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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 64 of 2004
Cuttack, this the 24th day of January, 2005

Akshaya Kumar Parida ..... Applicant

Vs

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 ? yes

(B.N.SOM)
VICE-CHAIRMAN

(J.K.KAUSHIK)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH AT CUTTACK

Original Application No. 64/2004

Date of decision: 24th **January, 2005**

The Hon'ble Mr.B.N. Som, Vice-Chairman
And
The Hon'ble Mr. J K Kaushik, Judicial Member

.....

Shri Akshaya Kumar Parida, aged about 57 years, son of late Keshab Chandra Parida, Village/PO Bilikana, P.S. Aul, Dist.Kendrapara, at present Senior Auditor, Office of the Principal accountant General (Audit I & II),Orissa

..... Applicant.

Rep. By applicant in person

Versus

1. Union of India, through the Principal Accountant General(Audit-I),Orissa, Bhubaneswar, At/PO Bhubaneswar, Dist.Khurda.

2. The Senior Deputy Accountant General (Administration) & Disciplinary Authority, office of the Principal Accountant General (Audit I), Orissa, Bhubaneswar, At/PO Bhubaneswar, Dist. Khurda.

3. Shri B.K.Mohanty, Senior Deputy Accountant General and Inquiring Authority, office of the Principal Accountant General (Audit I), Orissa, Bhubaneswar, Dist.Khurda

..... Respondents.

Rep by: Mr.U.B.Mohapatra,: Counsel for the respondents.
Sr.CGSC

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O R D E R

PER J K KAUSHIK, JUDICIAL MEMBER

Shri A K Padia has chosen to enter into the second round of litigation almost in the same matter intermixed some additional events and prayed for the following releifs:

" The enquiry report (Annexure A/9) and the order of the learned Disciplinary Authority (Respondent No. 2) dated 27.1.2004 (Annexure A/12) be quashed and necessary direction be issued to the respondents to regularise the period of illegal suspension from 4.8.2000 to 15.7.2001 as duty as per provisions of Rule 54 B of FR and also necessary suitable order/orders as the Hon'ble Tribunal deems just and proper."

2. We have heard the elaborate arguments advanced by the applicant who appeared in person and the learned counsel for the respondents. We have earnestly and anxiously considered the submissions, pleadings and the records of this case including the subsequent developments.

3. While the paper books of the case file contains the plethora of pleadings and equally were the wide-ranging arguments/ submissions by the applicant, the issue lies in a narrow compass. Filtering out the unnecessary details, the material facts as borne out form the pleadings of the parties are that applicant is holding

the post of Senior Auditor in the office of the Principal Accountant General) Audit-I & II), Orissa, Bhubaneswar. A charge sheet came to be issued vide memo dated 6.10.2000, alleging four Articles of charges against the applicant as set out in Annexure R/1 to the Counter Reply. On the other hand he was suspended for the reason of contemplation of disciplinary proceedings vide order-dated 4.8.2000, which came to be revoked subsequently on dated 16.7.2001.

4. The further facts of the case are that he requested the competent authority to supply him the left out part of the charge sheet along with certain other listed documents so as to enable his to submit his defence statement. A battle with the weapon of correspondence seems to have been fought; the disciplinary authority has been consistently sending registered letters alleging containing the requisite documents and the applicants refuting the contents thereof. Thereafter, the applicant was asked to inspect the same and attend the inquiry but the postal authorities also contributed to the misery of applicant and did not deliver any of the communications in time, which resulted in his non-participation in the inquiry as per him. Finally, the inquiry came to be concluded ex-parte and the same (Inquiry Report) have primarily been challenged in this OA amongst other things as noticed above. The impugned orders have been assailed on the

ground that they are prepared by violating the provisions of law i.e. sub rule-18 of Rule 14 of CCS (CCA) Rules 1965 etc.

5. There has been subsequent development in the matter. During the pendency of this case, the disciplinary authority has passed the penalty order vide 13.4.2004 on the basis of enquiry report, which is one of the orders under challenge in this case; the other one being order dated 27.1.2004 i.e. the order of rejection of representation made for quashing the very enquiry report. The applicant has been imposed the penalty of reduction by three stages from Rs. 6725/- to Rs. 6200/- in the time scale of pay of Sr. Auditor Rs. 5500-175-9000 for a period of three years with effect from 1.4.2004 and will not earn increments of pay during the period of reduction and that on expiry of the period, the reduction will have postponing his future increments. Both these order came to be stayed on the Misc. application No. 354/2004 moved by the applicant vide order dated 10.4.2004 till further orders; prima facie for the reasons that these orders seemed to have been issued in violation of Section 19 (4) of A T Act. 1985.

6. The applicant has argued his case in a zigzag manner and adduced lot of irrelevant contentions. Keeping in view that he might not be in a position to assist us in a professional manner

we gave him a lot of leverage but he always sidetracked the facts and grounds mentioned in his pleadings. He did not answer any of our queries, but we gave him patient hearing and endeavoured to go to the heart of the controversy. He pointed out enormous infirmities in the inquiry. He did not submit anything regarding the treatment of the period during which he remained under suspension even though there is a prayer to that effect. He has cited numerous case laws in support of his contentions. On the other hand the learned counsel for the respondents reiterated the defence of the respondents as set out in the reply and submitted that the applicant was adamant to delay the inquiry on any pretext. He was supplied the requisite documents at number of times and also was asked to inspect the same but the applicant did not avail the opportunity and the authorities had no option except to finalise the same since there was no stay on such finalisation.

7. At the very threshold, we would examine the repercussion of subsequent order of penalty, which has been passed on 13.4.2004, by the disciplinary authority, on the impugned orders. As per the doctrine of merger, the enquiry proceedings get merged into the final order of penalty. The doctrine of merger is required to be applied to the facts of this case, until we come to a positive conclusion that the penalty order passed

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on 13.4.2004 is a non-est order in the eye of law. In case, the subsequent order is found to be non-est in the eye of law, there would be further case for examination and in case the same is found to be otherwise, the applicant's case would not stand as far as the impugned orders are concerned since such orders would be deemed to non-existent due to such merger in penalty order which is incidentally not under challenge in this OA. In any case, either the subsequent order of the penalty passed on dated 13.4.2004 or the impugned orders in this OA are the non-est order(s), conversely, either the subsequent order is in existence or the impugned orders are in existence and not the both.

8. Now we would avert to the legal position of the penalty order passed on 13.4.2004 by the disciplinary authority. The admitted position of the facts is that this OA came to be admitted on dated 3.3.2004. There was no stay of any kind even though a prayer was made to stay both the impugned orders. When the disciplinary authority passed the order dated 13.4.2004, he moved an MA for seeking the stay of the same as well as another order dated 27.1.2004 which was marked as MA/1 but that is the same order as Annexure A/12 to the OA where specific prayer for stay was already there. However, both these orders were stayed on dated 10.4.2004 till further orders:

9. We find it expedient to examine the abstract legal position in regard to the interpretation of section 19 (4) of A T Act 1985; to be more precise as to whether the order passed by the disciplinary authority would fall within its ambit or not. To appreciate the same, the contents of the said provision are excerpted as under:

> "19. Applications to Tribunals-
>
> (1) to (3). Xxx
>
> (4). Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rule."

The bare perusal of the aforesaid provision reveals that the proceedings relating to the redressal of grievances in relation to the subject matter of the application, which has been admitted, are having the prohibition and not any other proceedings. The term 'proceeding under the relevant service rules as to redressal of grievances' should not be confused with the normal meaning of 'every proceedings'; in the present context disciplinary proceeding in the instant case. We may point out that there is no ambiguity in the said provision because there is further amplification by the words appeal and

representation. At the time of admission of the application, admittedly, neither any such appeal or representation was pending nor any subsequent appeal or representation has been entertained or decided. The disciplinary authority has passed the order in the disciplinary case which, by any stretch of imagination, does not fall within ambit of prohibition of section 19 (4) of the A T Act 1985. Thus contention of the applicant that the subsequent order of penalty passed by the disciplinary authority is in a non-est order being in contravention of section 19 (4) of the A T Act 1985 does not meet the scrutiny of law and therefore cannot be sustained.

10. Examining the matter from yet another angle, if the submissions of applicant were taken to logical conclusion as correct, the result would be absurd. Firstly, the moment an application relating to a disciplinary proceeding in particular is admitted, there would be no significance of prayer for grant of an interim order, which would be treated as an integral part of the very admission of the application. If such be the position, even asking for stay of the penalty order passed by the disciplinary authority, subsequently, would be an exercise in futility. We respectfully submit that such could not be the legislative intent in framing the law in an unequivocal and unambiguous terms by qualifying and restricting the ambit of the

same by using the words redressal of grievances. The manifest objective of the said provision would be that once redressal of grievances case is being adjudicated by the court of law, the appellate or other competent authority to deal with any representation in relation to the subject matter of the application, may not pass any contradictory orders on the same which may cause hurdle in imparting proper justice to the parties.

11. Looking the matter from any angel, we are of the considered and firmopinion that the prohibition envisaged under section 19 (4) of A T Act 1985, does not apply to the penalty order passed by the disciplinary authority concluding the disciplinary proceeding and such order can not be termed as non-est or void orders having no existence. On the other hand the enquiry proceedings conducted in a disciplinary case get merged into the order of penalty. If that were so, the order-dated 13.4.2004 could be termed and held as an effective and alive order. In other words, the same is not a non-est order; rather the impugned enquiry report as well as the order-dated 27.1.2004 got merged with the final penalty order dated 13.5.2004. Since the said penalty order itself is not under challenge in this OA, the net result would be that nothing

survives in this case for our adjudication and no further debate is required.

12. Even though, the applicant has not whispered even a word regarding his prayer for treating the period of suspension, we may point out that the respondents are duty bound to pass appropriate order on the same since the disciplinary case has been finalised and rightly so the applicant did not lead any submission on this. We are also refraining from referring to the numerous authorities cited by the applicant since we have nothing to adjudicate on merits in view of our specific findings that no cause of action survives to the applicant. However, we also notice that due to stay on the penalty order, the applicant might not have filed the statutory appeal and for that we propose to give him liberty.

13. Before parting with this case, we would like to enter into a caveat with the applicant. Firstly, we would have appreciated him, had he been a bit clear, concise, brief and to the point. We had to carry out an incisive analysis for crystallising the actual controversy and the same consumed an unusual time, which could have been avoided. We have also a note of caution for him that he should be temperate while corresponding with the authorities and for that purpose the letter dated 17.11.2000

(Annex. R/6) written regarding supply of documents to the disciplinary authority is alarming.

14. In the backdrop of the above analysis, the legal and factual position which come to be crystallised, the irresistible conclusion is that the O A sans merits as no cause of action survives, to the applicant, the same stands dismissed, accordingly with no order as to costs. Liberty is given to applicant to prefer an appeal against the penalty order dated 13.4.2004 (MA/2) to the competent authority within a period of 45 days from the communication of this order, which may be entertained ignoring the question of limitation and decided on merits in accordance with rules. The interim order already issued stands vacated forthwith.

(J.K.KAUSHIK)
JUDICIAL MEMBER

(B.N.SOM)
VICE-CHAIRMAN