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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.691 of 2006
Cuttack, this the 11th day of August, 2009

H.K.Burma Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.691 of 2006
Cuttack, this the 11th day of August, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....
Sri Harjakshya Keshari Burma, aged about 45 years,
Son of Sri Batakrushna Samal, Section Officer, at
present residing At-Type-II/213, Unit-4, PO-
Bhubaneswar, Dist. Khurda.

.....Applicant

Advocate for Applicant: M/s.Chitra Padhi, S.Behera.

-Versus-

1. Union of India represented through Comptroller and Auditor General,10, Bahadur Shah Zafar Marg, New Delhi-110 002.
2. Accountant General (A& E), Orissa, Bhubaneswar, Dist. Khurda.
3. Senior Accountant General (Administration), Office of the Accountant General, Orissa, Bhubaneswar, Dist. Khurda.
4. Deputy Accountant General (Funds), Office of the AG (A&E), Orissa, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.U.B.Mohapatra,SSC.

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant's case is that placing him under suspension vide order dated 11.12.2004 without serving any charge within one year as required under Government of India, DOP&T OM No.11012/4/2003-Estt.(A) dated 07.01.2004 and allowing the suspension order to continue amounts to arbitrary and unfettered exercise of power and as such, as per the decision of the Hon'ble Apex Court in the case of O.P.Gupta v Union of India and others, AIR 1987 SC 2257, the order of suspension is liable to be quashed. His

✓ further contention is that though he has made appeal against such long continuance of the order of suspension without following rules, till date no decision has been taken on the same. In the light of the above, by filing this OA Applicant sought to declare the order of suspension as void with further direction to reinstate the Applicant to service with full pay and allowances retrospectively.

2. By filing counter, the Respondents explain that commission and omission having been noticed, in contemplation of disciplinary proceedings the applicant was placed under suspension w.e.f. 11.10.2004 and on the recommendation of the Review Committee the said order of suspension of applicant has been allowed to continue till date. In regard to non-adherence of the aforesaid OM for framing of charge within one year, it has been stated that the OM is advisory in nature and not statutory in character and in this context, by relying on the decision of the Madras Bench of the CAT in OA No. 1951/93 disposed of on 22.08.1994 (G. Yousoof v Assistant Superintendent of Post Offices, Tiruchirapali and Another) it has been contended by the Respondents that by not issuing the charge-sheet within one year the order of suspension cannot be invalidated. On the above ground, the Respondents opposed the prayer of the Applicant.

3. Learned Counsel appearing for both sides reiterated the stand taken in their respective pleadings and

having heard them at length, perused the materials placed on record.

4. In course of hearing it is noticed that the applicant preferred an appeal under Annexure-A/10 against his suspension and its continuance till date as provided in Rules. But the said appeal is still pending consideration. According to the Applicant, the decision of the Madras Bench relied on by the Tribunal holding that for non-serving the charge sheet within one year will not invalidate the order of suspension the OM being advisory in nature is not applicable to this case as the said came into effect prior to amendment of Rule 10 of the CCS (CCA) Rules, 1965 making the review and serving of charge sheet within one year mandatory. We also usefully state that the sole aim of placing a Government servant under suspension is to keep him away anticipating tampering of any evidence or gaining over the witnesses. During suspension a suspected employee gets subsistence allowance from exchequer virtually without rendering any duty. Therefore, time and again various courts deprecated such long continuance of the order of suspension of a Government servant. However, as noted above since the appeal is pending without expressing any opinion on the merit of the matter, this Original Application is disposed of with direction to the Appellate Authority before whom the appeal preferred by the Applicant is stated to be pending to take a decision by taking into consideration the Government of India

instruction dated 7th January, 2004 and communicate the result thereof to the Applicant as early as possible at any rate within a period of thirty days hence. There shall be no order as to costs.

K.Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

C.R.Mohapatra
(C.R.MOHAPATRA)
MEMBER (ADMN.)