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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 651 OF 2004
CUTTACK, THIS THE ^{08th} DAY OF December , 2005

Meghanad Nayak.....APPLICANT

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Union of India & othersRESPONDENTS

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? *yes*

B. N. Som
(B. N. SOM)
VICE-CHAIRMAN

M. R. Mohanty
08/12/05
(M. R. MOHANTY)
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO. 651 OF 2004
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....
Shri Meghanad Nayak, aged about-53 years, S/o. Birabar Nayak, Permanent resident of Village-Sahadapada, PO/PS-Banki, Dist-Cuttack, at present residing at House No.-36, Maruti Residency, PO- Raghunathpur, Bhubaneswar, Dist.-Khurda.

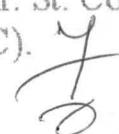
.....Applicant.

Advocate(s) for the Applicant - M/s. K.C.Kanungo, S.Behera, B.D.Das, C.Pathi.

VERSUS

1. Comptroller and Auditor General, Bahadur Shah Zafar Marg, New Delhi-1.
2. Accountant General (A & E), Orissa, Bhubaneswar, Dist.-Khurda.
3. Deputy Accountant General (Admn.) and Disciplinary Authority, Office of the Principal AG (A & E) Orissa, Bhubaneswar, Dist. Khurda.
4. Arun Kumar Nanda, Son of Achutananda Nanda, aged about 59 years, DAG (Adm.), Office of the Principal AG (A & E), Orissa, Bhubaneswar, Dist.-Khurda.

.....Respondents.

Advocate(s) for the Respondents - Mr. U.B.Mohapatra (Sr. St. Counsel),
Mr. B.Dash (ASC). 

ORDER

SHRI M.R.MOHANTY, MEMBER (JUDICIAL):

The Applicant, while working as senior Accountant; in the Office of the Principal Accountant General (A&E) of Orissa at Bhubaneswar, a search and seizure was conducted by the CBI, on 16.04.88, and properties disproportionate to his known source of income having been found, a case under section 5 of the Prevention of Corruption Act, 1947 was lodged as against him (Applicant) in the Court of the learned Special Judge at Bhubaneswar being registered as TR Case No. 34/89. During the pendency of the said Criminal Case (No. TR-34/89), a Departmental/Disciplinary proceedings was also initiated against the Applicant under Rule-14 of the CCS(CCA) Rules, 1965, on 05.05.92, on the allegation of sub-letting the Govt. Qrs.No.B(H)120 to an outsider. Another Departmental proceedings were also initiated against the Applicant on the allegation of acquiring properties without permission of his Departmental Authorities. The said Departmental proceedings (in which allegation of acquisition of properties without permission was the subject matter of consideration) were challenged by the Applicant in this Tribunal in O.A.No. 97/90; wherein this Tribunal (my order dated 13.07.92) asked the Departmental Authorities of Applicant not to pass any final orders in the said Disciplinary proceedings, until final disposal of the Criminal trial then pending in the Court of the learned Special Judge at Bhubaneswar. The said Criminal case No. TR 34/89 having been ended in conviction with imposition of sentence/asking the Applicant to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 1,00000/- etc. The 

Applicant preferred a Crl.Appeal (No. 302/95) before the Hon'ble High Court of Orissa; in which he has been released on bail (by order dated 16.11.95 rendered in Misc.Case No. 379/95) and by interim orders dated 28.11.95 (rendered in Misc.Case No. 391 & 392 of 1995) realization of fine and operation of judgment of conviction (rendered by the Special Judge in TR No. 34/89) had been stayed by the Hon'ble High Court of Orissa. Long after five years, on 14.03.01, when the Departmental Authorities served a copy of the enquiry report drawn in the Disciplinary proceedings (initiated against the Applicant on 05.05.92) requiring Applicant to have his say in the matter, at the said stage, the Applicant (by filing O.A.No. 202/01 before this Tribunal) has raised a point that since the Criminal case was still pending in appeal before the Hon'ble High Court of Orissa, the authorities should be stopped to pass any final orders in the Disciplinary proceedings. This Tribunal having heard the parties and after considering the materials placed on record, disposed of the said O.A. on 22.05.03. Relevant portion of the order dated 22.05.03 (rendered in O.A.No. 202/01) reads as under:-

“ But for the reason of the interim orders dated 20.11.95 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.”

On 03.04.05, the Hon'ble High Court of Orissa (in Misc.Case No. 11/04; arising out of Criminal Appeal No. 302/95, filed by the Respondent Department seeking vacation of the interim order dated

28.11.95) passed orders vacating the interim order granted in favour of the Applicant. Relevant portion of the said order is quoted herein below:-

“ In view of such law laid down by the Apex Court, continuance of the stay order passed by this Court in the year 1995 becomes illegal. I, therefore, vacate the order dated 28.11.95. Since the office has pointed out that the appeal is ready for hearing, the same be added to the hearing list.”

No sooner the interim order was vacated by the Hon'ble High Court of Orissa, on 03.04.05, the Disciplinary Authority (basing on the order of conviction passed by the learned Special Judge at Bhubaneswar in TR Case No.34/89) imposed the punishment of dismissal on the Applicant under Annexure-A/5 dated 05.04.04. Applicant carried the matter on appeal (under Annexure-A/6 dated 27.07.04) and, near about three and half months thereafter, when no order was passed on the said Appeal of Applicant, he preferred this Original application u/s. 19 of the Administrative Tribunals Act, 1985 with the following prayers: -

“ To quash the Annexure-A/5 for the ends of justice;
And

To direct the Respondents to reinstate the Applicant in the service forthwith; to hold that the period from 05.04.04 till the date of reinstatement as duty for all purposes;

And

To pass any other further order(s) or direction (s) as deemed fit and proper in the circumstances of the case.”

2. Respondents have filed their counter stating therein that the Applicant has nothing to make any grievance for the reason of issuance of the order dated 05.04.04; inasmuch as, pursuant to the orders rendered by

this Tribunal in O.A.No. 202/01 the Respondent Department had to bound down their hands in the matter of the Disciplinary proceedings. However, the CBI authorities approached the Hon'ble High Court of Orissa in Misc. Case No. 11/04 for vacation of the interim orders rendered in Crl.Appeal No. 302/95 and when the Hon'ble High Court of Orissa, after hearing the parties, vacated the said order of stay on 03.04.04 The Disciplinary Authority examined the conduct of Applicant and gravity of misconduct so also the facts and circumstances of the case that had led to conviction of Applicant and, after applying its mind, passed the order dated 05.04.04 in terms of the provisions of law under Rule-12 and 19(1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. Respondents have further submitted that although the applicant preferred an appeal, without waiting the final orders of the Appellate Authority, he has rushed to this Tribunal prematurely. Finally, the Respondents have prayed for dismissal of this Original Application.

3. We have heard Mr. K.C.Kanungo, learned counsel appearing for the Applicant and Mr. U.B.Mohapatra, Ld. Sr.Standing Counsel appearing for the Respondents and perused the materials placed on record; including the Rejoinder filed by the Applicant. Submissions of the learned counsel for the Applicant that the order of punishment of dismissal as imposed on the Applicant under Annexure-A/5 dated 05.04.04 and Annexure-A/7 dated 05.04.04 are not sustainable on the case of the violation of the principles of natural justice; inasmuch as before passing the said order no notice was put to the applicant; and that the order of punishment is an unreasoned one; as it does not reflect as to why the authorities did not feel inclined to proceed with the enquiry initiated against the Applicant on the self

same allegations which was the subject matter of consideration of the Criminal appeal pending in the Hon'ble High Court of Orissa. Further, submission of the learned counsel appearing for the Applicant is that while passing the order of punishment, various Govt. (of India) instructions/decisions were not adhered to by the Respondents. In this connection he has also relied on the decisions rendered by the Hon'ble Apex Court in the case of the Divisional Personnel Officer, Southern Railway and another Vrs. T.R.Challappan Vrs. UOI and others (reported in AIR 1975 SC 2216) wherein their Lordships of the Hon'ble Apex Court of India held as under:-

“ The rule-making authority deliberately used the word ‘consider’ and not ‘determine’ because the word ‘determine’ has a much wider scope. The word ‘consider’ merely connotes that there should be active application of the mind by the Disciplinary Authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term ‘consider’ postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the Disciplinary Authority after hearing the delinquent employee.”

In the above premises, thus, it is amply clear that before passing an order under Rule 19 of the CCA(CCA) Rules, 1965, an opportunity ought to be given to the Govt. servant to have his say in the matter. The learned

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counsel appearing for the Applicant has vehemently prayed for quashing of the impugned order of punishment; by canvassing the point that it is a settled position of law that unless a man is held guilty by the highest court in the country, he/she cannot be said to be a convict, especially when the matter is still subjudice before the Hon'ble High Court in Appeal and that, therefore, the Respondents ought not to have passed the order of punishment hastily.

4. On the other hand, learned Senior standing Counsel appearing for the Respondents Department has canvassed the point that the Tribunal should not entertain this Original Application at this stage, when the appeal of the Applicant is still pending against the order of punishment and, in the event the said Appeal is decided against the Applicant, he can ventilate his grievance before this Tribunal. It has further been submitted by him that this Tribunal being not the appellate authority over the decisions reached by the competent authority, if any order is passed in this O.A. that would be transgressing the powers available with the Appellate Authority. Further more, on the merit of the matter, it has been submitted by him that when the Applicant was convicted in a criminal case, he was rightly thrown out of the job by the competent authority by exercising the powers available under the rules and that, there being no lacunae in the order of punishment, the Tribunal should not interfere in it. Further more, it was submitted by him, as there was no explanation available to the Applicant to be canvassed, after he was convictd by Criminal court of law, he has rightly not been given any show cause notice before the order of punishment was passed.

5. Having heard the parties and perusing the materials placed on record, we are convinced that the Applicant, without exhausting all the

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remedies, has rushed to this Tribunal for ventilating his grievances in the present Original Application and that if any order is passed now, that would amount to transgressing the powers, jurisdiction and competence of the Appellate Authority. Section 20 of the Administrative Tribunals Act, 1985 reads as under:-

“20. APPLICATION NOT TO BE ADMITTED UNLESS OTHER REMEDIES EXHAUSTED:-

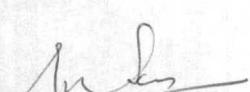
- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that Applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances;
- (2) For the purposes of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -
 - (a) if a final order has been made by Government or other authority or officer of other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
 - (b) where no final order has been made by the Government or other authority or officer or the person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.”

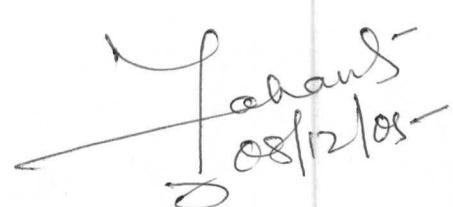
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The Applicant has also not shown any extraordinary circumstances enabling this Tribunal to entertain this O.A. before expiry of six months of filing of appeal. It is also not in dispute that the Appellate Authority has the inherent power to set right the wrong committed. If no opportunity was given to the Applicant to have his say in the matter, before passing of the impugned order, then the Appellate Authority can redress the said aspect of the matter by giving adequate opportunity to the Applicant (even by giving personal hearing) at his level or by remitting the matter to the Disciplinary Authority to give natural justice.

6. In the above said premises, without expressing any opinion on the merits of this case, we dispose of this Original Application by calling upon the Appellate Authority to consider the Appeal (that was preferred by Applicant under annexure-A/6 dated 22.07.04) within a period of 90 days from the date of receipt of a copy of this order.

7. This Original Application, accordingly, disposed of. No costs.


(B.N. SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)