

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A. NO. 109 OF 2007

Rabinarayan Das

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

ORDER DATED 3/5th MAY 2007

Preliminary Point on the Memoranda of Appearance

In this Original Application filed by Sri Rabinarayan Das, Junior Telecom Officer (now under suspension), Khurda Telephone Bhawan, Khurda (State of Orissa), there are in all four Respondents, namely, Union of India represented by the Chairman, Telecom Commission, Sanchar Bhawan, New Delhi (Respondent No.1); Chief General Manager, Telecom, Orissa Circle, Bhubaneswar (Respondent No.2); Director, Telecommunication, o/o Chief General Manager, Telecommunication, Orissa Circle, Bhubaneswar, Dist. Khurda (Respondent No.3); and General Manager, Telecom District, Bhubaneswar (Respondent No.4). The applicant inter alia prayed for quashing of the order dated 02.02.2007 (Annexure 5) placing him under suspension under sub-rule (1) of Rule 10 of the Central Civil Services(Classification, Control and Appeal)Rules, 1968, with immediate effect. This order dated 2.2.2007 was published in the Oriya daily, THE SAMAJ, in 27th February 2007 edition. The applicant also prayed for interim relief to stay operation of the order of suspension dated 2.2.2007.


2. The Original Application was filed on 13.3.2007. On scrutiny, the Registry of the Bench pointed out the maintainability of the O.A. on the grounds of lack of jurisdiction of the Tribunal as well as non-exhaustion of alternative remedy.



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3. The Division Bench, however, issued notices on the question of admission and interim relief by its order dated 21.3.2007. Accordingly, notices were issued on 22.3.2007 by Speed Post as well as Special Messenger directing the Respondents to show cause as to why the application should not be admitted, or why it should not be disposed of at the stage of admission itself, and if admitted, why it should not be disposed of at the subsequent stage without any further notice. It was further indicated in the notice that in order to contest the application, the Respondents might file their counter along with the documents in support thereof and that after serving copy of the same on the applicant or his legal practitioner by 12.4.2007, appear before the Tribunal either in person or through a legal practitioner/presenting officer appointed by them in this behalf along with the relevant records, failing which the application would be heard and disposed of in their absence without any further notice to them.

4. The O.A. was listed before the D.B. on 12.4.2007 with the noting by the Registry of the Bench that the Appearance Memo and the counter were not filed notwithstanding the sufficiency of service of the notices issued by the Tribunal. When the matter was taken up, the learned Senior Counsel Shri Indrajit Ray, appearing for the applicant, filed in Court an Affidavit sworn by the applicant on 12.4.2007. Thereafter both Shri U.B.Mohapatra, the learned Senior Central Government Standing Counsel, hereinafter referred to as the SCGSC, and Shri S.B.Jena, learned Additional Central Government Standing Counsel, hereinafter referred to as the ^{Sub}ACGSC, each filed Memo of Appearance stating to have entered



appearance for Respondent Nos. 1 to 4 and undertaking to plead and act for them in all matters in the aforesaid case.

5. Upon perusal of the Memoranda of Appearance filed by the SCGSC and the ACGSC, the Bench found the same to be not in Form No.11 prescribed under Rule 62 of the Central Administrative Tribunal Rules of Practice, 1993 (here-in-after referred to as "the CAT RoP"). Form No. 11, as stipulated at page 125 of the Swamy's Compilation on Central Administrative Tribunal (Act, Rules and Orders) Ninth Edition – 2002), is as such extracted below:

"FORM NO.11
[See Rule 62]
CENTRAL ADMINISTRATIVE TRIBUNAL
.....BENCH
OA/RA/CP/PT/MA OF 20.....
.....Applicants
v.
.....Respondents

Memo of Appearance

I,having been
authorized.....
(here furnish the particulars of authority)
by the Central/State Government/Government
servant/.....authority/Corporation/Society notified under Section 14
of the Administrative Tribunals Act, 1985, hereby appear for Applicant
No...../Respondent No.....and undertake to plead and act for
them in all matters in the aforesaid case.

Place

Signature and Designation of the
Counsel

Date:

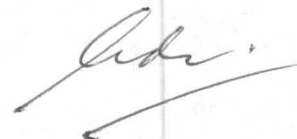
Address of the counsel for service."

(Emphasis supplied)



Rule 62(a) of the CAT RoP provides that any legal practitioner appearing on behalf of the Central Government or State Government or any Government servant sued or suing in his official capacity or any authority/corporation/society notified under Section 14 of the Act shall not be required to file a vakalatnama but he shall file with the Tribunal a Memo of Appearance in Form No. 11 only signed by him. Rule 62 (b) provides that a Presenting Officer other than a legal practitioner representing any of the parties referred to in sub-rule (a) shall also file a memo of appearance in Form No.11. The provision contained in sub-rule (a) of Rule 62 enables him to enter appearance on behalf of departmental Respondents by filing Memo of Appearance in Form No. 11, instead of Vakalatnama as prescribed in Rule 61 which is required to be duly executed by the party to the proceedings before the Tribunal. Therefore, the SCGSC or ACGSC is under an obligation to file Memo of Appearance in Form No.11 when he appears for all or any of the departmental Respondents in a particular proceeding before the Tribunal.

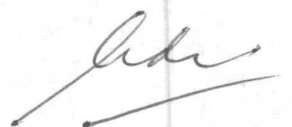
6. Upon perusal of the Memoranda of Appearance filed by the SCGSC and the ACGSC, both claiming to be appearing for the departmental Respondent Nos. 1 to 4, the Bench entertained a doubt as to how could two Central Government Standing Counsels appear for one set of departmental Respondents in a particular case ! Both the Memoranda of Appearance did not contain the 'particulars of authority', that is to say, the letter and/or communication from the Respondents containing the authorization in favour of the SCGSC and the ACGSC to appear and defend the Respondents in this case.



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7. To the query put by the Bench, the SCGSC submitted that by the Government of India, Ministry of Law & Justice, Department of Legal Affairs, Judicial Section, New Delhi, Order dated 17.9.2004, the President of India was pleased to engage him as SCGSC for presenting the Central Government case (other than the cases of Railways) before Central Administrative Tribunal, Cuttack Bench, Cuttack w.e.f. 20.9.2004 for a period of three years or until further orders whichever is earlier and that on the basis of the said order he has filed his Memo of Appearance on 12.4.2007 to appear for the departmental Respondent Nos. 1 to 4 . That no further authorization is required to be given to him by the departmental Respondents in this case and that his appearance has to be accepted by the Tribunal. In support of his contentions, the SCGSC furnished copies of the order dated 17.9.2004 and Government of India, Ministry of Law & Justice, Department of Legal Affairs, Judicial Section, New Delhi, Office Memorandum dated 18.7.2005.

8. The ACGSC clarified that by the Government of India, Ministry of Law & Justice, Department of Legal Affairs, his engagement as ACGSC for presenting the Central Government cases before this Bench of the Tribunal is still in force and that the departmental Respondent Nos. 1 to 4, by their letter dated 10.4.2007 addressed to him, have authorized him to defend the case on their behalf before the Tribunal. Our attention was also drawn by him to the enclosure of his Memo of Appearance filed on 12.4.2007 in this case. It is pertinent to mention here that the Memo of Appearance filed by the ACGSC is not in Form No.11.

9. As the learned Senior Counsel appearing for the applicant wanted to make his submissions in the matter, the Bench expressed in open Court that order on



the Memos of Appearance filed by the SCGSC and the ACGSC was reserved to be passed afterwards and proceeded to hear the learned Counsel for the applicant on the question of admission of the O.A. and interim prayer made therein, as referred to earlier.

10. Before advertng to the submissions made by the SCGSC and the ACGSC, we would like to refer to Section 23 of the Administrative Tribunals Act, 1985 (here-in-after referred to as "the A.T.Act") and some of the Government of India decisions relevant for the purpose, printed below the said Section 23, vide Swamy's Compilation on Central Administrative Tribunal (Act, Rules and Orders) Ninth Edition – 2002).

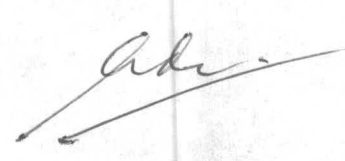
10.1 Section 23 of the A.T.Act reads thus:

"23. Right of applicant to take assistance of legal practitioner and of Government, etc., to appoint Presenting Officers.- (1) A person making an application to a Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or a local or other authority or Corporation or Society to which the provisions of sub-section (3) of Section 14 or sub-section (3) of Section 15 apply, may authorize one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorized by it may present its case with respect to any application before a Tribunal."

(Emphasis supplied)

From the above provision it is clear that the Central Government or a State Government or its Officers who are sued in their official capacity may authorize one or more legal practitioners or any of its officers to act as its Presenting Officers and that every person so authorized by it, may present its case with reference to any application filed before a Tribunal. Thus the authorization by the Central Government Ministry/Department and/or its officers, who are parties to a proceedings before the



Tribunal, in favour of a legal practitioner or any of its officers to act as Presenting Officer is a necessary condition to be fulfilled by a legal practitioner or an officer to act as Presenting Officer to present the case on behalf of the Central Government Ministry/Department or its officers who are officially sued.

10.2 In the Government of India, Department of Personnel & Training, O.M. No. A-11019/38/85-AT, dated 12th August 1985, all the Ministries/Departments have been advised that it would be prudent for them to appoint/engage advocates outside the panel of Counsels, if considered necessary, only at the rates approved for the SCGSC/ACGSC for presenting application in a High Court.

10.3 The Government of India, Department of Personnel & Training, O.M. No. 11019/58/85-A.T., dated 26.5.1986, the gist of which has been printed at pages 35 and 36 of the Swamy's Compilation (supra), while noting that the Central Government Counsels to present the cases of Central Government Departments before the Benches of the Central Administrative Tribunal wherever such Departments are respondents have been appointed and their names communicated to the Ministries/Departments, etc. and the provisions of Section 23(2) of the A.T.Act, has laid down that whenever an application is filed before a Bench of the Tribunal and a Central Government Department/Ministry or one of the officers under its control is made a respondent, having regard to the importance of the case concerned, the concerned Department/Ministry can also decide to present the case before the Bench of the Tribunal directly through one of its officers who should be at least a Group A officer of the Central Government and that if such a decision is taken, the concerned Ministry/Department may write to the Registrar of the Bench of the Tribunal



authorizing a particular officer to present the case on behalf of the Government. It has also been laid down therein that unless it is decided to present the case through an officer, the Department concerned should immediately get in touch with the Senior Standing Counsel/Standing Counsel attached to the particular Bench for handling the case himself or allotting the case to one of the Additional Standing Counsels attached to the Bench.

10.4 In the Government of India, Department of Personnel and Training, letter No.A-11019/38/85-AT, dated the 25th February 1987, the gist of which has been printed at pages 36 and 37 of Swamy's Compilation (supra), it has been laid down that the Central Government Departments are free to choose any counsel included in the panel to present their cases or request the Standing Counsel to allot a counsel to deal with their cases.

10.5. Thus, it is found from the provisions of Section 23 of the A.T.Act and the guidelines issued by the Government of India mentioned above that after notices issued by the Tribunal are received by the Central Government Department and its officers, a decision has to be taken by them as to whether or not to authorize the concerned SCGSC or one of the ACGSCs, or a private legal practitioner who is not included in the Panel of the Standing Counsels, or any of their Group A officer to appear and present their case before the Tribunal and that such authorized SCGSC or ACGSC, or legal practitioner, or its Group A officer only can be permitted under the provisions of Section 23 of the Act to appear and present the case on behalf of the Central Government Department or its officers in the proceedings before the Tribunal. In the absence of such authorization being conspicuously mentioned in the Memo of



Appearance, such counsel or officer cannot be permitted to appear and present the case on behalf of the Central Government Department/Ministry or officers who are sued officially.

11. Keeping in view the provisions of Section 23 of the A.T. Act and the Government of India decisions mentioned above, we proceed to examine the Memorandum of Appearance filed by the SCGSC and consider the contentions raised by him.

11.1 The Memorandum of Appearance filed by the Id. SCGSC in Court on 12.5.2007 is extracted below:

“CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No. 109 of 2007

Rabinarayan Das

.....

Applicant

Versus

U.O.I & ors

.....

Respondents

MEMO OF APPEARANCE

I, Sri UMA BALLAV MOHAPATRA, Advocate & Senior Central Government Standing Counsel, having been authorized by President of India through Ministry of Law & Justice by Central Government notified u/s 14 of the Administrative Tribunals Act 1985, hereby appear for the applicant No..... x...../Respondent No.1 to 4 and undertake to plead and act for them in all matter in the aforesaid cases.

Place: Cuttack

Date: 12.04.07.

Sd/ Uma Ballav Mohapatra
(Advocate)

Senior Central Govt. Standing Counsel
Central Administrative Tribunal

Address of the counsel for service
Cuttack.”

11.2 The relevant portion of the order dated 17.9.2004 issued by the _____ Government of India, Ministry of Law, Department of Legal Affairs, relied on by the



SCGSC is extracted below:

“ORDER

In supersession of this Department's order F.No. 28(11)/2001-Judl. Dated 6.11.2001, The President is pleased to engage Shri Uma Ballav Mohapatra, Advocate as Senior Central Government Standing Counsel for presenting the Central Government case (other than the cases of Railways) before Central Administrative Tribunal, Cuttack Bench, Cuttack in place of Shri A.K.Bose with effect from 20.9.2004 for a period of three years or until further orders whichever is earlier.

2. The engagement of Shri Umaballav Mohapatra will be governed by the terms and conditions contained in this Department's O.M. No. 26(1)/99-Judl. Dated 24.9.1999.

3. Hindi version of this order will follow.

Sd/-

(D.R.Meena)


Joint Secretary & Legal Adviser to the Government of India”

11.3 In terms of the provision of Section 23 of the A.T.Act, the legal practitioner or the SCGSC or the ACGSC is required to be authorized by the concerned Central Government Department/Ministry and its officers, who are parties to the proceedings before the Tribunal, to appear and present the case on their behalf. As stated earlier, even the Central Government Department/Ministry and its officers may authorize any of its officers (Group A) to act as Presenting Officer and may also authorize a legal practitioner who is not empanelled as SCGSC or ACGSC by the Ministry of Law & Justice, Department of Legal Affairs considering the importance of the case before the Tribunal. Thus, the choice extended by the provision of Section 23 of the A.T.Act to the Central Government Ministry/Department will be frustrated if the concerned SCGSC or, as the case may be, ACGSC **suo motu** appears and represents before the Tribunal in a particular case on the strength of the order issued by the Ministry of Law & Justice, Department of Legal Affairs, without any authorization from the Central Government Ministry/Department and its officers who



are parties to the proceedings before the Tribunal. In any event, the order issued by the said Ministry of Law & Justice does not meet the requirement of Section 23 of the A.T.Act. Only after receipt of the notices issued by the Tribunal, the Central Government Ministry/Department and its officers, who are parties to the proceedings before the Tribunal, take a decision whether or not to authorize the SCGSC or any of the ACGSC included in the panel or to authorize a legal practitioner not included in the panel with the approval of the Minister of the Administrative Ministry. Even the Central Government Ministry/Department and its officers who are parties to the proceedings before the Tribunal may authorize any of its officers (Group A) to act as Presenting Officer to present their case before the Tribunal. This being the object of Section 23 of the A.T.Act and the Government of India decisions taken from time to time, it cannot be held that the SCGSC or any of the ACGSCs has a right to enter appearance for the Central Government Ministry/Department and its officers in the proceedings before the Tribunal on the basis of the order issued by the Ministry of Law & Justice, Department of Legal Affairs, without any authorization from such Ministry/Department and officers. In this view of the matter, the contention of the SCGSC before us is not tenable and acceptance thereof would defeat the object of the statutory provision contained in Section 23 of the A.T.Act.

11.4 The SCGSC before us, in support of his contention, also relied on the Office Memorandum dated 18.7.2005 issued by the Government of India, Ministry of Law & Justice, department of Legal Affairs. We have gone through the said Office Memorandum. It has, no doubt, put a restriction on the acceptance of cases by the Central Government Counsel directly from different Government Departments and



made a provision that all the Ministries/Departments seeking to engage counsel in a case are to contact the SCGSC of respective Benches of the CAT ~~Benches~~ at places other than Bangalore, Chennai, Delhi, Kolkata and Mumbai where Branch Secretariat/Litigation Sections are located. It does not provide that the SCGSC can suo motu enter appearance for the Central Government Ministry/Department and its officers in the proceedings before the Tribunal without any authorization and/or intimation and/or instructions by such Ministry/Department and its officers. As regards restriction on acceptance of cases directly from Government Departments by any empanelled ACGSC, it is found that while issuing this Office Memorandum dated 18.7.2005 the Ministry of Law & Justice, Department of Legal Affairs have not taken into consideration the Department of Personnel & Training letter No. A-11019/38/85-AT, dated 25th February 1987 and in the absence of supersession of the decision of the Government contained in the said letter dated 25.2.1987, the same still holds the field. In this view of the matter, the contention of the SCGSC before us that he being the Senior Standing Counsel engaged by the Ministry of Law & Justice, Department of Legal Affairs, has a right to enter appearance in the cases where Central Government Ministry/Department and its officers are parties before the Tribunal and present their case without any authorization and/or instruction from such Ministry/Department and its officers, holds no water.

12. We would now deal with the Memo of Appearance filed by the ACGSC



on 12.4.2007 in the present case which is as such extracted below:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK
O.A. NO. 109/2007

Rabinarayan Das Applicant
Versus
Union of India and others Respondents

MEMO OF APPEARANCE

I, Sri Shashi Bhusan Jena, Additional Central Government Standing Counsel, having been authorized by the Central Government notified under section 1 of the Administrative Tribunal Act, 1985 hereby appear for the Respondents No.1 to 4 and undertake to plead and act for them in all the matters in the aforesaid case.

Sd/ Shashi Bhusan Jena

SHASHI BHUSAN JENA

ADDITIONAL CENTRAL GOVERNMENT
STANDING COUNSEL

Place: Cuttack

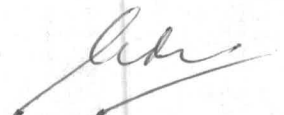
Date 12.4.2007

Address of the counsel for service

Shashi Bhusan Jena, Advocate, Orissa High Court,
Cuttack 2"

12.1 The above Memo of Appearance filed by him is not in Form No.11 as prescribed under Rule 62 of the CAT RoP. He has not furnished the particulars of the authority, that is to say the authorization required to be given by the Central Government Ministry/Department and its officers who are parties in the instant proceedings before the Tribunal. However, he has enclosed a letter dated 10.4.2007 issued to him by the Assistant General Manager (Legal), for CGMT, Orissa Circle, Bhubaneswar (Respondent No.2). Paragraph 3 of the said letter dated 10.4.2007 reads as follows:

"The CGMT, Bhubaneswar, has been pleased to authorize you to defend the case on behalf of the Respondent in CAT, Cuttack. Necessary steps may kindly be taken for defending the case on 12.4.-7 and to seek



extension of time for 2 months as per the foregoing letter The copy of the O.A. is enclosed herewith."

It has not been whispered in the said letter that the other Respondent Nos. 1, 3 and 4 have authorized him to conduct the case on their behalf. Therefore, he should have filed the Memo of Appearance only for Respondent No.2 and not for other Respondents. He should have also mentioned the particulars of the said letter in the body of the Memo of Appearance filed by him on 12.4.2007. He having failed to comply with the requirements of Form No.11 prescribed under Rule 62, the Memo of Appearance filed by him on 12.4.2007 is not acceptable.

13. The other controversy arising in the instant case is whether Memoranda of Appearance, one filed by SCGSC and the other by ACGSC for one set of departmental Respondents, can be accepted by the Tribunal. In this connection, we would like to refer to the Office Memorandum dated 18.7.2005 issued by the Government of India, Ministry of Law & Justice, Department of Legal Affairs. The said Office Memorandum has taken note of similar controversy arising in a W.P.No. 46487 of 2005 (Lieutenant Colonel M.K.Sanga Vs. Union of India and another) before the Allahabad High Court. In the said case, where two counsels claimed to be representing Union of India, the Allahabad High Court observed that this kind of dispute was most unfortunate and embarrassing and that this kind of situation apart from being detrimental to the interest of Central Government also results in wastage of the court's time. There is no provision in the ATA, CAT ProR and CAT RoP to allow two Government counsels to appear for one set of Central Government Ministry/Department and its officers who are parties in a particular proceedings before the Tribunal. As has been observed by the Allahabad High Court, such situation will




not only result in embarrassment but also wastage of court's time. In view of this, the Memoranda of Appearance filed by the SCGSC and the ACGSC, both for one set of Respondents 1 to 4, are also found to be not acceptable.

14. As has been found above, both the Memoranda of Appearance filed by them being not in conformity with Form No.11 as prescribed under Rule 62 of the CAT RoP and they having failed to produce before the Bench the due authorization issued by the Respondent Nos. 1 to 4 in their favour, the Memoranda of Appearance filed by them on 12.4.2007 are rejected.

14.1 The Registry is directed to scrutinize the Memo of Appearance filed by the Id. SCGSC or any Id. ACGSC in any case and notify the defects therein requiring them to rectify the same. In case the Government Counsel find it difficult to rectify the defects in the Memo of Appearance, they may be advised to file Vakalatnama as is done in the case of Railway cases. The Registry is directed to ensure filing of Memo of Appearance in Form No.11. Only the proper and due Memo of Appearance shall be brought on record and the appearance of the concerned Government Counsel shall be noted in the case record.

ON ADMISSION AND INTERIM RELIEF

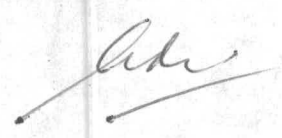
15. Applicant Rabinrayan Das, while working as Junior Telecom Officer, Bharat Sanchar Nigam Limited, a Government of India Enterprise, Khurda Telephone Bhawan, Khurda, was placed under suspension under Rule 10(1) of the CCS (CCA) Rules, 1965, by order dated 02.02.2007(Annexure 5) issued by the Chief General Manager, Telecom Orissa Circle, Bhubaneswar (Respondent No.2) during pendency of a disciplinary proceedings against the applicant. This order dated 02.02.2007



(Annexure 5) was published in the Oriya daily, THE SAMAJ, 27th February edition. The applicant filed the instant Original Application on 13.03.2007 praying for the relief of quashing the said order dated 02.02.2007 and the interim relief of staying its operation during pendency of the O.A.

16. The Registry of the Tribunal pointed out the defects as to the maintainability of the O.A. on the grounds of lack of jurisdiction of the Tribunal over the BSNL and non-exhaustion of the alternative remedy by the applicant. However, the Division Bench by order dated 21.03.2007 directed issuance of notices to the Respondents 2, 3 and 4 through special messenger fixing 12.04.2007 for appearance and filing of the counter to the O.A. by the Respondents and particularly on admission and interim relief.

17. On 12.04.2007 when the matter was taken up, the learned counsel appearing for the applicant filed an Affidavit sworn by the applicant stating that he is still continuing as an employee of the Government of India and has not yet been absorbed in the BSNL, although he did not aver such fact in the O.A. Had he stated this fact in the O.A., the Respondents would have got an opportunity to reply thereto on the date fixed, i.e., 12.04.2007. Be that as it may, as noted earlier, the SCGSC filed a Memo of Appearance stating to have appeared for Respondent Nos. 1 to 4 and the ACGSC also filed a Memo of Appearance in the Court, enclosing therewith a letter dated 10.4.2007 issued from the office of Respondent No.3, claiming to have appeared for Respondent Nos. 1 to 4 too. However, for the reasons indicated in the earlier part of this order, we are not accepting the Memoranda of Appearance filed by both of them being not proper as per Form No.11 prescribed under Rule 62 of the CAT Rules



of Practice, 1993 and further because the particulars of the authority/authorization were not indicated therein.

18. However, in view of the statement of the applicant, made on oath by his affidavit dated 12.04.2007 filed in Court, that he is still continuing as a Government employee and has not yet been absorbed in the BSNL, we opine it proper, at this stage, to leave aside the question of lack of jurisdiction of the Tribunal and proceed to consider the question of admission of the O.A. and the prayer for interim relief.

19. We have heard Shri Indrajit Roy, the learned Senior Counsel appearing for the applicant. The SCGSC and the ACGSC, both purporting to have appeared for Respondent Nos. 1 to 4, prayed for time to file counter and for adjournment of the matter.

20. Before considering the submissions made by the learned Senior Counsel appearing for the applicant, we would like to state the brief facts of the case as emerged from the averments of the O.A. and the Annexures thereto..

20.1 In the year 1971 applications were invited from the candidates for selection to the post of Engineering Supervisor, Telegraphs, by the erstwhile Posts & Telegraph Department, Orissa Circle, on the basis of marks secured in the B.Sc. Examination. The applicant had submitted his application on 19.11.1971 declaring and stating to have secured 620 marks out of 900 marks in the B.Sc. Supplementary Examination held in the month of September 1967. On the basis of the said 620 marks, i.e., 68.9%, the name of the applicant was placed at Sl.No. 68 of the select list amongst the candidates belonging to other categories (O.C.) and he was appointed as Junior Telecom Engineer on 29.5.1973 as by then the post of Engineering Supervisor



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Telegraphs was redesignated as Junior Telecom Engineer. Later on in an enquiry, it was revealed from the tabulation register of the Utkal University for the B.Sc.Examination,1967 that the applicant had secured only 363 marks out of 900 in the Supplementary Examination. He had passed the B.Sc. Examination from Khetrabasi College,Nirakarpur, which had issued a mark sheet showing the applicant to have secured 363 marks out of 900. The Department had lodged a complaint with the C.B.I. that the applicant had got himself selected on the basis of a false/incorrect mark sheet. The C.B.I. investigated into the matter and instituted a criminal case against the applicant for the offences under Sections 420, 468 and 471 IPC, vide S.P.E.Case No. 9 of 1982.The trial court by its judgment dated 11.08.1986 convicted the applicant for the offences punishable u/S. 420, 468 and 471 IPC and sentenced him to undergo RI for one year on each count with direction for the sentences to run concurrently. The applicant was dismissed from service w.e.f. 11.12.1986 on the ground of misconduct which had led to his conviction on the criminal charge. Assailing the conviction and sentence, the applicant had filed Criminal Appeal No. 3/82 of 1987/86 and the appellate court by judgment dated 24.11.1987 allowed the appeal and set aside the conviction and sentence. Thereafter the disciplinary authority passed an order dated 6.4.1988 by which the order of dismissal of the applicant was set aside and it was directed that further departmental enquiry should be held under the provisions of CCS (CCA) Rules, 1965 and that the applicant should be deemed to have been placed under suspension w.e.f. 11.12.1986 under Rule 10(4) of the said Rules.

Adi,

20.2 The applicant had filed OA No. 153 of 1988 before the Tribunal against the order of deemed suspension from service in contemplation of enquiry and the Tribunal had allowed the O.A. by order dated 27.8.1990 by quashing the order dated 6.4.1988 referred to above. Consequently, the applicant was reinstated in service w.e.f. 21.3.1991, but was not allowed consequential benefits on the ground that the same were not granted by the Tribunal while quashing the impugned order.

20.3 The applicant had once again approached the Tribunal in OA No. 36 of 1993 for a direction to the Respondent to pay him full back wages from 11.8.1986 to 22.3.1991 and for other reliefs.

20.4 During pendency of the said O.A.No. 36 of 1993, the disciplinary authority by order dated 1.2.1994 had decided to initiate fresh departmental proceeding against the applicant and issued the charge memo. The applicant had also filed O.A.No. 244 of 1994 before the Tribunal for quashing the charge memo dated 1.2.1994. The applicant had also challenged the said charge memo before the Tribunal by filing OA No. 244 of 1994.

20.5 The Tribunal, vide its order dated 9.8.1999, disposed of the OA No. 36 of 1993 with a direction to the Respondents to pay the salary to the applicant for the period from 11.8.1986 to 21.3.1991 within the stipulated time.

20.6 The Tribunal, by another order dated 9.8.1999, allowed OA No. 244 of 1994 and quashed the charge memo dated 1.2.1994 in so far as it relates to charge no.1 and observed that the Department may proceed with the other three charges.

20.7 Respondent-Department had filed O.J.C.No.14013 of 1999 before the High Court of Orissa against the order dated 9.8.1999 passed in OA No. 36 of 1993



and the applicant had filed O.J.C.No. 14014 of 1999 challenging the order dated 9.8.1999 passed by the Tribunal in OA No.244 of 1994.

20.8 The High Court, by a common judgment dated 7.9.2006, dismissed OJC No.14013 of 1999 filed by the Department and allowed O.J.C.No. 14014 of 1999 by quashing the order dated 9.8.1999 passed by the Tribunal in OA No. 244 of 1994.

20.9 The High Court relying on the decisions of the Hon'ble Supreme Court in the cases of **Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd.Yousuf Miyan**, AIR 1997 SC 2232, **State of Rajasthan v. B.K.Meena and others**, AIR 1997 SC 13, and **G.Sudarasan v. Union of India and another**, AIR 1996 SC 668, had concluded in paragraph 17 as follows:

"In view of the facts and circumstances of the instant case, this Court is of the conclusion that initiation of the departmental proceeding against opp.party no.1 under the CCS (CCA) Rules is not barred by any statute. However, his suspension couldn't have been ordered with retrospective effect, i.e., with effect from the date of suspension on the criminal charges. It should have been with prospective effect. Therefore, the order of suspension of opposite party no.1 is liable to be treated as prospective. Consequently, he is entitled to the normal salary till the date of passing the impugned order of suspension. This Court is also of the opinion that the Tribunal committed manifest error of law in allowing O.A. 244 of 1994 and directing the instant petitioners not to further proceed against opposite party no.1 in the disciplinary proceeding under the CCS (CCA) Rules in respect of charge no.1."

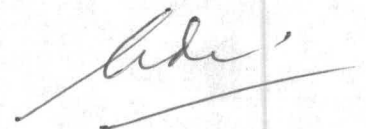
(Emphasis supplied)

20.10 The High Court, in paragraph 19 of the judgment, quashed the Tribunal's order dated 8.9.1999 passed in O.A.No. 244 of 1994. With the setting aside of the Tribunal's order dated 8.9.1999, the disciplinary proceedings have to proceed for enquiry into the charges vide charge memo dated 1.2.1994.



20.11 The review application (RVWPET No. 140 of 2006) filed by the applicant for reviewing the order dated 7.9.2006 was rejected by the High Court vide order dated 8.2.2007.

21. The learned Senior Counsel for the applicant vehemently urged that after the appellate court allowed the applicant's appeal and set aside the judgment of conviction and sentence passed against the applicant in the criminal case, the disciplinary authority by his order dated 6.4.1988 had reinstated the applicant in service and directed that the applicant would be deemed to have been under suspension w.e.f. 11.12.1986 under Rule 10(4) of the CCS (CCA) Rules, 1965. This order dated 6.4.1988 was quashed by the Tribunal's order dated 27.8.1990 passed in OA No.153 of 1988 filed with the Tribunal (Annexure 6) and the applicant was reinstated in service on 6.3.1991. Once the decision of the Respondent-Department in placing the applicant under suspension has been held to be illegal by a competent court of law, the similar action of the Respondent-Department as impugned in the instant O.A. is not sustainable and liable to be struck down. He also submitted that the Respondents, after issuance of the charge memo dated 1.2.1994 (Annexure 7), having allowed the applicant to continue in service till now, have acted mala fide and arbitrarily in placing the applicant under suspension. He further submitted that the Respondents, in issuing the impugned order of suspension, have acted in flagrant defiance and violation of the High Court's judgment in OJC No. 14014 of 1999. Reliance is placed on the decision in the case of **Prafulla Chandra Mohapatra v. State of Orissa and others**, 74(1992) CLT 704 (SC).



22. We have carefully perused the pleadings of the applicant and considered the submissions made by his learned Senior Counsel.

23. As regards his first submission, it is found that the subject-matter of OA No. 153 of 1988 was the order of suspension passed by the disciplinary authority on 6.4.1988 under Rule 10(4) of the CCS (CCA) Rules, 1965. After the applicant was acquitted of the criminal charges by the appellate court, the disciplinary authority had passed the said order dated 6.4.1988 reinstating the applicant in service and directing that the applicant should be deemed to have been placed under suspension w.e.f. 11.12.1986, i.e., the date when the order dismissing him from service was effective. However, the Tribunal by its order dated 27.8.1990 (Annexure 6) quashed the said suspension order issued u/Rule 10(4) of the CCS (CCA) Rules, 1965. The Department having not gone up in appeal, the Tribunal's order has become final and is binding on the Department. Thus, the applicant was reinstated in service on 6.3.1991. Thereafter, the disciplinary authority issued the charge memo dated 1.2.1994 (Annexure 7) which was the subject matter of OA No.244 of 1994 before the Tribunal and OJC No.14014 of 1999 before the High Court of Orissa. While the said OA No.244 of 1994 was partly allowed by the Tribunal in as much as out of the three charges against the applicant, only charge no.1 was quashed, the High Court by judgment dated 7.9.2006 (Annexure 6) passed in OJC No. 14014 of 1999 had quashed the Tribunal's order dated 9.8.1999. The review application filed by the applicant against the order dated 7.9.2006 passed in OJC No. 14014 of 1999 was also rejected by the High Court by order dated 8.2.2007 (Annexure 2). Therefore, the charges as leveled against the applicant in the charge memo dated 1.2.1994 have to be inquired into. The order



dated 2.2.2007 (Annexure 5) placing the applicant under suspension under Rule 10(1) of the CCS (CCA) Rules, 1965 was issued by the disciplinary authority during pendency of the disciplinary proceeding with reference to the charge memo dated 1.2.1994 (Annexure 7). This order dated 2.2.2007 is quite distinct from the order dated 6.4.1988 which was the subject matter of OA No.153 of 1988. A plain reading of sub-rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 makes it amply clear that the disciplinary authority has the power to place a Government servant under suspension during pendency of the disciplinary proceeding. In this view of the matter, we hold that the orders dated 6.4.1988 and 2.2.2007 are distinct and different from each other and that in the absence of any bar imposed by the Tribunal in its order dated 27.8.1990 for the disciplinary authority from placing the applicant under suspension even in exercise of his power under Rule 10(1) of the CCS (CCA) Rules, 1965, the impugned order dated 2.2.2007 cannot be faulted.

24. In so far as the second submission of the applicant is concerned, we found that after initiation of the departmental proceedings, vide the charge memo dated 1.2.1994, the applicant had filed OA No.244 of 1994 before the Tribunal and OJC No. 14014 of 1999 and RVWPET No. 140 of 2006 before the High Court. O.A.No.244 of 1994 was decided by the Tribunal on 9.8.1999 whereas OJC No. 14014 of 1999 and RVWPET No.140 of 2006 were decided by the High Court respectively on 7.9.2006 and 8.2.2007. When these litigations were over, the disciplinary authority perhaps thought it fit to exercise its power under Rule 10(1) of the CCS (CCA) Rules 1965 to place the applicant under suspension during pendency of the disciplinary proceedings initiated vide charge memo dated 1.2.1994. The



applicant's continuance in service from the date of his reinstatement after his acquittal of the criminal charges in appeal will not create a legal bar for the disciplinary authority from exercising its statutory power under Rule 10(1) of the CCS (CCA) Rules. We, therefore, have no hesitation in rejecting the submission of the learned Senior Counsel for the applicant on the delay in issuing the impugned order of suspension.

25. In order to appreciate the last contention of the applicant, we have carefully perused the judgment dated 7.9.2006 passed by the High Court in OJC No. 14014 of 1999. We find that the Hon'ble High Court of Orissa in the said judgment did not restrain the disciplinary authority from exercising its power under Rule 10(1) of the CCS (CCA) Rules, 1965. Therefore, his submission that the disciplinary authority, in issuing the impugned order placing the applicant under suspension, has violated the judgment of the High Court of Orissa passed in OJC No. 14014 of 1999, is rejected.

26. We have also gone through the decision relied on by the applicant in the case of *Prafulla Chandra Mohapatra (supra)* and found that the facts of that case are quite distinguishable from the facts of the present case and therefore, the ratio decidendi laid down therein is not applicable to the instant case.

27. Last but not the least, we would like to point out here that in the course of hearing we put a query to the learned Senior Counsel appearing for the applicant as to whether there is any rule which enables the applicant to prefer an appeal against the impugned order of suspension dated 2.2.2007. In this connection, we also drew his attention to paragraph 6 of the O.A. where it has been stated that the applicant has availed of all the remedies available to him under the relevant service rules. However,



the learned Senior Counsel did not give any satisfactory reply. In order to satisfy ourselves on this point, we referred to the CCS (CCA) Rules, 1965 and found that Rule 23 clearly says that an appeal lies against an order of suspension made under Rule 10. On this score per se, we do opine that the applicant, without exhausting the alternative remedy of appeal, cannot maintain the instant O.A., more particularly when he has failed to point out any exceptional circumstance under which the Tribunal may entertain the O.A. to redress his grievance. Therefore, we also hold that the O.A. is not maintainable, being devoid of any merit.

28. As the disciplinary matter has been continuing since about two decades and in the meantime a number of litigations have been initiated by the applicant and the Respondents which have been finally disposed of, we direct the Respondents to complete the enquiry and take a final decision in the matter within a period of 90 (ninety) days from the date of receipt of this order.

29. The Registry is directed to hand over copy of this order to the learned counsel for the applicant and send copies of the order to the Respondents by Registered Post with A/D. The Registry is also directed to send copies of this order to the Secretary to Government of India, Department of Personnel & Training and the Secretary to Government of India, Department of Legal Affairs, both at New Delhi, for information and any necessary action with regard to preliminary point in this order on the Memoranda of Appearance filed by the Id. SCGSC and Id. ACGSC.

30. In the result, this O.A. is rejected in limine.

(B.B.MISHRA)

ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)
VICE-CHAIRMAN