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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOs. 477 OF 2007
Cuttack, this the 29th day of August, 2008

Manish Kumar Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
MEMBER (A)

(JUSTICE K. THANKAPPAN)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 477 OF 2007

Cuttack, this the 29th day of Aug. 2008

CORAM:

Hon'ble Shri Justice K. Thankappan, Member (J)

Hon'ble Shri C.R. Mohapatra, Member (A)

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Shri Manish kumar, Son of Shri Bhola Prasad Agrawal, aged about 36 years, a permanent resident of Gopal Lane, Mahavir Chhak, Lohardaga, Jharkhanda, at present working as Senior Engineer (Bridge), East coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar..... **Applicant**
By the Advocate(s) M/s. J. Sengupta

D.K. Panda

G. Sinha

A. Mishra

S. Mishra

Vs.

1. Union of India represented thorough its Seretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, E.C. Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

..... **Respondents**

By the Advocate(s)..... Mr. S.K. Ojha.

O R D E RHON'BLE MR.JUSTICE K. THANKAPPAN, MEMBER(J)

The applicant having faced departmental inquiry as well as criminal charge being investigated by C.B.I., has approached this Tribunal for the following relief:

- “1. To quash the entire proceedings.
2. To quash the letter dt.01.11.07, in so far as it relates to the direction to the enquiry officer to continue the proceedings from the stage, it was held last on 21.12.2005.
3. Further to direct to start the enquiry denovo from the stage of submission of reply.
4. Further to pleased to direct to allow the applicant to be defended by a legal practitioner.”

2. The applicant has urged so many grounds in the Original Application in support of his case. Firstly, it has been urged by the applicant that as the subject-matter, the facts and the evidence in the CBI proceedings and the departmental inquiry are one and the same, the departmental inquiry cannot be continued. Secondly, the applicant submits that as the Inquiry Officer appointed by the department is biased against him, he is so hasty in conducting the departmental inquiry without allowing the applicant to examine or cross-examine the witnesses now relied on by the Department. The third contention of the applicant is that the documents which are required for the sake of defence of the applicant, are not being allowed to be produced by the applicant or the others summoned by the applicant through request. Lastly, the applicant submits that as per the order dated 01.11.07, it is ordered by the authorities that the inquiry should continue from the stage at which the earlier inquiry officer stopped or abstained from continuing with the inquiry.

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3. We have heard Ld. Counsel for both the parties and the legal position canvassed by both the Counsels appearing for the parties and perused the records produced.

4. The short question now to be decided in this application is whether a departmental proceeding against an employee on the same set of charges, which are under investigation of the C.B.I., can be continued or not. As per the interim order dated 22.11.07 relying on the judgement of the Hon'ble Supreme Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (1999 3 SCC 679) and G.M. Tank Vs. State of Gujarat (2006 5 SCC 446), this Tribunal stayed the further continuation of the departmental inquiry for a specific period and thereafter the interim order has been continuing as on date. Hence the departmental inquiry is now at a standstill.

5. Before entering into the other grounds urged by the applicant, it is only advantageous to find out whether the further continuance of the departmental inquiry is justifiable or not.

6. To answer this question, though the Ld. Counsel for the applicant relied on some judgements of the Hon'ble Apex Court, the Ld. Counsel for the Respondents, on the contrary, also relied on the judgements of the UOI & Ors. Vs. A.N. Sexena, reported in 1992(3) SCC 124 and also on the judgement delivered in O.A. No.197/2007 by the CAT, Jaipur Bench on 14.11.2007 in case of Shri K.K. Vema, Dy. CEE/NWR-Vs.-UOI. It is the settled law that continuation of a departmental proceeding simultaneously with criminal proceeding on the same allegation is not a bar. In this context, Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel

and Training, Office Memorandum, dated 01.08.2007 is noteworthy. In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry [2004 (10) SCALE Page 340], it has been held in Para 9 of the judgement as follows:-

“ It is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.”

It is thus clear that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court in Capt. M. Paul Anthony case (supra).

7. In the light of the above, we are of the view that the matter has to be considered by the competent authority and in this context, it is to be noted that the applicant has already filed a representation on 07.03.07 to stay the departmental proceedings and the said representation is pending with the General Manager (Respondent No.2). If so, this matter can be decided by the Respondent No.2 as expeditiously as possible by disposing of the applicant's representation dated 07.03.07, at any rate within 30 days from the receipt of the copy of this order.

8. With regard to the other contention of bias against the Inquiry Officer, etc., it is to be noted that the earlier Inquiry Officer has been abstained from continuing with the inquiry and a new Inquiry Officer has been appointed. If so, this contention is not liable to be considered by us at this stage.

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9. With regard to the next contention that as per Annexure-A/11 order the General Manager, Respondent No.2 has ordered the present Inquiry Officer to continue with the inquiry from the stage it was left by the previous Inquiry Officer on 21.12.05, the allegation of the applicant is that since the earlier Inquiry Officer was so hasty to complete the inquiry the applicant had not been supplied with the documents to prepare his defence. If so, the inquiry now ordered to be continued by the present Inquiry Officer from the stage at which the earlier Inquiry Officer had stopped, his request for supply of documents should be considered. Though in the counter affidavit the allegations are denied, we are of the view that it is the duty of the Inquiry Officer to supply the documents, which are relevant for the applicant to take the defence, and if so, the inquiry now ordered as per Annexure -A/11 has to be conducted de novo. We make it clear that the inquiry now ordered to be conducted against the applicant shall commence only after disposal of the applicant's representation dated 07.03.07 by the Respondent No.2, as stated in the preceding paragraph. Till such time, the proceeding against the applicant shall remain stayed.

10. In the light of the aforesaid observations and directions, this O.A stands allowed to the extent indicated above. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER