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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 4 OF 2003
CUTTACK, this the 31st day of March, 2003.

ISHWAR SHARAN KATARHA.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

RESPONDENTS.

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.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

31/03/2003

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 04 OF 2003
Cuttack, this the 31st day of March, 2003

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.) .

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Ishwar Sharan Katarha,
Aged about 45 years,
S/o. Daulat Ram Katarha,
Principal, M.I.T.I.,
Chowudwar, Dist. Cuttack.

....

Applicant.

By legal practitioner : Mr. B.S. Tripathy-I,
Advocate.

:Versus:

1. Union of India represented by the
Ministry of Labour, Directorate General
of Employment and Training, New Delhi.
2. Director General/Joint Secretary to Govt.
of India, Directorate General of Employment
and Training, New Delhi-1.
3. The Regional Director, R.D.A.T., Salt Lake,
Kolkata-700 864.
4. Sri J. Jay Prakash, V.I., M.I.T.I.,
Choudwar, Dist. Cuttack .

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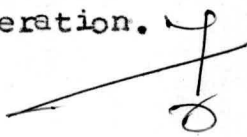
Respondents.

By legal practitioner: Mr. A.K. Bose, Senior Standing Counsel.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant has challenged the order of his suspension (passed under Annexure-7 dated 24.12.2002) on the ground that the same is illegal, arbitrary, unjust, outcome of mala fides and has been made with extraneous consideration.



2. The brief fact of the case is that while the Applicant was functioning as principal/Deputy Director of the Model Industrial Training Institute, Choudwar (in short 'M.I.T.I.'), on the basis of an anonymous petition purported to have been made relating to the appointment of the Respondent No.4 (Sri J. Jaya Prakash, who was selected and appointed as the Vocational Instructor in the said M.I.T.I., Choudwar), a preliminary fact finding enquiry was conducted on 15.6.2001 and, it is the case of the Applicant, that even though in the said preliminary enquiry into the said allegations, nothing was found against him; yet, in a most illegal, arbitrary and mala fide manner, on 24.12.2002, he was placed under suspension under Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in contemplation of a disciplinary proceedings.

2. Respondents have filed a preliminary objection/counter explaining the reasons and circumstances leading to placement of the applicant under suspension; wherein the allegations made by the Applicant, in his Original Application have been denied. It has also been submitted by the Respondents that this Original Application is not at all maintainable; for the same being filed prematurely.

3. I have heard Mr. B.S. Tripathy, Learned Counsel appearing for the Applicant and Mr. Anup K. Bose, Learned Senior Standing Counsel appearing for the Respondents and perused the records. Mr. Tripathy, Learned Counsel for

the Applicant, during the oral argument, submitted that the Applicant being a honest and sincere officer, ought not to have been placed under suspension for false and fabricated allegations; moreover, when nothing was found against him during the preliminary enquiry conducted by the higher officers of the Department. It has also been argued, by the Learned counsel for the Applicant, that the allegation, basing on which the Applicant has been placed under suspension, is not at all coming within the purview of 'misconduct' and, as such, the sword of suspension ought not to have been utilised in the case of the Applicant and if at all there was any necessity to keep away the Applicant, for conducting a free and fair enquiry into the matter, then Respondents, instead of "placing him under suspension", could have well transferred the Applicant to some other place. But not doing so and placing the Applicant under suspension, without any prima facie evidence, is illegal, arbitrary and unjust and needs to be interfered with by this Tribunal. In support of his submission, learned Counsel for the Applicant has relied upon the following decisions which had also been taken note of:-

- a) 1973(1) SLR vol. 8-521;
SUBRAMONIAN VRS. STATE OF KERALA AND OTHERS.
- b) 1985(1) SLR vol. 38-361;
IBRAHIM VRS. KERALA WAKF BOARD;
- c) 1986(vol. II) SLJ-134;
ABULLAIS KHAN VRS. THE STATE OF WEST BENGAL AND OTHERS;



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- d) 1986 (Vol. II) SLJ-266
DINESH SINGH VRS. UNION OF INDIA;
 - e) 1999 (7) SLR (Vol. 141) -670;
ISHWAR SINGH VRS. STATE OF HARYANA AND OTHERS;
 - f) AIR 1999 SC 1416
CAPT. M. PAUL ANTHONY VRS. GOLD MINES LTD.
AND ANOTHER.

4. After hearing learned Counsel for both sides and perusing the records, I would like to quote herein below the Rule-10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965:-

*10. SUSPENSION:

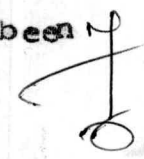
(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made".

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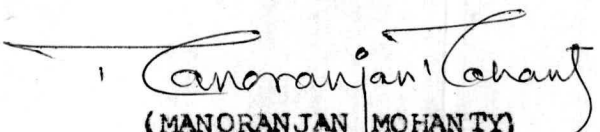
I am to observe that suspension is not a punishment; it is, rather, an incident of service and an order of suspension, in its very nature, is one made to meet an emergent situation, where it is thought best, in the interest of the administration, for the employee to be kept out of his normal right of discharging duties, since his continuance in the office might jeopardise either a departmental proceeding drawn up or to be drawn up against him or any investigation that might be carried on against him or any investigation that might be carried on against an alleged misconduct. It, also, cannot obviously extend for an indefinite time causing inordinate delay and complete dislocation of the normal service prospects of an employee. A prolonged suspension, without any justifiable reason, severely disturbs an orderly organisation of service rendered by a public service and would be antithesis of the constitutional mandate of equality in a welfare society. Such a position cannot be allowed to remain in a society governed by the rule of law. On a bare reading of the Rules, it is crystal clear that the Government is entitled to place an officer under suspension even before definite charge are framed/ communicated to him when 'preliminary investigation' has been made into his conduct, following allegations of corruption or malpractice are levelled against him. In the instant case in para-4 of the counter it has been



submitted by the Respondents that "the allegations made by the Applicant is totally baseless as he (Applicant) has been placed under suspension in contemplation of a disciplinary proceedings under the statutory Rules, as the appropriate authority, after due application of mind is satisfied that a case, prima facie, exists basing on the 'preliminary enquiry report' apart from the other materials". Thus, it cannot be said, at this stage, that the impugned suspension order is bad being prima facie illegal, arbitrary or out come of extraneous consideration. Allegation of mala fide, as raised by the Applicant, is not enough to vitiate the order of suspension without any unimpeachable evidence/documents/materials placed in support of the allegation of mala fide. No iota of evidence has been placed on record by the Applicant with regard to the plea of mala fide. As to the submission that the authorities could have transferred the Applicant in order to keep him away from the present place, instead of placing him under suspension, I am of the considered opinion that such discretion having been vested with the authorities of the Applicant, this Tribunal is to make no opinion like an appellate Authority. Applicant need approach his authorities for exercise of such discretion in his favour. As to the submission of the Advocate for,

the Applicant that the allegation, in question, is not a 'misconduct'; the answer is that if demand of bribe shall not be a 'misconduct', then what else can be ? Therefore, the said submission of the Advocate for the Applicant is hereby over-ruled.

5. In the above said premises, I find no merit in this Original Application to interfere with the order of suspension at this stage and, therefore, this Original Application is dismissed and, as a consequence, the interim order passed in this case stands vacated.
No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 31/03/2002