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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 652 of 2009

Cuttack, this the 6th day of February, 2011.


Prashanta Kumar Nayak Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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


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


(A.K. PATNAIK)
MEMBER (JUDL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 652 of 2009
Cuttack, this the ^{Feb./}8th day of ~~January~~, 2011

C O R A M:

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

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

Prashanta Kumar Nayak, aged about 50 years, Son of Late
Haramohan Nayak, At:5R/4, Forest Park, PO/PS-Capital,
Munsif-Bhubaneswar, Dist. Khurda.

.....Applicant

By legal practitioner: M/s.K.B.Panda, M.Dasberma, D.R.Nanda,
P.Priyambada,P.K.Sahoo, Counsel

-Versus-

1. Union of India represented by Secretary to Government of India, Department of Personnel and Training, At/Po/Ps/Munsif, New Delhi-110 001.
2. State of Orissa represented by Chief Secretary, Orissa, Orissa Secretariat, PO/PS-Capital, Munsif-Bhubaneswar, Dist. Khurda.
3. Special Secretary, General Administration Department, Orissa Secretariat, PO/PS-Capital, Munsif-Bhubaneswar, Dist. Khurda.

....Respondents

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

O R D E R

MR. A.K.PATNAIK, MEMBER(JUDL):-

Applicant (Prashanta Kumar Nayak) is a 1984 batch Orissa cadre Indian Administrative Service Officer. While continuing as Secretary to Government of Orissa, Science and Technology, on the allegation of pending investigation and

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enquiry relating to criminal charge involving moral turpitude, vide order dated 27th July, 2006, he was placed under suspension with immediate effect. He challenged the said order of his suspension dated 27th July, 2006 in OA No.694 of 2006 before this Tribunal on the ground that he was placed under suspension pending investigation on criminal case but in fact no such criminal or departmental proceedings had ever been initiated or pending against him. In the said OA it was submitted by Learned Government Advocate for the State of Orissa that the order of suspension dated 27th July, 2006 was corrected by the corrigendum dated 16th October, 2006 substituting the word "trial" instead of "investigation" of Criminal charge. It was also contended by him that it was not correct to state that there was no criminal case pending against the Applicant when the Learned Spl. CJM (CBI) Bhubaneswar vide order dated 03.07.2006 in SPE No.3 of 2000(A) has taken cognizance by the date the order of suspension was issued. Accordingly, Learned Government Advocate for the State of Orissa so also Learned Senior Standing Counsel for the Union of India have prayed not to interfere in the order of suspension initially challenged by the Applicant in OA No. 694 of 2006. In regard to *lis pendency*,

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Learned Counsel for the Applicant submitted that there is no evidence to show that any such investigation or trial took place or pending against the Applicant in any court of law or authority. After hearing the parties at length and upon perusal of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, this Tribunal disposed of the matter on 12th August, 2009. Relevant portion of the order reads as under:

6. A bare reading of the above Rule, would clearly indicate that a Member of the service can be placed under suspension only on the grounds of investigation, inquiry or trial relating to a pending criminal charge. The order under Annexure-A/1 envisages that the applicant has been placed under suspension on investigation relating to criminal charges and subsequently by issuing corrigendum the word 'investigation' was substituted by 'trial'. But no evidence has been produced before us by the Respondents to the extent that any such trial is pending anywhere against the Applicant. However, we are now concerned with the power of this Tribunal to interfere in the matter at this stage because as per Rule 16 (i) of the AIS (D&A) Rules, 1969, one has to make an appeal before the Appellate Authority against the order of suspension which opportunity has not been availed of by the Applicant till date.

In the aforesaid circumstances, it is only proper for this Tribunal to dispose of this Original Application by permitting the applicant to prefer an appeal to the Appellate Authority, in terms of the aforesaid Rules within a period of 30(thirty) days hence and the Appellate Authority (Respondent No.1) is hereby directed to consider and pass appropriate order on the said appeal of the Applicant within a period of 60(sixty) days and communicate the result thereof to him. Ordered accordingly. No costs."

2. Respondent No.1 considered the appeal preferred by the Applicant but declined to interfere with the order of

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suspension of the Applicant for the reasons given in the order dated 19th November, 2009 which was communicated to the Applicant by the Respondent No.3 in letter under Annexure-1 dated 26.11.2009. The reasons given in the order read as under:

“ORDER

WHEREAS, Shri Prashant Kumar Nayak, IAS (OR:84) was placed under suspension by the Government of Orissa vide order No. AIS/V-18/05(Pt)-16006/AIS.I, dated 27th July, 2006 as investigation relating to criminal charge involving moral turpitude were pending against him. The word “investigation” appearing in the said order was replaced by the word “trial” vide a corrigendum issued on 16/10/2006.

AND WHEREAS, Shri Prashant Kumar Nayak, h as submitted an appeal dated 21.8.2009 under Rule 16 (i) of All India Services (Discipline & Appeal) Rules, 1969 against the order of Government of Orissa dated 27/7/2006 placing him under suspension, corrigendum dated 16/10/2006 issued to the order of suspension and Government of Orissa’s Memorandum dated 29/8/2005 initiating major penalty proceedings against him.

AND WHEREAS, the appeal has been submitted under Rule 16 (i), the Central Government has considered it as an appeal only against the order of suspension. Moreover as per Rule 16 of the AIS (D&A) Rules, 1969, no appeal lies against the Memorandum initiating the departmental proceedings.

AND WHEREAS, as per rule 17 of the AIS (D&A) Rules, 1969, no appeal preferred under the said rules shall be entertained unless such appeal is preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant. The appeal of Shri Prashant Kumar Nayak tough time barred, has been considered by the Central Government as per directions of CAT, Cuttack Bench, in OA No. 694 of 2006 vide order dated 12/8/2009.

AND WHEREAS the appeal dated 21/8/2009 of Shri Prashant Kumar Nayak has been received in the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training through proper channel only on 14/10/2009.

AND WHEREAS in his appeal, Shri Prashant Kumar Nayak has inter alia cited grounds for revocation of his suspension viz; (i) that there was no proper application of mind on the part of the Disciplinary Authority inasmuch as on the relevant date neither any



investigation nor any trial was pending against him; (ii) that while major penalty proceedings were initiated against him vide memorandum dated 29th August, 2005 a decision to place him under suspension was taken by the State Government at a later date; (iii) that there was no prima facie material to submit a charge sheet against the appellant; (iv) that he has been discriminated against by invoking Rule 3(3) of AIS (D&A) Rules, 1969 vis-à-vis similarly placed other officers; (v) that no evidence has been produced before CAT by the respondents to extent that any such trial is pending; (vi) that the prolonged suspension for more than 3 years on non-existent grounds and non-commencement of any inquiry even after nearly four years speaks itself that the action of the State Government is borne out of malafide intention and extraneous considerations not germane to any rule or propriety or reasonability and thereby the suspension and departmental proceedings are liable to be quashed at the threshold.

AND WHEREAS, as informed by the State Government of Orissa, the Spl. CJM, CBI, Bhubaneswar vide order dated 3/7/2006 in case No. SPE No.3 of 2000(A)-Union of India v Dr.Sidhartha Patra observed in the concluding para of the said order that –

“I am not inclined to accept the closure report submitted by Shri A.P.Gupta, Dy. Superintendent of Police, CBI:SCB:Kolkata in respect of Prashant Kumar Nayak against whom the further investigation u/s.173(2) CrPC was going on. The protest petition filed by the complainant, Prasanta Kumar Das is allowed.

Accordingly, cognizance is taken of the offences u/s 120-B read with 376/511 IPC against Shri Prashant Kumar Nayak. Issue summons to him fixing 4.9.2006 for appearance of accused Prashant Kumar Nayak.”

AND WHEREAS, the appellant challenged the order dated 3/7/2006 passed by the learned Spl.CJM (CBI), Bhubaneswar in the Hon'ble High Court in CRLMC No. 1629/06 and the Hon'ble High Court while admitting the case called for LCR and fixed the date to 29/8/2006. As intimated by the Advocate General, Orissa, Cuttack on 17/9/2009 and Superintendent of Police, CBI, SCB, Kolkata on 18/9/2009 to the State Government, the CRLMC No. 1629/2006 is still pending before the Hon'ble High Court.

AND WHEREAS, the appellant has been placed under suspension pursuant to the criminal trial against the appellant set in motion after the CJM/CBI/BBSR taking cognizance against the appellant vide order dated 3/7/2006, the State Government has rightly invoked rule 3(3) of the AIS (D&A) Rules, 1969.

AND WHEREAS, as per rule 3(3) of AIS (D&A) Rules, 1969, a member of the Service in respect of, or against, whom an investigation inquiry or trial relating to a criminal charge is

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pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a member of service or is likely to embarrass him in the discharge of his duties or involves moral turpitude, the action of the State Government to place him under continued suspension is in accordance with the rules in this regard.

AND WHEREAS, Shri Prashant Kumar Nayak has been placed under suspension under rule 3(3) of the AIS (D&A) Rules, 1969, the appellant has unnecessarily tried to link it with the pending disciplinary proceedings initiated against him vide charge memorandum dated 29/8/2005. There is therefore an element of *malafide* in the action taken by the State Government; neither it is erroneous nor unjust.

AND WHEREAS, the suspension of Shri Nayak has been reviewed by the Suspension Review Committee under chairmanship of the Chief Secretary. The Committee perused all relevant materials available relating to suspension of Shri Prashant Kumar Nayak. The Committee noted the view of SP, CBI, Kolkata as well as Advocate General, Orissa. The Committee after careful perusal and consideration of all the facts and materials placed before it including the present status of the criminal cases involving moral turpitude of Shri Nayak pending in the Court of Special CJM, CBI, Bhubaneswar and the CrI. Misc. Case filed in the Orissa High Court recommended for continuance of suspension of Shri Prashant Kumar Nayak for further period of one hundred eighty days w.e.f. 8/10/2009 and accordingly the State Government has issued necessary orders in this regard on 5/10/2009.

AND WHEREAS, Shri Prashant Kumar Nayak having been placed under suspension by the State Government of Orissa under Rule 3(3) of All India Services (Discipline & Appeal) Rules, 1969 subsequent to the Special CBI Court at Bhubaneswar on 3/7/2006 taking cognizance of offences under section 120B and 376/511 of IPC, it will not be appropriate for the Central Government as appellate Authority to interfere in the matter at this stage when the matter relating to cognizance taken by CJM (CBI), Bhubaneswar rejecting closure report submitted by CBI, is subjudice before the Orissa High Court in a criminal misc. petition filed by the appellant.

NOW THEREFORE, the Central Government as the Appellate Authority has come to the conclusion that in the facts and circumstances of the case in which Shri Prashant Kumar Nayak has been placed under suspension/continued suspension, there is no justification for accepting the appeal of Shri Prashant Kumar Nayak. The appeal is accordingly rejected."

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3. Being aggrieved by the aforesaid order of the Appellate Authority dated 19th November, 2009 communicated by the Government of Orissa, (Respondent No.3) in letter under Annexure-A/1 dated 26-11-2009 this Original Application has been filed with prayer to quash the order of rejection of the appeal communicated vide enclosure to Annexure-1, to declare the order placing him under suspension at Annexure-2 as illegal, arbitrary, actuated by mala fides and not in compliance with Rule 3(3) of the All India Services (Disciplinary & Appeal) Rules, 1969 and to grant him any other relief/reliefs as deemed fit and proper.

4. Respondent No.1 by filing counter affidasvit objects to the grant of relief sought for by the Applicant in this OA. According to him, the order in appeal has been passed by the Central Government with due application of mind and having regard to the facts and circumstances of the case. The Learned Special CJM, CBI Court vide order dated 3.7.2006 had taken cognizance of offences u/s 120B r/w section 378/511 of IPC against the applicant. The learned Special CJM, CBI having taken cognizance of the offences by the applicant, the process of his trial was set in motion. The Applicant instead of facing the

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trial, challenged the said order in the High Court by filing CRLMC No. 1629 of 2006. Respondent No.1 expressed his inability to state if in the meanwhile any order has been passed by the Hon'ble High Court of Orissa in the said CRLMC No. 1629 of 2006 on the order dated 3.7.2006 of Special CJM, CBI. It is the contention of the Respondent No.1 that the applicant has been successfully abusing the process of law to delay in framing the charge by the Trial court though cognizance has already been taken on the issue against the applicant. Next contention of the Respondent No.1 is that the applicant is trying to mislead this Tribunal by stating that h has been exonerated by the CBI though after rejecting the report of Investigating agency Learned Special CJM, CBI took cognizance against the Applicant. On the aforesaid ground, the Respondent No.1 prayed for dismissal of this OA.

5. Respondents 2 & 3 in their counter affidavit have stated that the Special CJM, CBI, Bhubaneswar vide his order dated 03.07.2006 in SPE no. 3 of 2000(A)-Republic of India vrs Dr.Sidharth Patra had taken cognizance of the offences of moral turpitude u/s.120-B read with 376/511 IPC against Shri P.K.Nayak, IAS (RR: 1984) in the Balasore Sex Scandal case

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wherein a direction was issued to summon Shri P.K.Nayak, IAS (Applicant) before the Court of Special CJM, CBI, Bhubanewar on 04.09.2006 for his appearance. Therefore, after careful consideration of the facts of the case and in exercise of powers conferred under rule 3(3) of the All India Services (Discipline & Appeal) Rules, 1969 the State Government had placed Shri Prasanta Kumar Nayak, IAS (RR: 1984), Ex-Secretary to Government, Science and Technology Department under suspension w.e.f. 27.07.2006 vide GA Department order No. 17006/AIS.I, 27.07.2006 read with GA Department Corrigendum No. 24852/AIS.I, dated 16.10.2006 as trial relating to criminal charges involving moral turpitude was pending against him. The suspension of the Applicant was extended from time to time on the recommendation of the concerned Review Committee. The order taking cognizance by the Special CJM, CBI, Bhubaneswar dated 3.7.2006 has been challenged by the Applicant in CRLMC No.1629 of 2006 in which the Hon'ble High Court called for the LCR and the matter is still pending before the Hon'ble High Court of Orissa for consideration. As the Criminal case is on motion under 'trial', the suspension of the applicant ordered under Rule 3(3) of AIS (D&A) Rules,

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1969 and continued till date cannot be found faulted. Accordingly, Respondents 2 & 3 have prayed for dismissal of this OA.

6. It is contended by Mr.K.B.Panda, Learned Counsel appearing for the Applicant that the very placing the applicant under suspension either for investigation or trial in criminal case is not justifiable because it is the well settled legal principle that a criminal trial commences only upon charges being framed and not before that stage. Learned Special CJM, CBI, Bhubaneswar in order dated 3.7.2006 issued summon to the applicant to appear for taking cognizance in the matter. The said order of the Learned Special CJM, CBI, Bhubaneswar was challenged by the applicant in the High Court of Orissa in which the Hon'ble High Court was pleased to keep the appearance of the applicant in abeyance. Second contention of the Applicant is that the Learned Special CJM, CBI, Bhubaneswar lacks jurisdiction and competence to issue summon to the applicant for taking cognizance in such matter which is triable only by the Sessions Court. In the circumstances placing the applicant under suspension in the garb of investigation or trial of criminal case amounts to mala fide exercise of power. In support of his prayer



that the order of the appellate authority is not sustainable, the Learned Counsel for the Applicant contended that the Appellate Authority has not exercised his power independently with due application of mind rather than being influenced by the order of the Suspension Review Committee Report which was based on the report of the SP, CBI and the AG. On the aforesaid grounds Learned Counsel for the Applicant strongly prayed for quashing the order of suspension under Annexure-2 and the order of the appellate authority enclosed to the letter under Annexure-A/1. On the other hand, Mr. Bose, Learned GA appearing for the Respondents 2 & 3 and Mr. Mohapatra, Learned SSC appearing for the Respondent No.1 vehemently opposed the arguments advanced by Mr. Panda, Learned Counsel appearing for the Applicant. It was contended by them that once it was decided by the Learned Special CJM, CBI, Bhubaneswar summoning the applicant to appear for taking cognizance which has been deferred by virtue of the orders of the Hon'ble High Court, in all respect, it can safely be presumed/said that the criminal case is in motion against the applicant and in the circumstances utilization of the power conferred under Rule 3(3) of AIS (D&A) Rules, 1969 cannot be said to be unjustified. Next

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contention of the Respondents' Counsel is that meanwhile review committee has reviewed the order of suspension and as the criminal case is still on motion against the applicant but has been deferred at the behest of the applicant for the challenge made in the Hon'ble High Court, recommended his suspension to continue and accordingly the applicant has been continuing under suspension. But the applicant has not challenged the subsequent order passed on his suspension. Accordingly, Respondents' Counsel reiterated their stand taken in the counter. By placing reliance on the earlier order of this Tribunal dated 12th August, 2009 in OA No. 694 of 2004 and the meaning of 'investigation' and 'trial', Learned Counsel appearing for the Applicant has stated that as the present situation does not come within the meaning of "investigation" and "trial" and trial is yet to commence keeping the applicant under suspension for years together is not justified. Further he replied that when he challenged the initial order of suspension being uncalled for and unwarranted the subsequent orders passed on the suspension has to be nullified even if it is not specifically challenged by the Applicant. Besides, it was submitted by Learned Counsel for the

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Applicant that the subsequent order extending the suspension of the applicant has not been received by him.

7. We have given our thoughtful consideration to the rival submissions made with reference to pleadings and materials placed in support thereof by the respective parties. Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 [hereinafter called as 'Rules'] vests power, competence and jurisdiction to place an All India Service Officer under suspension in certain contingency. It reads as under:

“(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating **to a criminal charge is pending** may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a (member of the service) or is likely to embarrass him in the discharge of his duties or involves moral turpitude.”

8. Admittedly, on the allegation of sex scandal, the matter was entrusted to the CBI for enquiry. The CBI in SPE No.3 of 2000(A) submitted its report before the Special Chief Judicial Magistrate (CBI), Bhubaneswar recommending closure of the case against the Applicant. But on the basis of the protest petition filed by one Prasant Kumar Das, the Special CBI Judge rejected the closure report of the CBI and took cognizance of the

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offences of moral turpitude against the Applicant offences under section 120-B read with 376/511 IPC and vide order dated 3.7.2006 directed the applicant to appear on 4.9.2006. The said order of the Special CBI Judge was challenged by the Applicant in CRLMC No.1629/06 before the Hon'ble High Court in which LCRs have been called for by the Hon'ble High Court and the matter is still pending. From the foregoing facts it reveals that investigating agency had given a clean cheat to the Applicant to which the Learned CBI Judge not having agreed issued notice to the Applicant to appear but the applicant challenged the said order before the Hon'ble High Court of Orissa and as the LCRs have been called for by the Hon'ble High Court, presumably there has been no further progress in the matter before the Learned CBI, Judge, Bhubaneswar. Since the matter is pending before the Hon'ble High Court involving the broader issue of competency of the court in issuing notice etc. resulting in a stalemate in so far as actual trial proceedings are concerned, we are not inclined to express any opinion on the issue whether trial has commenced and been continuing thereby justifying the order of the suspension. We are aware of Hon'ble Supreme Court's decision regarding quashing of long continuance of the order of

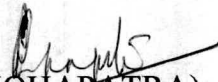
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suspension as in the case reported in (1994) 27 ATC 566 -**Bena (Smt) v State of Kerala and others** and this aspect of the matter, as it appears from the order of the appellate authority, has not been considered by the Appellate Authority/Respondent No.1. The Appellate Authority, prima facie, has been swayed away with the report of the Review Committee which was based on the report of the SP, CBI and Advocate General. Notwithstanding the decision of the Hon'ble Apex Court in regard to the quashing of the suspension order which has been continued for more than four years, we are hamstrung in taking any conclusive view on this matter due to the nexus shown by the Respondents between the criminal case and the order of suspension of the applicant as also non-production of any document before this Tribunal on the status of the case in respect of which records have been called for by the Hon'ble High Court of Orissa. Unless clear picture emerges and decision is taken by the Hon'ble High Court of Orissa on the aforesaid pending matter, we cannot reach any conclusion at this stage on the issue of revocation of the order of suspension of the Applicant.

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In the result, this OA stands disposed of with the
above observation by leaving the parties to bear their own costs.


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


(A.K. PATNAIK)
MEMBER (JUDL)

