows :-

" 15. Action on the inquiry report (1) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule-14, as far as may be."

On the face of the abovesaid provisions of law, there is enough force in the contention of Mr. Kanungo. On an incisive analysis of the matter in issue, in the peculiar circumstances of this case, we are of considered view that the right of silence available to the Applicant under the Consitution of India is still continues to be enforced by him in the Disciplinary Proceedings in question ; so long his Criminal Appeal (No.302 of 1995) is pending in the Hon'ble High Court of Orissa ; especially because (a) a Criminal Appeal (during pendency of which ; not only the convict has been enlarged on bail but the sentences and realisation of fines have be stayed) is an extention/continuation of the Criminal Trail and (b) the finding/results of the Disciplinary Proceedings may influence the Criminal Appeal or get influenced by the conviction order passed in the Criminal (Trail) Court.

12. Therefore, Respondents are hereby directed not to pass any final order in the Disciplinary proceedings in question till disposal of the Criminal Appeal No.302 of 1995 pending in the Hon'ble High Court of Orissa .

13. However, on the face of the conviction of the Applicant in the Criminal Trail (which was recorded against the Applicant on 04.11.1995) he was available to be dealt with directly under Rule 19 of the C.C.S. (C.C.A .) Rules of 1965 ; notwithstanding the Disciplinary Proceeding in question. Relevant portion of Rule 19 of C.C.S. (C.C.A.) Rules, 1965 reads as follows:-

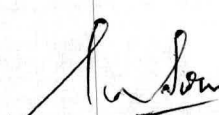
" 19. Special procedure in certain cases.
Notwithstanding anything contained in Rule-14 to Rule-18 :-

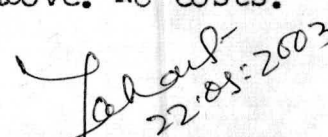
- (i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) xxxxx
- (iii) xxxxx

the disciplinary authority may consider the circumstances of the case and made such orders thereon as it deems fit. xxxxxxxx "

But for the reason of the interim orders dated 28.11.1995 of the Hon'ble High Court of Orissa rendered in Criminal Appeal No.302 of 1995, the hands of the Respondent - Department have been bound-down till disposal of the said Criminal Appeal or till those interim orders are modified ; for which the Respondents ought to approach the said Hon'ble Court.

14. In the aforesaid premises, this Original Application is allowed to the extent stated above. No costs.


(B. N. SOM)
VICE CHAIRMAN


(M. R. MOHANTY)
MEMBER (JUDICIAL)