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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.NO. 10 of 2003
Cuttack, this the 5th day of Nov., 2004.

JAGAR SINGH. Applicant.

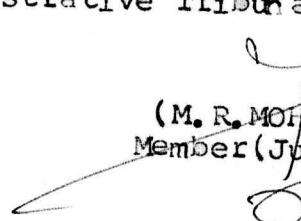
-Vrs.-

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.


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Judicial)
05/11/2004

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO. 10 OF 2003
Cuttack, this the 5th day of Nov., 2004

C O R A M:

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

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Shri Jagar Singh, I.A.S,
Commissioner-Cum-Secretary
to Government, P.G.&P.A.
Department, Orissa. **Applicant.**

By legal practitioner: In person.

-Versus-

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

By legal practitioner: Mr. T. Dash, Government Advocate.
&
Mr. U. B. Mohapatra, Senior Standing Counsel(Central).

O R D E R

MR. MANORANJAN MOHANTY, Member(Judicial):

Applicant, Shri Jagar Singh, a Member of the Indian Administrative Service, having faced a Disciplinary Proceedings (under Annexure-1 dated 12-06-2002) has filed this Original Application under Section 19 of the

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Administrative Tribunals Act, 1985; challenging the impugned proceedings to be bad, illegal and not tenable in the eyes of law and has prayed for quashing/setting aside the same.

2. The Applicant faced the charge-sheet under Rule-8 of the All India Services (Disciplinary and Appeal) Rules, 1969 on the allegation that, while working as Land Reforms Commissioner to the Board of Revenue of Orissa (having Headquarters at Cuttack) during 1998-99, he appointed outsiders, named below, as Job-contract employees directly on their applications without conducting any interview and without following the ban-order for appointment issued by the Finance Department of Government of Orissa (in their order No. 11172(4)/F dated 20-03-1998) read with instructions issued by the Revenue and Excise Department of the said State Government under Letter No. 5(E)52/88-54370/R dated 20.08.1988 and 5(E)92/88-20114/R dated 07.05.1993) and by violating the orders of the Hon'ble High Court of Orissa rendered in OJC Nos. 13767, 13768, 13855, and 13884 of 1998 (in which it was specifically directed to absorb retrenched workers on the basis of their seniority, whenever any legitimate vacancy arises) totally banning appointment of outsiders. It has also been

alleged against him that he showed undue official favour to some candidates (named below) by collecting their applications and by forwarding those applications to the Tahasildars with specific directions to appoint them:

- (a) Surendra Charcha,
S/o. Duryodhan Charcha,
Vill./PO: Sorada,
Dist.: Ganjam.
- (b) B. Hrusikesh,
S/o. B. Ramachandra,
Vill: Langipalli,
PS: Berhampur,
Dist: Ganjam.
- (c) Ramakrushna Padhi,
S/o. Shri Magaka Padhi,
At/PO: Nalabanta, Aska,
Dist: Ganjam;
- (d) Sajid Khan,
S/o. Yakub Khan,
Bhawani patra,
Dist. Kalahandi.
- (e) Prakash Ch. Pradhami,
S/o. Shri Khadala Pradhami,
Paramanandapur,
Dist. Kalahandi.
- (f) Satyanarayen Nayak,
S/o. Jima,
At/PO: Chorjagarh,
Via: Monichala,
Dist. Kalahandi.
- (g) Prabir Kumar Roul,
Plot No. 42, Lane-2,
Jagannath Bihar,
BMB Colony,
Bhubaneswar-3.

3. It appears, after making certain correspondences with the authorities pertaining to supply of documents etc.,

the Applicant had to put up a reply to the charges (under Annexure-5 dated 31-10-2002) in which he denied the allegations and, while doing so, he has expressed his desire to submit a detail written statement of defence on a later date.

4. Respondents have filed a counter in this case by contesting the matter and the Applicant has filed a rejoinder thereto.

5. In course of hearing of the case (today) Applicant appeared in person and stated that the ban order that was imposed by the Finance Department of the Government of Orissa (in its letter No. FR-3/98 - 45318(230)/F dated 29th October, 1998) was, virtually, stood recalled in Departmental letter No. FR-3/98 577(240)/F dated 5th January, 1999 and that, in that view of the matter, the charge-sheet (pertaining to unauthorised engagement of the aforesaid 7 persons) was an outcome of non-application of mind.

6. Mr. T. Dash, Learned Government Advocate appearing for the State of Orissa stated that instead of making a rush to this Tribunal, the Applicant ought to have represented the State Government (by pointing out the discrepancies, what he has raised herein) before approaching this Tribunal and that, therefore, this Tribunal should not interfere in the matter at this premature stage.

7. On the face of the prayer of the Applicant, as made in this Original Application, we would like to observe here that it has repeatedly been observed by the Apex Court of India that the Administrative Tribunal should not enter into making judicial review of the charge-sheet by examining correctness of the charges at a interlocutory stage of Departmental proceedings. In the case of UNION OF INDIA AND OTHERS v. UPENDRA SINGH (reported in (1994) 27 Administrative Tribunals Cases-200), the Hon'ble Apex Court held as follows:-

"The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the Original Application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A Writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view".

In the said case of Upendra Singh (supra), the Apex Court pulled up this Tribunal with the following words:-

"In the instant case, the Central Administrative Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the

inquiry officer appointed by him) and found that the charges are not true. The Central Administrative Tribunal reached this finding on the basis of material and orders produced by the respondent, in particular the proceedings taken by the Commissioner of Income Tax under Section 263 and the order of the Income Tax Appellate Tribunal (ITAT) in the appeal preferred by an assessee against the order of the Commissioner of Income Tax. It is stated that the Department is filing an application before the High Court under Section 256(2). It is not known whether the said observations/findings of the ITAT will ultimately be upheld or not. They are not yet final. In the circumstances the conclusion is that the order of the Central Administrative Tribunal is clearly in excess of its jurisdiction."

In the said case of Upendra Singh (supra) the Central Administrative Tribunal examined the correctness of the charges levelled against the respondent on the basis of the material produced by him and quashed the same. Allowing the Appeal of the Union of India in the above case, the Hon'ble Supreme Court held as follows:-

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges".

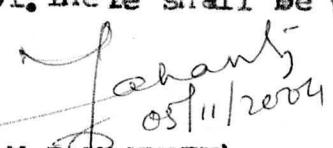
A Division Bench of this Tribunal in the case of Santosh Kumar Mishra VS. Government of India and others (rendered in O.A. No. 447 of 2001 disposed of on 06-02-2002), while deciding the similar grievances

(as raised by the Applicant in this case) for quashing of the charge-sheet, had declined to interfere, after taking into consideration the various judge-made-laws of the Hon'ble Apex. Therefore, we are not inclined to interfere in the present matter at this premature stage.

8. In the aforesaid premises, this Original Application is hereby disposed of, however, by granting liberty to the Applicant to present his case before the State Government of Orissa; which he should do by the end of December, 2004 and, in the event any such representation is made by the Applicant, then the State Government of Orissa should give a fresh look to the matter before proceeding against the Applicant on the allegation of/the charge-sheet drawn up against him under Annexure-1 dated 12-06-2002.

9. With the aforesaid observations and directions, this Original Application is disposed of. There shall be no order as to costs.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDL.)