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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.342 of 2008
Cuttack, this the ~~30th~~ day of April, 2009

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|-------------------------|------------------|
| Prafulla 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?

K. Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.342 of 2008

Cuttack, this the 30th day of April, 2009

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)

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Shri Prafulla Chandra Mishra, aged about 54 years, son of Late Srinibas Mishra, Commissioner, Consolidation, Cuttack, Orissa, presently residing at Qr.No.JO-19, Cantonment Road, Cuttack-753 001.

.....Applicants

Advocate for Applicant: M/s.K.C.Kanungo, S.C.Beura

-Vs-

1. Union of India represented through Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, North Block, New Delhi-1.
2. Chief Minister of Orissa-Cum-Minister-in-charge of Department of General Administration-Cum-Disciplinary Authority, Office of Chief Minister of Orissa, Orissa Secretariat, Bhubaneswar, Dist. Khurda, Orissa.
3. Shri Ajit Kumar Tripathy, Chief Secretary to Govt. of Orissa, Department of Finance, Orissa Secretariat, Bhubaneswar, Dist. Khurda, Orissa.
4. Principal Secretary to Govt. of Orissa, Department of Finance, Orissa Secretariat, Bhubaneswar, Dist. Khurda, Orissa.
5. Commissioner-cum-Secretary, Department of Excise, Govt. of Orissa, Bhubaneswar, Orissa Secretariat, Bhubaneswar, Dist. Khurda, Orissa.
6. Special Secretariat to Government of Orissa, General Administration Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda.

.....Respondents

Advocate for Respondents: Mr.A.K.Bose, GA.

O R D E R

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

The substance of the matter, as revealed from the record is that on the allegation that the Applicant [Shri Prafulla Chandra Mishra, IAS {RR-19820} while working as Chairman-Cum-Managing

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Director, Orissa State Beverage Corporation Ltd (OSBC), Bhubaneswar for the period from 24.11.2000 to 09.01.2002 committed serious breach of financial and administrative discipline, disobeyed the instruction of the Government; kept the Board of Directors, Orissa State Beverages Corporation in dark about the affairs of the Orissa State Beverages Corporation; incurred unauthorized and heavy expenditure for different purchases and purposes without the approval of the Board of Director and thereby caused unavoidable loss to the Corporation. For this he was charge-sheeted proposing to hold an inquiry against him under Rule 8 of the AIS (D&A) Rules, 1969. The matter is under enquiry and during the midst of the enquiry alleging likelihood of bias on the part of the Respondent No.3 (Ajit Kumar Tripathy, Chief Secretary to Govt. of Orissa, Bhubaneswar), the Applicant has approached this Tribunal in the present Original Application seeking direction to the Respondent No.2 (Chief Minister of Orissa-cum-Minister-in-charge of Department of General Administration-cum-Disciplinary Authority, Office of the Chief Minister of Orissa, Bhubaneswar) to restrain the Respondent No.3 to process/forward any note/file or documents in connection with the disciplinary proceedings of the applicant to be transmitted to the Disciplinary Authority for the ends of justice. He also seeks quashing of the order of rejection (Annexure-1) of his representation made to the Disciplinary Authority requesting as above. The main reason of seeking such a direction by the Applicant is that as the Respondent No.3 was associated in his earlier postings with the

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ongoing disciplinary proceedings relating to the tenure of applicant as Chairman cum Managing Director of Orissa State Beverages Corporation and is biased against the Applicant, his association in the disciplinary proceedings would prejudice the interest of the applicant. In support of the above contention, Learned Counsel for the Applicant relied on the decision of the Hon'ble Apex Court rendered in the case of **D.D. Suri v A. K. Barren and others**, AIR 1971 SC 175.

2. The Government of Orissa in General Administration Department by filing preliminary counter objects to the contention of the Applicant. It has been stated that the Orissa Legislative Assembly constituted a House Committee on 09.08.2001 by adopting the motion to enquire into the alleged un-lawful functioning of the State Beverage Corporation of Orissa Limited. The House Committee called for relevant information and after obtaining this information submitted its interim report on 24.12.2002. Respondent No.3 was the Principal Secretary, Excise Department from 25.11.2003 to 21.09.2004. As the basis of taking action against the applicant was the report of the House Committee, The Respondent No.3 had played no role in the matter nor was he inextricably involved as its architect in the matter of allegation basing on which the disciplinary proceedings has been initiated against the Applicant. It has further been averred that no specific allegation has been made attributing mala fide against any Government Officers. The impugned order under Annexure-A/1 dated 04.08.2008 is a reasoned order and the same has been passed in

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compliance of the direction of this Tribunal dated 27.02.2008 in OA No. 125/08 directing consideration of his representation made in this regard. Accordingly, it has been averred in the counter that as there has been no miscarriage of justice in the decision making process of passing the order under Annexure-A/1 this OA needs to be dismissed. The reply of the Applicant to the preliminary counter of the GA Department, more or less, is the reiteration of the contentions raised in this Original Application.

3. However after giving a full-fledged hearing to the parties, we have thoroughly scrutinized the materials placed on record in support of the contentions of the parties. Against the backdrop narrated above, now the question that arises is whether during the midst of the enquiry this Tribunal can interfere in the matter restraining the Respondent No.3 to deal with the matter in any manner and/or whether there has been any real bias on the part of the Respondent No.3 and/or dealing with the matter would in any manner prejudice the Disciplinary Authority in taking final decision in a free and fair manner.

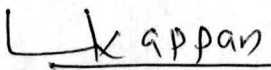
4. The Rulings of the Apex Court which need no emphasis are that the Court/Tribunal has to be vigilant while applying principles of bias as it primarily depends on facts of each case. The Court only act on **real bias** not merely on **likelihood of bias**. In this case, on receipt of the House Committee report, the Respondent No.3 forwarded the same to the Disciplinary Authority for taking further action in the matter which does not mean that as he was Principal

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Secretary, Excise Department during the incumbency of the Applicant as Chairman cum Managing Director of Orissa State Beverages Corporation, he was in any manner biased. Even if he is biased he has nothing to do in regard to the final decision on the disciplinary proceedings initiated against the Applicant; as it is trite law that departmental proceeding is a quasi judicial proceeding. The Inquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. Thereafter, it is for the Disciplinary Authority to take a final decision, based on the report of the IO and materials available on record, after taking into account the defence statement of the charged officer. No other authority in between is empowered under the rules to take decision in a disciplinary proceedings initiated against an employee. Admittedly, in the present case the Respondent No.2 is the Disciplinary Authority and who is to ultimately take the final decision and that decision is also subject to appeal, as provided, under the AIS Rules. In view of the above, the apprehension of the applicant that as because the Respondent No.3 was the Principal Secretary of the Excise Department when the Applicant was Chairman cum MD of OSBC dealing with the matter by him may prejudice the Disciplinary Authority is nothing but apprehension and on such apprehension no direction can be given as sought by the Applicant in this OA. Similarly, it is the settled law that a little difference in facts or

additional facts may make a lot of difference in the precedential value of a decision. The ratio of any decision must be understood in the background of the facts of that case. On a harmonious reading of the decision of the Hon'ble Apex Court in the case of D.D.Suri(surpa) vis-à-vis the present case it is seen that there has been substantial difference so far as factual aspects of the matter in both the cases are concerned and, therefore, the case of D.D.Suri(surpa) is hardly of any help to the Applicant. It is also seen that after taking into consideration all aspects of the matter, the prayer of the Applicant has been rejected in a well reasoned order by the Respondent No.2 under Annexure-A/1 which, in absence of any error or proven miscarriage of justice in the decision making process, in no circumstances, calls for any interference by this Tribunal.

5. In view of the facts and law narrated above, we find absolutely no ground to interfere in the matter. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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