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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 59 of 2011

Cuttack this the 25th day of June, 2014

CORAM

HON'BLE MR. R. C. MISRA, MEMBER (Admn.)
HON'BLE MR. S.K. PATTNAIK, MEMBER (Judl.)

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Srikanta Prusty, IAS,
Aged about 46 years,
S/o Sankarsan Prusty,
Vill- Bankapatuli, PO- Pipilia,
PS- Ghatagaon, Keonjhar,
Director, Secondary Education, Orissa,
Head of Building, Bhubaneswar, Dist. Khurda.

...Applicant

(Advocates: M/s. J. Sengupta, D.K.Panda, G. Sinha, A. Mishra)

VERSUS

Union of India represented through

1. Secretary to Govt. of India,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training,
New Delhi, PIN-110001.
2. State of Orissa represented through its
Special Secretary to Government,
GA Department, Secretariat, Bhubaneswar,
Dist- Khurda, PIN-751001.

... Respondents

(Advocate: Mr. U.B.Mohapatra for R-1, Mr. G.C.Nayak for R-2)

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ORDER (ORAL)

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant, an IAS officer and working as Director, Secondary Education, Orissa, has filed this O.A. in a second round of litigation challenging the suspension order dated 05.02.2011 (Annexure-A/7) and for quashing of the same.

2. In order to appreciate the contentious issues raised by both the sides, the admitted background/facts may be summarized for brevity and to avoid repetition. The applicant prior to induction into Indian Administrative Service was working as General Manager, DIC, Cuttack. On 30.06.2010, on the report of Inspector, Vigilance, Cuttack Division, F.I.R. under Section 13(1)(2) of Prevention of Corruption Act was registered besides other penal provisions of cheating, forgery, and conspiracy against the State Government. In view of investigation of the vigilance case pending against the present applicant and other General Managers, DIC, the GA Department vide order dated 15.07.2010 in exercise of power conferred by Sub Rule (3) of Rule 3 of All India Services (Discipline and Appeal) Rules, 1969, placed the applicant under suspension with immediate effect. Before the service of suspension order, the applicant approached this Tribunal in O.A. No. 357/10 and this Tribunal by order dated 13.08.2010 dismissed the O.A. holding that since the applicant had not exhausted the remedy available under the relevant rules, the O.A. was not maintainable and gave liberty to the applicant to approach the Appellate Authority under Rule 16(1) of the All India Services (Discipline and Appeal) Rules, 1969, for challenging the suspension order. Since the Tribunal had granted the interim order of stay

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vide order dated 16.07.2010 further ordered that the said stay shall continue till appeal is filed, and even liberty was given to the applicant to file an application for stay before the Appellate Authority. Being aggrieved by the said order of this Tribunal, the present applicant filed a Writ before the Hon'ble High Court of Orissa, Cuttack in W.P.(C) No. 14551/2010. The matter was disposed of by the Division Bench of the Hon'ble High Court vide order dated 14.09.2010 wherein Their Lordships categorically observed that there was no illegality or infirmity committed by the Tribunal in passing the impugned order dated 13.08.2010 where liberty was given to the applicant to file an appeal before the Departmental Appellate Authority and till then the order of suspension was ordered to be stayed. Their Lordships while disposing the Writ further directed the applicant to file an interim application for stay and application for condonation of delay along with appeal memo and in such event the Appellate Authority, i.e. Union of India represented through Secretary to Govt. of India, DoP&T, was directed to condone the delay and dispose of the appeal on merits within three months from the date of its filing and in case any application for interim stay is filed along with the appeal memo the same shall be considered and disposed of in accordance with the law within two weeks of its presentation. Needless to say that inspite of the specific direction of this Tribunal and of the Hon'ble High Court of Orissa, the applicant, for reasons best known to him, did not pursue his departmental remedy. The department was unaware of pendency of writ petition before the Hon'ble High Court of Orissa or its disposal and when no appeal was filed, finally on 05.02.2011 in pursuance to the order of

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this Tribunal passed in O.A. No. 357/10 passed another order of suspension to be in force with immediate effect, which is being impugned in this O.A.

3. Ld. Counsel for the applicant challenged the vires of the suspension order passed on 15.07.2010 so also the subsequent order dated 05.02.2011. It may not be out of place to mention here that since the order of suspension dated 15.07.2010 was assailed in this Tribunal in the earlier O.A. and as the said O.A. was dismissed with liberty to the applicant to approach the departmental appeal forum and as the said order of this Tribunal has been confirmed by the Hon'ble High Court of Orissa, the said suspension order cannot be challenged in the present O.A. as it is not only barred by Resjudicata but also by constructive Resjudicata. This Tribunal cannot pass an order which will make the earlier order of this Tribunal and Hon'ble High Court infructuous or sterile. Hence, we only confine ourselves to the veracity and legality of the suspension order dated 05.02.2011.

4. It may not be out of place to mention here that even though earlier suspension order was passed on 15.07.2010 and subsequent suspension order was passed on 05.02.2011, the applicant is merrily continuing in his job due to interim stay order and stay order passed by this Tribunal in the earlier O.A. so also in present O.A. In the impugned order dated 05.02.2011, it has been categorically mentioned that as the appeal period is only 45 days from the date of service of the suspension order (Rule 17 of the All India Services (Discipline and Appeal) Rules, 1969) and since suspension order was served on the applicant on 17.07.2010, the appeal period expired on 31.08.2010. The GA Department in the impugned order has categorically mentioned that as the applicant has not preferred any

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appeal within the stipulated time frame or as per the liberty given by this Tribunal, the State Government in exercise of the power conferred under Sub rule (3) of Rule 3 of All India Services (Discipline and Appeal) Rules, 1969, again placed the applicant under suspension with immediate effect as the earlier suspension had not taken into the effect and the applicant was continuing in service in view of the stay order.

5. In the counter the Respondents have categorically mentioned that since the earlier suspension order dated 15.07.2010 lost its force by lapse of time and particularly when that could not be given effect from an ante date and more so when the officer was discharging the duty in the office all along by virtue of the stay order of this Tribunal and as the department was not aware of the disposal of the Writ Petition by the Hon'ble High Court of Orissa since the order of the Hon'ble High Court was received by the Department only on 09.08.2011 and as the charge was grave and there was coal scam and linkage coal was sold to fake firms on the recommendation of the present applicant and other officers causing loss to the Government and pecuniary advantage to the applicant to a tune of Rs. 26,36,514/- and as the vigilance case is pending against the applicant along with five other persons on the allegation of corruption and showing undue favour to fictitious firms at a subsidized rate causing loss to the Government exchequer to the tune of more than 26 lakhs, the Government had no other option than to place the officer under suspension by virtue of fresh order dated 05.02.2011.

6. In fitness of things, soon after expiry of the departmental appeal period the suspension should have taken effect as per the earlier suspension order dated 15.07.2010 but as due to mis-communication or lack of

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communication the officer was allowed to continue in his job as if there was a stay order, fresh order of suspension was required to be passed because once the earlier suspension order is treated to be in force it was statutorily required to be reviewed before expiry of 90 days and has to be reviewed by review committee for continuance of the suspension order. The whole confusion arose due to mis-reading of the final order passed by the Tribunal and non-filing of the departmental appeal by the applicant. The applicant did not furnish copy of the order of the Hon'ble High Court, which could have forced the department to take a fresh look into the problem. Since the applicant did not prefer any appeal inspite of the liberty given by this Tribunal and Hon'ble High Court of Orissa, he cannot be permitted to take mileage out of the said order as the same was not challenged even within the extended time frame granted by this Tribunal and Hon'ble High Court. There is nothing on record to show that in fact the department was communicated with the order dated 14.09.2010 immediately after its pronouncement. Even the impugned order 05.02.2011 does not whisper about pendency of any writ petition before the Hon'ble High Court. Since the applicant wanted to take mileage out of contentious stay order, he should have approached the appropriate authority in time. Last time, the Tribunal and the Hon'ble High Court had given liberty to the applicant to approach the departmental appellate forum but he did not resort to that forum and again has approached this Tribunal wasting further valuable time of this Tribunal and wanted to get relief which he could not get earlier, which is not permissible. Even in the present case, there is no order of continuance of stay after 09.03.2011 and it was categorically directed that the stay order

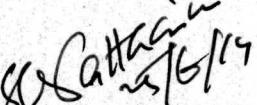
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granted by this Tribunal on 09.02.2011 shall continue till 25.03.2011. Even then still the applicant enjoyed the said post and the suspension order was never pressed into effect. On 28.02.2012 the Bench directed for hearing of this O.A. but it was never listed till date. It may sound unwell but this state of affairs only speaks of vicious circle encircling all the stake holders of a litigation pending before this Tribunal.

7. To sum up, since the earlier suspension order could not have been pressed into service, the department had no other option than to pass a fresh order of suspension on 05.02.2011 and for this order the applicant is to blame himself for suppressing and not agitating the matter before the appropriate authority in time and as such he cannot be permitted to take mileage of his own folly and reagitate the matter before this Tribunal without exhausting the departmental remedy. Hence, this O.A. being devoid of merit is dismissed. Interim order granted by this Tribunal is hereby vacated. However, the applicant is at liberty to exhaust the departmental forum for redress as the department was right in placing the Government servant under suspension as a vigilance case involving coal scam is pending investigation and certainly the applicant, in the hierarchy, is capable of misusing his power and position. The authority is empowered to put him under suspension as his continuance in service is likely to embarrass him in discharging of his duties and the charge is connected with his position as a member of the service. Last but not the least, suspension order can be interfered in judicial forum when it is not passed by the competent authority, secondly, when there is no compelling ground for getting rid of the services of the public servant during pendency of departmental proceeding or

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criminal proceeding and, thirdly, when the charge is not serious. In the instant case, the gravamen of the charge is very serious as there is allegation of coal allotment to fictitious/non-existent firms causing loss of millions of rupees to the public exchequer so also accruing pecuniary advantage to the delinquent employees. This is not a fit case for judicial interference and we refrain from doing so. No costs.


(S.K.PATTNAIK)

MEMBER(Judl.)


R.C.MISRA
25/6/2014
MEMBER (Admn.)

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