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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No09 OF 2003
Cuttack, this the 11th day of August, 2005.

JAGAR SINGH

APPLICANT.


VERSUS

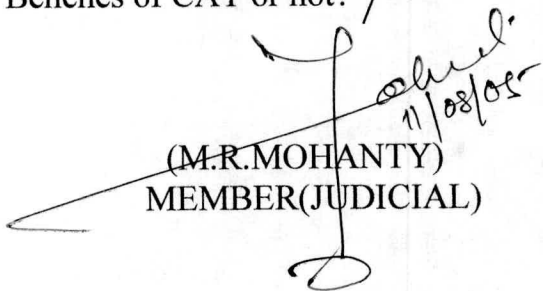
UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)
11/08/05

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CENTRAL ADMINISTRATIVE TRIBUNAL
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C O R A M:-

***THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)***

SHRI JAGAR SINGH, IAS,
Commissioner-Cum-Secretary to Govt.,
P.G. & P.A. Department, Orissa.

.....APPLICANT.

For the Applicant: In person.

V E S U S

1. Union of India represented through Secretary,
Department of Personnel & Training, Ministry
of Personnel, Public Grievances & Pension,
North Block, New Delhi.
2. State of Orissa, represented through Chief Secretary,
Government of Orissa, Secretariat, Bhubaneswar.

.....RESPONDENTS.

For the Respondents: Mr. A. Routray, GA (State)
Mr.U.B.Mohapatra, SSC(Central).

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O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL):-

Applicant, a 1976 batch Officer of Indian Administrative Service, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 challenging the validity/legality of the Memorandum of charges dated 27-06-2002 issued to him under Rule-8 of the AIS (D&A) Rules, 1969. Government of Orissa has filed a counter; to which the Applicant has also filed a rejoinder refuting the averments made in the said counter. Despite several opportunities, counter has not been filed on behalf of the Union of India.

2. We have heard Mr. Indrajeet Roy, Learned Senior Advocate appearing for the Applicant / Applicant in person, Shri A. Routray, learned Additional Government Advocate appearing for the State of Orissa and Mr. U.B. Mohapatra, learned Senior Standing Counsel representing the Union of India.

3. In support of his challenge to the Memorandum of charges under Annexure-1 dated 27-06-2002, the Applicant has pointed out that power has been conferred under the Orissa Survey and Settlement Act, 1958 on the Land Reforms Commissioner, Board of Revenue, Orissa, Cuttack, to discharge certain quasi-judicial duties and functions and, if

there was any irregularity or illegality in the matter of discharging duties on such a quasi judicial authority, either of parties have a right to challenge the same before the appropriate forum to set aside an order of the Land Reforms Commissioner; but for any such wrong order, no misconduct can be attributable unless the same is proved to be deliberate or actuated with mala fides and that since no mala fide has been alleged in the charge sheet (for alleged wrong interpretation of law stated to have been committed by the Applicant while discharging the quasi judicial duties) it cannot be a ground to start a proceeding for alleged misconduct, as has been done under Annexure - 1 dated 27.06.2002. In this connection he has also taken the support of various statutory provisions and judicial pronouncements to the extent that a wrong interpretation of law cannot be a ground for misconduct.

4. On the other hand, the Respondents/Government of Orissa, by filing a counter, have disclosed that since during investigation of Cuttack Vigilance P.S. Case No. 27 of 2000, U/s. 13 (2) read with 13 (1) (d) P.C.Act/120/B/468/471 IPC it revealed that the Applicant, during his incumbency as the Commissioner of Land Reforms (Orissa) at Cuttack in the year 1998 to 1999, committed gross misconduct (while reviewing the disposed of SRP) cases by misusing his official position and, therefore, it was felt necessary to initiate proceedings, as against the Applicant, by issuing the memorandum of the charges under Annexure-1.

As regards the plea of the Applicant that the charge framed against him does not fall within the provisions of Rule 3(1) of AIS (Conduct) Rules, 1969 it has been disclosed that as per Rule 3(1) of the aforesaid rules, every member of the service shall, at all times, maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service. According to the Respondents the Applicant had acted in a manner which was unbecoming on the part of a Government servant and, by such mis-utilisation of his official status, huge loss was caused to the Government and, in order to find out the motive of such illegality, it was felt necessary to enquire into the matter, more so when vigilance case is pending against the Applicant under the prevention of corruption Act. It has further been stated that the Applicant had done some work which was not within the purview of section 40 of the Orissa Survey and Settlement Act, 1958. As regards the plea of the Applicant that he has intentionally been proceeded with departmentally, at a time when he is ripe for consideration for promotion; it has been disclosed by Respondents that at the stage of drawal of the charge-sheet, the Applicant was not eligible for any consideration for promotion to any higher grade. By stating so, the Respondents have vehemently opposed the prayer made in his Original Application.

4. We have considered various submissions made by the parties and have perused the materials placed on record. It is seen that for some

of his act of omission and commission the Applicant was charge-sheeted under Annexure-1 dated 27-06-2002 . Under Annexure-2 dated 29-07-2002 Applicant asked permission to peruse certain records. Accordingly the GA (Vig.) Department of the Government of Orissa was requested in letter dated 19.08.2002 to allow the Applicant to peruse the relevant records. Again, the Applicant wrote a letter dated 26-08-2002 to the Special Secretary to Govt. of Orissa, in GA Department to the effect that he had not been intimated the date and time for perusal of the records (to be made available by the Vigilance Organisation) and, that, therefore, he is unable to submit his explanation by 28-08-2002 and, accordingly, he prayed for extension of time (to submit his explanation) till 30-09-2002. By letter dated 23.09.2002, the Applicant was allowed extension of time till 30-09-2002 to submit his explanation. Simultaneously, request was also made to the GA(Vig.) Department of the Government of Orissa to allow the Applicant to peruse the connected records. The Applicant submitted his written statement of defence to the charges on 29-07-2002 and 26-08-2002. Under Annexure 4 dated 31-10-2002 Applicant, again, submitted a representation to the Special Secretary of General Administration Department with regard to the maintainability of the charges. But before any decision was taken (on the written statement of defence submitted by him) the Applicant filed this Original Application and obtained ad interim stay order on 13-01-2003.

6.

It is a settled position of law that Court/Tribunal has no jurisdiction to go into the correctness or truth of the charges at a interlocutory stage; which is the function of the Disciplinary Authority or the Inquiring Officer appointed in a Disciplinary Proceedings. In the case of **TRANSPORT COMMISSINER, MADRAS - vrs. - A. RADHA KRISHNA MOORTHY** (reported in 1995 SCC (L & S) 313), it was held by the Apex Court of India that the truth and correctness of the charges was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary proceedings. In the case of **STATE OF UTTAR PRADESH vrs. BRAHM DATT SHARMA AND ANOTHER**, (reported in AIR 1987 SC 943), it was held by the Apex Court that when a show cause notice is issued to a Government servant (under a statutory provision) calling upon him to show cause, the Government servant ordinarily, must place his case before the authority concerned by showing cause and the Courts/Tribunals should not interfere with the notice at that stage. In the case of **UNION OF INDIA AND OTHERS vrs. K.K.DHAWAN**, (reported in AIR 1993 SC 1478) the Hon'ble Apex Court of India have clearly held that the Government is not precluded from taking disciplinary action for violation of the conduct Rules even with regard to exercise of quasi judicial powers (where the officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty) if there is prima facie material

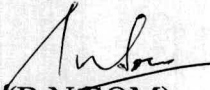
to show recklessness or misconduct in the discharge of his duty; if he has acted in a manner which is unbecoming of a Government Servant; if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory power; if he had acted in order to unduly favour a party; and if he had been actuated by corrupt motive, however, small the bribe may be.

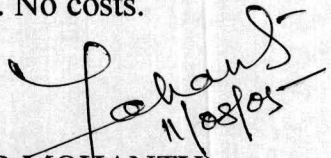
7. In the present case, it is seen that the powers of the Commissioner at Cuttack (which post was held by the Applicant) stood transferred to the Commissioner at Bhubaneswar by Government Notification dated 16.08.1999 and yet, as has been alleged, he dealt with those cases, without jurisdiction, on days subsequent thereto. This is a serious factual allegation and, in our considered view, this aspect of the matter need be enquired into; even in the interest of the Applicant.

8. In the above view of the matter, it is clear that the Tribunal is not to take over the functions of the Disciplinary Authority. The truth or otherwise of the charges is a matter for the Disciplinary Authority to go into. We, therefore, are not inclined to interfere in this matter at this stage; but, however, we make it clear that the Disciplinary proceedings that has started against the Applicant need be completed as early as

possible, preferably not later than six months from the date of receipt of a copy of this order.

9. In the result, this O.A. stands disposed of . No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)