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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 37 of 2008
Cuttack, this the 16th day of December, 2008

Jagar Singh 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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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Jagar Singh, IAS, Commissioner-Cum-Secretary to Govt., PG &
PA Department, Orissa.

.....Applicant

By Advocate: Miss. Iqbal Shabiya, Mr.R.K.Satpathy.

- Versus -

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

By Advocate: Mr.A.K.Bose.

O R D E R

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

Applicant belongs to IAS 1976 batch. While he was working
as Commissioner cum Secretary to Government, PG & PA Department,
vide Memorandum dated 12.06.2002 (Annexure-1) a set up of charge was
framed and served on him proposing to hold an enquiry under Rule-8 of
AIS (D&A) Rules, 1969. In the absence of documents, requested for by
him, he submitted his reply under Annexure-2 dated 31.10.2002.
Thereafter, by filing OA No.10 of 2003 he sought to quash the
disciplinary proceedings initiated against him. This Tribunal by its order

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dated 05-11-2004 disposed of the aforesaid OA directing the Respondents to facilitate the applicant to submit his written statement of defence. The Applicant was given liberty to submit the written statement of defence by the end of December, 2004. But as he was on election duty he received the order of this Tribunal on 6.1.2005 and submitted his reply under Annexure-3 dated 17-01-2005; after which till 06.07.2006 there was no enquiry. However, on 04.05.2007 the IO submitted his report under Annexure-4 holding that there was no violation of any Rules, instructions and orders of the Government. But the Disciplinary Authority did not agree with the findings recorded by the IO. Thereafter, vide letter dated 21.09.2007 (Annexure-5), the Disciplinary Authority supplied copies of the report of the IO along with his note of disagreement to the Applicant calling upon the applicant to submit his written statement of defence. Applicant submitted his reply under Annexure-6 dated 04.10.2007. There being no progress to conclude the said proceedings, he has approached this Tribunal in the present Original Application seeking to quash the Memorandum of charge under Annexure-1 dated 12.06.2002.

2. Respondents, in their counter reply have strongly denied the allegation of *mala fide* attributed by the Applicant in the matter of the disciplinary proceedings initiated against him. It has been stated that there is no intentional or deliberate delay in the disciplinary proceedings initiated against the applicant. As per the instructions of the Government,

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statement of defence under rule 8(5) is expected to be limited simply to admitting or denying the charges communicated to the officer and for such admission or denial, inspection of documents is not necessary as he would get full opportunity to inspect the listed documents during the course of inquiry as per rule 8(12) of the AIS (D&A) Rules. They have also rebutted the allegation of non-supply of documents made by the Applicant. According to them on receipt of request of applicant in this regard, the custodian of the records i.e. GA (Vigilance) Department of the Government, with intimation to Applicant, was requested to supply the documents to the Applicant. The proceedings under rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 was initiated against the applicant for the irregularities committed by him in the matter of appointment of JC employees during his incumbency as Land Reforms Commissioner, Orissa, Cuttack from 18.08.1998 to 14.10.1999. On consideration of the written reply submitted by Applicant after the orders of this Tribunal in OA No. 10 of 2003, the matter was enquired into. The disciplinary authority did not agree with the report of the IO dated 4.5.2007. Therefore, the Disciplinary Authority after recording his tentative reasons of disagreement furnished the copy of the report of IO together with the tentative reasons of disagreement to the Applicant calling upon him to furnish his reply. On receipt of the reply of Applicant, a decision in the disciplinary proceedings has already been

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taken and the case is being processed for obtaining the advice of the UPSC as per the provisions of Rule 9 of All India Service (Discipline and Appeal) Rules, 1969.

3. According to Learned Counsel for the Applicant, for the incident allegedly taking place on 18.08.1998 to 14.10.1999, the Applicant was charged vide order dated 12.06.2002. In spite of several requests no document was supplied to the Applicant to file his written statement of defence. However even though he submitted his written statement of defence on 31.10.2002 there was no progress. Even after submission of written statement of defence pursuant to the orders of this Tribunal dated 5.11.2004 on 17.1.2005 the matter was kept as it was and finally on 04.05.2007 the IO submitted its report copy of which together with the copy of disagreement note was supplied to the applicant on 21.09.2007. Though the applicant submitted his reply under Annexure-6 dated 04.10.2007, till filing this OA i.e. on 31.10.2007 no decision was communication to the Applicant. The disciplinary proceedings like Damocles' sword have unnecessarily been hanging on the head of the Applicant thereby keeping him under tremendous mental anxiety and agony affecting his future prospects. Therefore, relying on the decisions of the Hon'ble Supreme Court and other High Courts rendered in the cases of **State of A.P v N. Radhakrishna**, (1998) 4 SCC 154, **P.V.Mahadevan v MD T.N.Housing Board**, (2005) 6 SCC 636,

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Mohanbhai Dungarbhai Parmar v Y.B.Zala (1980) 1 SLR Guj. 324, **Trilochan Singh v Union of India**, ATR 1986 (2) CAT Del. 405 and **Selvaraj v K.M.Nandagopal**, 1995 (2) SLR Kar. 227 Learned Counsel for the Applicant strongly persuaded us for quashing the disciplinary proceedings initiated against him under Annexure-1.

4. On the other hand Respondents' Counsel rebutted the stand of the Applicant by stating that there was absolutely no delay and laches on the part of the Respondents. In this connection he pointed out that though rule does not permit for supply of document for filing of show cause reply at the initial stage, applicant has unnecessarily delayed the matter by asking for documents and ultimately though submitted the reply on 31.10.2002 soon thereafter approached this Tribunal in OA No. 10/03. On receipt of notice, the Respondents were slow in the progress of the matter and finally though this Tribunal gave liberty to applicant to submit his reply by December, 2004, he submitted it only on 17.1.2005. The IO submitted its report on 4.5.2007 copy of which together with copy of the disagreement note was served on the applicant on 21.09.2007 and he submitted his reply on 4.10.2007. In the mean time though decision in the proceedings has already been taken, the case is being processed for obtaining the advice of UPSC as required under Rule 9 of the AIS (D&A) Rules, 1969. Therefore, according to him the delay if any was not attributable to the Respondents. Hence, the relief claimed by the

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Applicant that there was delay for which the proceedings need to be quashed has no legs to stand. Further it has been argued by him that the applicant once again approached this Tribunal seeking the relief as claimed in this OA. The said prayer of the applicant was already considered and rejected by this Tribunal giving liberty to the applicant to place his defence within a stipulated period. As such, this OA being barred by the principle of *res judicata* is not maintainable at all. Accordingly, he has prayed for dismissal of this OA.

5. We have given our thoughtful consideration to the rival submissions of the parties and perused the materials placed on record including the decisions relied on by the Learned Counsel for the Applicant. No Rule or Instructions could be placed on record by the Learned Counsel for the Applicant mandating specific time limit for completion of the disciplinary proceedings initiated against a Government Servant. At the same, even if there is no specific rule or instructions, Authorities cannot be allowed such an unbridled power which would result in procrastination in the initiation and completion of the proceedings. It is neither the intention of the rule making authority nor has it the sanction of law laid down by the Hon'ble Apex Court in very many cases in past which would entail unjustified lingering on of such cases. But in the instant case we find no such abnormal delay in either initiating or completing the proceedings. According to applicant he

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submitted his written reply after the orders of this Tribunal on 17.01.2005 and IO appointed after 6.7.2006 submitted its report on 4.5.2007. Applicant participated in the enquiry without any demur on such delay. He approached this Tribunal earlier seeking to quash the proceedings which was disposed of giving liberty to the applicant to submit his reply which he submitted on 4.10.2007 and hardly three months thereafter he approached this Tribunal on 15.1.2008. It has been stated by the Respondents that though in the meantime decision has been taken by the competent authority, the matter is being processed for obtaining advice of the UPSC as required under Rule 9 of the AIS (D&A) Rules, 1969. In the circumstances, it cannot be said that there has been abnormal delay in conclusion of proceedings and even if there has been delay that cannot be a ground for quashing of the proceedings in view of the order passed by this Tribunal in earlier OA. We have gone through the above cited decisions and we find that the facts and situation of those cases are different and distinct from the present case. In the case of N.Radhakrishnan (supra), cited by the Applicant, it has been held by the Apex Court that it is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the

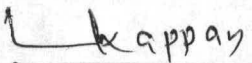
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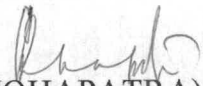
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matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after a reasonable period of time. But the explanation given by the Respondents for the delay, and analyzing the facts of those matters vis-à-vis the present one, we are of the opinion that this case needs no interference. In the light of the discussions made above, we find no merit in the matter.

6. However, according to the respondents a decision in the disciplinary proceedings has already been taken and the case is being processed for obtaining the advice of the UPSC as per rule 9 of AIS (D&A) Rules, 1969. In view of this, we direct the Respondents to take final view in all respects and communicate the decision thereon to the applicant within a period of 180 days from the date of receipt of copy of this order failing which the disciplinary proceedings would stand terminated.

7. With the above 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.)