

Order dated 17.12.2003

Heard Mr.S.S.K.Subudhi, the learned counsel appearing for the Applicant and Mr.Ashok Mohanty, learned senior counsel appearing on behalf of the Respondents and perused the materials placed on record.

2. It is the case of the Respondents that the applicant having faced with criminal proceedings before the Special Judge (CBI), Bhubaneswar (on the allegation of having made fraudulent withdrawal of Provident fund dues of the employees of Orissa Transport Corporation) has simultaneously been proceed with departmentally; as a consequence of which he has been placed under suspension. It is the further case of the Respondents that they have reviewed the matter and the Applicant is now being paid subsistence allowances at the rate of 75%. It is the further contention of the learned senior counsel for the Respondents that the allegation against the Applicant being serious and grave in nature and the criminal proceedings having been pending against him before the appropriate Criminal Court, the Department (as per the law laid down by the Hon'ble Supreme Court in the case of M.Paul Anthony vs. Bharat Gold Mines Ltd. reported in AIR 1999 SC 1416 are within their rights to proceed departmentally; even though a criminal proceedings is pending against the Applicant on self same allegation. Shri Mohanty drew my attention to the relevant observations made by the Hon'ble Apex Court in M.Paul Anthony's case (supra)

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which runs thus :-

" 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 proceed 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".

It is in this background, the learned senior counsel Shri Mohanty urged for vacation of stay in so far as departmental proceedings against the applicant is concerned.

3. On the other hand the learned counsel for the applicant drew my attention to some of the observations of the Hon'ble Apex Court in the very same case of M. Paul Anthony (supra) to allow the interim order of stay to continue till the disposal of criminal proceedings.

4. The rival submissions made by the learned counsel appearing for the rival parties have been considered carefully and the observations of the Hon'ble Supreme Court of India made in M. Paul Anthony's case (supra) have also been gone through to come to a definite conclusion vis-a-vis the allegations levelled against the Applicant. It appears that no fruitful purpose would be served; if the departmental proceedings is allowed to remain stayed any further, as due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed; particularly because the nature of charge, does not approve of it.

5. For the reasons discussed above, I am inclined

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to dismiss this Original Application by granting
liberty to Respondents to proceed against the Applicant
appropriately, within the four corners of rules and
regulations governing the field. No costs.

13/12/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

Or. No. 12.12.03

copies of order
prepared for
counsel for
both sides.

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So (5)