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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 642 of 2002  
Cuttack, this the 11<sup>th</sup> day of July, 2005

Bansidhar Rout

.....

Applicant

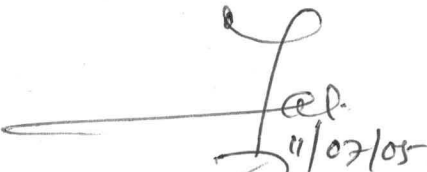
Vs


Union of India & Others .....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75
2. Whether it be circulated to all the Benches of the  
Central Administrative Tribunal or not ? 75

  
( M.R. MOHANTY )  
MEMBER (JUDICIAL)

  
( B.N. SGM )  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 642 of 2002  
Cuttack, this the 11th day of July, 2005

CORAM :

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

AND

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

.....

Shri Bansidhar Rout, aged about 58 years, Son of Late Gouranga Rout, Principal, Traffic Training School, Bhubaneswar, Now residing at K.B.K. Road, Cuttack, Town/Dist : Cuttack.

..... Applicant

By the Advocates

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M/s B.Mohanty-I, S.Patra,  
P.K.Majhee, A.Panda.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. State of Orissa, represented through Chief Secretary, Orissa Secretariate, Bhubaneswar, Dist : Khurda.
3. Principal Secretary to Government of Orissa, Home Department, Orissa Secretariate, Bhubaneswar, Dist : Khurda.

..... Respondents

By the Advocates

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M/s. B.Dash(ASC),  
A.N.Routray(State).

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN :

Shri Bansidhar Rout, Principal, Traffic Training School, Bhubaneswar (now retired) has filed this O.A. seeking the following reliefs :

- i) Departmental proceeding pursuant to Annex-A/4 be stayed till finalisation of Criminal Proceeding ;
- ii) Pass any other order/orders which the applicant is entitled to in the facts and circumstances of the present case.

2. The case of the applicant in a nutshell is that, the applicant, a member of Indian Police Service (IPS, in short), while working as Superintendent of Police (SP, in short), Dhenkanal had sent a proposal to the Employment Exchange for sponsoring candidates for recruitment as Police Constable fixing the dates of interview from 12.9.95 to 14.9.95. The recruitment test was to be carried out by Selection Committee consisting of Deputy Inspector General of Police (DIG, in short) as Chairman, S.P. of the district, in this case the applicant, and Commandant/Deputy Commandant of Orissa as the Members. However, the recruitment test could not be held and the same was postponed on administrative grounds without fixing any future date under the orders of D.I.G., Northers Range, Sambalpur and that the same position was intimated to Special I.G.(Admn.) under wireless message dated 8.9.95 (Annexure-1). However, an F.I.R. was filed by D.S.P.,

Vigilance Cell, Orissa in the Police Station/Vigilance Police Station, Sambalpur No. 31/97 dated 30.6.97 alleging that one Shri Sarada Pattnaik who was known to the S.P., Dhenkanal (the applicant), with the help of two Constables working in the office of the S.P., Dhenkanal had collected consideration money <sup>from the intending candidates</sup> with the promise to show favour to those persons during recruitment test of Constables in Dhenkanal district. It was also alleged in that F.I.R. that one Shri Sarada Pattnaik, son of an influential person of the locality, with the help of Constable Akrura Mallick and Constable Nibaran Rout, collected and accepted money on behalf of the applicant who needed money for his daughter's marriage which was to be held in April, 1996. Although, he was not directly involved, his name was also included in the said charge-sheet dated 30.6.97. It has been submitted by the applicant that the recruitment of Constables which was postponed in 1995 was held in 1999 after transfer of the applicant. It is his submission that the postponement of recruitment test which was held years after his transfer goes to show that there was no scope at all for the applicant to make any illegal gain. However, the applicant was placed under suspension by the State Government by its order dated 3.5.01. This order was challenged by the applicant before this Tribunal in O.A.No. 164/01. The O.A. was dismissed, after which the applicant challenged the same in O.J.C. No. 3718/02 before the Hon'ble High Court of Orissa. Later on, the

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applicant was reinstated in service on 5.12.01 as Respondent No.1 did not confirm the suspension order nor did initiate departmental proceeding within 90 days as required under law. Later on, by his order dated 29.5.02, a major penalty charge-sheet was issued by the Respondent No.3. On receipt of the said charge memo, the applicant had filed his written statement of defence on 13.7.02 asking upon the Respondent No.3 not to proceed with the departmental proceeding as the charges in departmental enquiry were substantially the same as the charges in T.R. Case No. 7/2000 pending before the Ld. Special Judge, Vigilance, Sambalpur. But his representation did not yield any positive result.

3. The Respondent No.3 by filing a detailed counter has opposed the application. It has, however, been admitted by him in the counter that the name of the applicant does not appear as an accused in the F.I.R. He has, *also*, submitted that the law is well settled that criminal proceeding and departmental proceeding can proceed simultaneously because departmental enquiry concerns the incidence of official misconduct which is clearly distinguishable from the criminal charges. Relying on the case laws of N.Shivalingaih vs Karnataka State Co-operative Marketing Federation Ltd, Kalyani vs Superintending Engineer and Union of India vs K.K.Dhawan, he has argued that the enquiry can be held regarding the conduct of an official when there has been violation

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of Conduct Rules simultaneously with a criminal case. It is for the disciplinary authority, after going through the materials on record, to decide as to whether, in a given case, departmental proceeding should be kept on hold pending the outcome of the criminal case. It is only in case when the charge against the employee is of a grave nature and involves complex question of law and fact, the question to stay the disciplinary proceeding may arise. He has also rebutted the plea of the applicant that disclosure of his defence in the disciplinary case will prejudice his case in the criminal proceeding by stating that his defence is merely a camouflage since he has already disclosed his defence plea during police/vigilance investigation. He has further submitted that the charge brought against him being neither so grave nor involves complicated question of facts and law, the decision to continue departmental proceeding simultaneously with the criminal proceeding would be fair and right decision in the interest of the applicant and for expeditious disposal of the case in public interest.

4. The applicant has filed detailed rejoinder dated 23.4.03 where he has given elaborate reply to para-5 of the counter stating what action he had taken against the police officials who were reported to have indulged in collection of money, the report that he had submitted to his higher authorities in the police organization and that he had not received any instruction from those



authorities in return. He has also submitted that "it is interesting to note here that though holding of recruitment test was postponed during September, 1995, without knowing the said facts money was collected two months thereafter during November, 2005." The Respondent No.3 had filed reply to the rejoinder dated 29.3.04. He has also filed additional counter dated 4.10.04.

5. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

6. The sole question to be answered in this O.A. is whether the disciplinary proceeding initiated against the applicant by the Respondent No.3 by his charge memo dated 29.5.02 should lie over till the finalization of the criminal case pending before the Special Judge, Vigilance Court, Sambalpur. As we have noted earlier, the Respondent has opposed the application stating that under law there is no bar for simultaneous action under the disciplinary rules as well as under criminal law. The Ld. Counsel for the applicant by relying on the judgement of the Apex Court in Kusheshwar Dubey vs M/s Bharat Coking Coal Ltd. and others has submitted that while there is no legal bar for simultaneous proceedings being taken yet here is a case where it would be appropriate to defer disciplinary proceeding awaiting disposal of the criminal case. He has submitted that in the facts and circumstances of the present case, there is lot of force behind the prayer of the applicant. Recalling the

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decision in the Delhi Cloth and General Mills Ltd. vs Kushal Bhan, he submitted that as the charge framed against the applicant in the domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending final disposal of the criminal case. He further argued that the ratio of the Kushal Bhan case squarely covers the present case. In the circumstances, let us see if in the instant case the criminal action and the disciplinary proceeding are grounded upon the same set of facts.

7. In the departmental case, the allegation brought against the applicant is that he committed grave misconduct by moving the Employment Officers Kamakhyanagar, Hindol and Dhenkanal by his letter dated 29.8.95 to sponsor names of the candidates to appear in the recruitment test for Constables to be held from 12.9.95 to 14.9.95. It is further alleged that he has "prior acquaintance with one outsider namely, Shri Sarada Pattnaik ~~and~~ who with two other Constables namely, Constable 315 Akrur Mallick and Constable 111 Nibaran Rout collected bribe from aspiring candidates to select them as Constables." It was further alleged that Constable Nibaran Rout collected illegal gratification amounting to Rs. 2.62 lakhs from nine intending candidates while Constable Akrur Mallick collected illegal gratification amounting to Rs. 1.60 lakhs from seven intending candidates and that amount, so collected, was given to Shri Sarada

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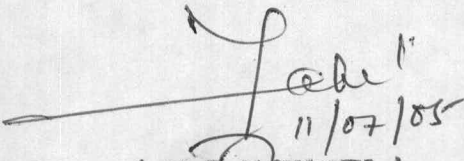
Pattnaik who handed over the same to S.P., Shri B.D. Rout, the applicant, for appointment of the intending candidates, at the latter's residential quarters. It was further stated that the matter was enquired into by D.I.G. of Police, C.I.D., C.B., Cuttack on the orders of the "Hon'ble High Court on O.J.C.No. 87/97 and was found to be taken prima facie." A criminal case was also filed in the Court of Special Judge, Sambalpur bringing same allegation and the charges under Column-7 of the charge-sheet are found to be the same as appears in the charge-memo issued against the applicant. In his rejoinder, as also in his earlier submission, the applicant has submitted that he had also received information alleging collection of bribes by those two Constables in collaboration with Shri Sarada Pattnaik. Immediately, thereupon he had, not only conducted enquiry into the matter, <sup>but</sup> had taken disciplinary action against those two Constables and had reported the matter to his higher authorities. The applicant has further submitted that the allegation against him appears to be hollow because the recruitment test was postponed long before September, 1995 and the alleged collection of money took place, as alleged, some time during the period November, 95 to January, 96.

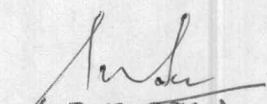
8. From the above facts of the case, it is clear that the criminal action and disciplinary proceeding in this case are grounded upon the same set of facts. We also find that while the Respondent No.3 in his counter has gone on record to say the allegation against the

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applicant "is not grave", in article of charges at Annexure-1 issued against him, it is clearly stated that he had committed "grave misconduct." Further, the applicant was also put under suspension, but no charge-sheet could be filed for quite some time. Further, if the charge against him was neither grave nor involved complicated questions of facts, surely, there was no case with the disciplinary authority to put him under suspension. All in all, the position taken by the Respondents seems to be contradictory. We, therefore, hold that as the grounds on which disciplinary action has been initiated against the applicant both in the criminal court as also in the departmental proceeding are based on the same set of facts, we are of the view that the disciplinary proceeding initiated against the applicant should have stayed. We order accordingly following the ratio in the case of Kusheswar Dubey vs Bharat Coking Coal Ltd.

9. Having regard to the facts and circumstances of the case and the replies filed by the Respondent No.3 in this case, we would direct the Respondents to take all possible actions available under law to expedite the finalization of the criminal case pending in the Court of Ld. Special Judge as the applicant has already retired from service and is now a senior citizen. No costs.

  
( M.R. MOHANTY )  
MEMBER (JUDICIAL)

  
( B.N. SGM )  
VICE-CHAIRMAN

KUMAR