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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 166 of 2008
Cuttack, this the 23rd day of January, 2009

Subash Chandra Mishra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.166 of 2008

Cuttack, this the 23rd day of January, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
AND

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Subash Chandra Mishra, aged about 53 years, S/o.Late
Brahmananda Mishra, presently working as Conservator of Forest
(K.L), Office of the Chief Conservator of Forest (Kendu Leaves),
Aranya Bhawan, Chandrasekharapur, Bhubaneswar, Dist. Khurda.

.....Applicant

By Advocate :M/s.H.M.Dhal, C.R.Swain, B.B.Swain.

- Versus -

1. Union of India represented by its Secretary to Government,
Ministry of Environment and Forest, Lodhi Road, New Delhi.
2. State of Orissa represented through its Principal Secretary to
Government Forest and Environment Department, Secretariat
Building, Bhubaneswar.
3. State of Orissa represented through Secretary to Government,
General Administration Department, Secretariat, Bhubaneswar.
4. Union Public Service Commission, represented through its
Secretary, Dholpur House, New Delhi.

....Respondents

By Advocate :Mr.A.K.Bose, GA,
Mr. U.B.Mohapatra, SSC.

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O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant an Orissa Cadre Indian Forest Service Officer by
filing this Original Application U/s.19 of the Administrative Tribunals
Act, 1985 assails the disciplinary proceedings initiated against him under
Rule 8 of AIS (D&A) Rules, 1969 vide memorandum of charge under

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Annexure-A/1 dated 02.07. 2003 especially on the ground of delay in completion of the proceedings thereby throttling his promotion to the next higher post. He has also prayed for direction to the Respondents to open the sealed cover in respect of the promotion for which DPC was held on 11.09.20007. For the sake of clarity charge articulated against the Applicant is extracted herein below:

“Sri Subas Ch. Mishras, IFS during his incumbency as Conservator of Forests, Angul Circle for the period from 19.2.2000 to 17.05.2000 committed certain irregularities for which he is charged with the following:

1. Negligence in duty;
 2. Showing undue unwarranted favour to private parties.’
2. In spite of adequate opportunities, no counter has been filed either by the Government of India/Respondent No.1 or by the UPSC/Respondent No.4. However, by filing counter, Respondents 2 & 3 have contended that there was no intentional or deliberate delay in culmination of the proceedings. Inquiry has already been completed but for the requirement of the rules, the advice of the UPSC was sought. In turn UPSC sought certain information which could not be collected and sent to the UPSC for its opinion due to the fact that the connected documents/files were diverted for disposal of the representations submitted by the applicant to various quarters, in the meantime. According to the Respondents, the delay if any in conclusion of the proceedings being not fully attributable to them, and the proceedings are

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at a stage of culmination there is no need for interference by this Tribunal.

3. By filing rejoinder, the Applicant rebutted some of the facts made in the counter by highlighting that delay in disposal of the proceedings has caused supersession in promotion by his juniors. By filing additional counter, the Respondents 2 and 3 have pointed out that the case of the applicant was duly considered by the DPC but the result of the DPC so far as applicant is concerned has been kept in a 'sealed cover' and would be opened only after finalization of the disciplinary proceedings against him.

Relying on the averments made in the respective pleadings of the parties, Learned Counsel appearing for both sides have tried to sustain the respective claims. Having given in-depth consideration to the rival submissions of the parties, we have perused the materials placed on record.

4. Before proceeding to take a view on the merit of the matter, we may put on record that the applicant has prayed for two reliefs in this OA. One is quashing of disciplinary proceedings/charge sheet and the other for direction for opening the 'sealed cover' containing the recommendation of the DPC so far as the applicant's promotion is concerned. In our opinion, these are two different and distinct cause of action and ought not to have been asked for in one OA as per Rule 10 of

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the CAT (Procedure) Rules, 1987. However, in view of the principle that when dispensation of justice and rule of hypertechnicality are pitted together the former should prevail over the latter, instead of dismissing this OA we proceed to decide the matter on merit as under.

5. It is seen that the charge sheet is of the year 2003. He has not approached either before his authority or in this Tribunal at any point of time before the enquiry was concluded. It is also seen from the record that before receipt of the advice of the UPSC, the applicant submitted representations seeking exoneration from charges and for the reason of dealing with the representation there was delay in collection of information and sending the record/information called for by the UPSC. In other words, by exposing himself to participating in the enquiry the applicant abandoned his right to challenge the charge sheet on the principle of law of acquiescence. Besides the above, it is well settled by a series of decisions of the Hon'ble Apex Court that ordinarily no writ lies against a charge sheet or show cause notice. The reason why ordinarily OA should not be entertained against a mere show cause notice or charge sheet is that a mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry

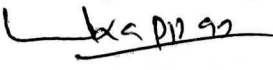
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the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance (vide **Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh** [1996] 1 SCC 327; **Special Director v. Mohd. Ghulam Ghouse**-AIR 2004 SC 1467; **Ulagappa v. Divisional Commr., Mysore** (2001)10 SCC 639; **State of UP v. Brahm Datt Sharma** – AIR 1978 SC 943). In view of the above we refrain from granting any of the reliefs claimed by the Applicant in this OA.

6. At the same time, we cannot close our eyes to the fact that because of the proceedings, the promotion of the applicant has been affected. Every employee has a right to know the fate of the disciplinary proceedings initiated against him as quickly as possible. Government of India has also issued guidelines for completion of the disciplinary proceedings initiated against a Government Servant within a reasonable time. As stated by the Respondents 2 & 3 in the instant case only the advice of the UPSC is awaited. There has been no say by the UPSC in this case in spite of the notice having been served on them. In view of the above, we call upon the UPSC/Respondent No. 4 to furnish their advice

as sought by the Respondents 2 & 3 so far as the present case is concerned within a period of 60 days hence. The Respondents 2 & 3 are directed to take a final view on the present proceedings and communicate the result thereof to the Applicant, within a period of another 60 days of receipt of the advice of the UPSC. It is made clear that in case no decision is taken and communicated to the Applicant after expiry of 120 days from the date of the order, the proceedings initiated under Annexure-A/1 against the applicant shall be deemed to have been quashed.

7. In the result, with the aforesaid observations and directions this OA stands disposed of by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)