

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 694 of 2006
Cuttack, this the 12th day of August, 2009

C O R A M:

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

Prashanta Kumar Nayak, aged about 47 years, Son of Late Haramohan Nayak, a/p 5R/4, Forest Park, PO/PS-Capital, Munsif-Bhubaneswar, Dist. Khurda.

.....Applicant

Advocate for Applicant: M/s.Devashis Panda,
K.B.Panda,
M.Dasverma,
Ms.S.Patnaik.

-Versus-

1. Union of India represented by Secretary to Government of India, Department of Personnel and Training, At/Po/Ps/Munsif, New Delhi-110 001.
2. State of Orissa represented by Chief Secretary, Orissa, Orissa Secretariat, PO/PS-Capital, Munsif-Bhubaneswar, Dist. Khurda.
3. Special Secretary, General Administration Department, Orissa Secretariat, PO/PS-Capital, Munsif-Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.U.B.Mohapatra,
SSC,& Mr.A.K.Bose, GA

O R D E R
(ORAL)

Per- MR. JUSTICE K.THANKAPPAN, MEMBER (J):-

Heard Mr. K.B.Panda, Learned Counsel

appearing for the Applicant, Mr. A.K..Bose,
Learned Government Advocate for the State of
Orissa and Mr. U.B.Mohapatra, Learned Senior

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Standing Counsel appearing for the Union of India and perused the materials placed on record.

2. Short fact of the matter is that the Applicant (Prashanta Kumar Nayak) is a 1984 batch Orissa cadre Indian Administrative Service Officer. He has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the order under Annexure-A/1 dated 27th July, 2006 placing him under suspension pending investigation relating to criminal charges. He contends that there is no criminal case pending against in any court of law or authority nor any disciplinary proceedings is under contemplation or pending. In the above back ground he has prayed for quashing of the order of suspension under Annexure-A/1.

3. On the other hand, relying on the averments made in the counter, Learned Government Advocate appearing for the State of Orissa contended that the order under Annexure-A/1 has been corrected by issuance of subsequent order dated 16th October, 2006 by way of corrigendum by substituting the word

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 "trial" instead of "investigation" of Criminal charge. It is also contended by him that it is not correct to state that there was no criminal case pending against the Applicant when the Learned Spl. CJM (CBI) Bhubaneswar vide order dated 03.07.2006 in SPE No.3 of 2000(A) has already taken cognizance by the date the order under Annexure-A/1 was issued. Accordingly, Learned Government Advocate so also Learned Senior Standing Counsel appearing for the Union of India opposed the contention thereby the prayer of the Applicant and have prayed to dismiss this OA.

4. In regard to *lis pendency*, Learned Counsel for the Applicant submitted that there is no evidence to show that any such investigation or trial took place or pending against the Applicant in any court of law or authority. He has therefore reiterated his prayer for allowing the relief claimed in this OA by the Applicant.

5. For deciding the issue in hand, we have gone through Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 [hereinafter

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called as 'Rules'] dealing with the circumstances under which an All India Service Officer can be placed under suspension. Sub-rule 3 of the aforesaid Rules clearly provides as under:-

"(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a (member of the service) or is likely to embarrass him in the discharge of his duties or involves moral turpitude."

6. A bare reading of the above Rule, would clearly indicate that a Member of the service can be placed under suspension only on the grounds of investigation, inquiry or trial relating to a pending criminal charge. The order under Annexure-A/1 envisages that the applicant has been placed under suspension on investigation relating to criminal charges and subsequently by issuing corrigendum the word 'investigation' was substituted by 'trial'. But no evidence has been produced before us by the Respondents to the extent that any such trial is pending any where against the Applicant.



However, we are now concerned with the power of this Tribunal to interfere in the matter at this stage because as per Rule 16 (i) of the AIS (D&A) Rules, 1969, one has to make an appeal before the Appellate Authority against the order of suspension which opportunity has not been availed of by the Applicant till date.

In the aforesaid circumstances, it is only proper for this Tribunal to dispose of this Original Application by permitting the applicant to prefer an appeal to the Appellate Authority, in terms of the aforesaid Rules within a period of 30(thirty) days hence and the Appellate Authority (Respondent No.1) is hereby directed to consider and pass appropriate order on the said appeal of the Applicant within a period of 60(sixty) days and communicate the result thereof to him.

Ordered accordingly. No costs.

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

Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

K.jtm,ps



MA No. 397/2009

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A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Heard Learned Counsel for both sides on the above MA seeking recalling the order dismissing this Original on default. We are satisfied ^{with} _✓ the reasons attributed by the Learned Counsel for the Applicant for his non-appearance on the date the OA was listed and dismissed for default. Hence, the order dismissing this OA on default is hereby recalled. MA is accordingly disposed of.

However, while giving consideration on the MA we have also heard on the merit of this Original Application. Hearing on this OA is concluded and order is dictated and pronounced in open court vide separate sheets attached to the record. For the reasons discussed therein, this OA stands disposed of. No costs.

Member(Admn.)

Member(Judicial)