

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 1045/2002
Cuttack, this the 5th day of January, 2004

DUKHISHYAM ROUTRAY.

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APPLICANT.

:VRS.:

UNION OF INDIA & ORS.

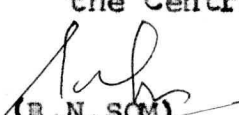
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RESPONDENTS.

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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


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

Original Application No.1045 of 2002
Cuttack, this the 5th day of January, 2004

C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN.
&
THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDICIAL)

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DUKHISHYAM ROUTRAY,
Aged about 54 years,
S/o.Late Dambarudhar Routray,
permanent resident of
Village-Mundilo, Via:Mandasahi,
PS/DIST. Jagatsinghpur,
presently residing at Manchhuati,
PO: Salepur, Dist.Cuttack and
serving as Jr.Telecom Officer,
(now under suspension).

.... Applicant.

For the Applicant. : M/s.S.S.K.Subudhi,
Manoranjan Dash,
T.B.Jena,
S.Patnaik,
D.Narendra,
Advocate.

-Versus-

1. Union of India represented through
Director General, Postal and Telegraph Deptt.,
Bharat Sanchar Nigam Limited,
Sanchar Bhawan, New Delhi.
2. Chief General Manager,
Telecommunication,
Bharat Sanchar Nigam Ltd.,
Orissa Circle, Bhubaneswar.
3. Dy.General Manager (Installation),
O/O.C.G.M.T., Doersanchar Bhawan,
Unit-IX, Bhubaneswar, Dist. Khurda.

.... Respondents.

By legal practitioner: Mr.Anup K.Bose,
Senior Standing Counsel (Central).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):


While the Applicant, Dukhishyam Routray, was working as officiating S.D.E. under the Telecom Deptt. of Government of India; a C.B.I. case was instituted against him and placed in the Court of Special Judge, Bhubaneswar (as RC-34 (A)/1997) u/s.13 (2), 13 (1) (2) of the P.C. Act, 1988 and he was also issued with the memorandum of charges (under order No. Vig-8-141/97 dated 29.11.1999) under Rule-14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965. In the said proceedings, Inquiring Officer was appointed to enquire into the charges in question. The Applicant having been asked to appear in the enquiry, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying therein for stay of the disciplinary proceedings till disposal of the Criminal case, in question.

2. Respondents have filed their counter stating therein that since there is no bar for simultaneous proceedings (i.e. Criminal as well as Disciplinary) against a Government servant and since the sets of the charges in both the proceedings are distinct and different, there is no need to stay the disciplinary proceedings pending finalisation of the Criminal case as against the Applicant.

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3. None appears for the Applicant; nor any request has been made on his behalf seeking adjournment. On 16.10.2003, when the matter was listed/called, none were present on behalf of the Applicant. Similar was the situation on 14-11-2003, 21-11-2003, 09-12-2003 and finally today also. Since the Disciplinary Proceedings (initiated against the Applicant, under Annexure-4 dated 29-11-2002) has been stayed (since 20-12-2002) by ad-interim orders of this Tribunal, we are not inclined to adjourn this matter any further. We, in the circumstances, heard Mr. A. K. Bose, Learned Senior Standing Counsel; for the Union of India, appearing for the Respondents and perused the materials placed on record with the aid and assistance of Mr. Bose.

4. It is the case of the Applicant that since the charges levelled against the Applicant in the Criminal case pending before the Learned Special Judge, Bhubaneswar are the same and similar to that of the charges framed and communicated to the Applicant in the disciplinary proceedings initiated against him, he has a right to maintain silence in the disciplinary proceedings, till the finalisation of the Criminal case. In the counter and also during the oral submission, learned Senior Standing Counsel submitted that the charges levelled in the disciplinary proceedings against the Applicant are totally different than the charges levelled against the Applicant in the C.B.I./ Criminal case. It has been clarified that while the CBI case is based on the allegation of "acquiring assets



disproportionate to his known source of income", the disciplinary proceedings has been initiated under Rule-14 of Central Civil Services (Classification, control and Appeal) Rules, 1965 for failure to comply with the provisions of Rule-18 (2) and (3) of CCS (Conduct) Rules, 1964 (pertaining to acquisition of movable and immovable property, without taking prior permission of the Government). Mr. Bose, learned Sr. Standing Counsel, in support of his contention has relied upon the decision of the Hon'ble Apex Court of India rendered in the case of CAPT. M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. AND ANOTHER (AIR 1999 SC 1416). We have gone through both the charges filed in this case and the citations relied upon by Mr. Bose.

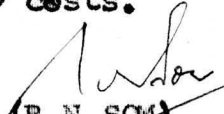
5. There is no doubt that right of silence is available to a citizen/Govt. servant to be exercised in the matters like the present one; but before claiming such right of silence, one has to prove that disclosure of his defence in the disciplinary proceedings would in any way fatal to the conclusion of the Criminal case pending against him. Law is well settled in a plethora of judicial pronouncements that departmental proceedings and proceedings in a criminal case can proceed simultaneously; as there is no bar in their being conducted simultaneously, though separately; but if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which

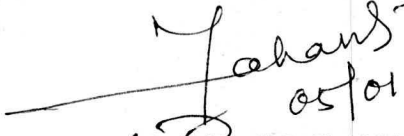
involves complicated questions of law and fact, then it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It is to be noted here that whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet. This also cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed for long, and if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

6. On going through the records/materials placed on record and upon hearing the learned Senior Standing Counsel appearing for the Respondents, we are satisfied that none of the above grounds have been proved by the Applicant for staying the departmental proceedings till the finalisation of the Criminal case.

7. In the aforesaid view of the matter, we find no reason to interfere in the matter; which is accordingly dismissed and as a consequence the ad-interim stay order passed on 20.12.2002 stands vacated.

No costs.


(B.N. SOM)
VICE-CHAIRMAN


05/01/2004
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)