

u

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 433 OF 2001
Cuttack, this the 16th day of April, 2003

PRASANTA KUMAR NAYAK. APPLICANT.
: VRS. :
UNION OF INDIA & ORS. 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? Yes.


(B.N. SEN)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 483 OF 2001
cuttack, this the 16th day of April, 2003.

C O R A M:-

THE HONOURABLE MR. B.N.SOM, VICE- CHAIRMAN
A N D

THE HON' BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

....

PRASANTA KUMAR NAYAK,
Aged about 43 years,
S/o. Late Harmohan Nayak,
at present working as Additional
Secretary to Government of Orissa,
Department of F&ARC, Secretariat,
Bhubaneswar, district-Khurda.

....

APPLICANT.

By legal practitioner: M/s. Akhil Mohapatra,
R. C. Saheo,
J. M. Rout,
B. Mallick,
Advocate.

-Versus-

1. State of Orissa, represented by Chief Secretary to Government of Orissa, Secretariat, Bhubaneswar, DIST: KHURDA.
2. Union of India represented by the Secretary to Govt., Department of Personnel and Training, public Grievances and Pension, New Delhi.

....

RESPONDENTS.

By legal practitioner: Mr. K. C. Mohanty,
Government Advocate (State)
(For Respondent No. 1);

Mr. A. K. Bose,
Senior Standing Counsel (Central)
(For Respondent No. 2).

16

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Applicant, a member of the Indian Administrative Service (of 1984 batch) in Orissa cadre, has been charge-sheeted under Rule-8 of AIS (D&A) Rules, 1969 under Annexure-10 dated 30.12.2000 and Annexure-11 dated 27.01.2001. On submission of his reply dated 15.01.2001 and 14.02.2001 to these charges, Inquiring Officer and Presenting Officer were appointed on 24.03.2001 to enquire into the allegations levelled against the Applicant. (By filing a Memorandum on 04-04-2003, Learned Government Advocate, appearing for the State Government of Orissa, has intimated that the enquiry is still pending and that the records of the enquiry proceedings have been produced before the Hon'ble High Court of Orissa on 7.2.2003, pursuant to the direction made in O.C.R.M.C. No. 578/2000). It is the case of the Applicant that for the reason of pendency of the Departmental proceedings in question, his promotion has been throttled by keeping his case (relating to promotion) in sealed cover; as a result of which he has been superseded by his juniors. In the said premises, the Applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 with prayers (a) for quashing the disciplinary proceedings initiated against him under Annexure-10 dated 30.12.2000, Annexure-11 dated 27.1.2001 and Annexure-14 dated 24.3.2001 and (b) seeking a direction to the Respondents to open

the sealed cover pertaining to his promotion to grant him the consequential benefits.

2. We have heard Mr. Akhil Mohapatra (Learned Counsel appearing for the Applicant); Mr. K. C. Mohanty, (Learned Government Advocate appearing for the State Government of Orissa); Mr. A. K. Bose (Learned Senior Standing Counsel appearing for the Government of India) and Mr. S. Das, Learned Counsel for the petitioner in WP(C) NO. 365 of 2002 (as per the directive dated 27.2.2003 of the Hon'ble High Court of Orissa rendered in the said Writ Petition) and also perused the materials placed on record.

3. For the reason of the judgment of the Hon'ble Supreme Court of India rendered in the case of UNION OF INDIA AND OTHERS VRS. UPENDRA SINGH (reported in (1994) 27 Administrative Tribunals Cases 200), this Tribunal is precluded from making judicial review of the charge-sheet by examining correctness of the charges. In the said case of Upendra Singh (supra), the Hon'ble Apex Court held as follows:-

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the Original Application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

In the said case of Upendra Singh (supra), the Apex Court pulled up this Tribunal with the following words:

In the instant case, the Central Administrative Tribunal under-took the inquiry which ought to be held by the disciplinary authority (or the inquiry officer appointed by him) and found that the charges are not true. The Central Administrative Tribunal reached this finding on the basis of material and orders produced by the respondent, in particular the proceedings taken by the Commissioner of Income Tax under Section 263 and the order of the Income Tax Appellate Tribunal (ITAT) in the appeal preferred by an assessee against the order of the Commissioner of Income Tax. It is stated that the department is filing an application before the High Court under section 256(2). It is not known whether the said observations/findings of the ITAT will ultimately be upheld or not. They are not yet final. In the circumstances, the conclusion is that the order of the Central Administrative Tribunal is clearly in excess of its jurisdiction.

(emphasis supplied)

It has also been held by this Tribunal in the case of another I.A.S. Officer of Orissa cadre (SANTOSH KUMAR MISHRA VRS. UNION OF INDIA AND OTHERS in O.A.NO. 447 of 2001 decided on 06.02.2002) that * this Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary Authority to go into *. It was also held by the Apex Court of India, in the case of TRANSPORT COMMISSIONER MADRAS VRS. A. RADHA KRISHNA MOORTHY (reported in 1995 SCC (LSS) 313) that *the truth and correctness of the charges was not a matter for the Tribunal to go into-more particularly at a stage prior to the conclusion of the disciplinary enquiry*. Therefore, the prayer of the Applicant in the present case for quashing the disciplinary proceedings/charges, at this

J
B

too premature stage, is not available to be allowed. While taking this view, it is worthwhile to note that this Tribunal is really not to adjudicate as to whether a decision is correct or not but certainly to look to the decision making process; to find out as to whether the same has been correctly done or not. By keeping in mind the aforesaid limitations, by order dated 2.7.2002, this Tribunal (in a single Member Bench; in absence of a division Bench) issued an interim direction to the Chief Secretary of the Government of Orissa to look to the grievances of the Applicant (before proceeding with the enquiry); because the stand of the Applicant was that all the allegations in the charge-sheets had already been found by the individual departments to be not sustainable. But the Hon'ble High Court of Orissa; by its order dated 27.2.2003, rendered in W.P.(C) NO. 365 of 2002, quashed the said interim order.

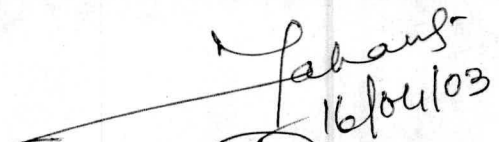
4. The next prayer of the Applicant is to direct the Respondents to open the sealed cover (pertaining to his promotion) also cannot be allowed; because the disciplinary proceedings is still pending against him. Earlier the Applicant moved this Tribunal in the present case, for issuance of an interim direction to the State Government pertaining to his promotion; which was turned down vide order dated 31.1.2001. Being aggrieved, the Applicant carried the matter to the Hon'ble High Court of Orissa in a writ petition (OJC NO. 3322/2002) and obtained

7
6

a direction, on 17.1.22003 from the Hon'ble Court requiring this Tribunal to hear and dispose of the present Original Application No. 483/2001 within a period of three months. Accordingly, this case has been taken up for hearing on 30.1.2003, 21.3.2003, 31.3.2003 and on 4.4.2003; when counsel for the parties were heard.

5. In the conclusion, for the reasons discussed in the foregoing paragraphs, this Original Application is dismissed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


16/04/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)