

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 68 of 2010
Cuttack, this the 8th day of February, 2011.

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.)

✓All-
(A.K.PATNAIK)
MEMBER(JUDL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 68 of 2010
Cuttack, this the 8th day of February, 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 51 years, Son of Late
Haramohan Nayak, At:E.R 4, Forest Park, Unit-1, Unit -1,
Bhubaneswar-751 009, PS Capital, Munsifi, Bhubaneswar,
Dist. Khurda.

.....Applicant

By legal practitioner: M/s.K.B.Panda, P.K.Sahoo,M.Das Burma, R.N.Singh,
S.R.Das, 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, in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 seeks to quash the order dated 29.8.2005 relating to the contemplated inquiry

Verdict

against him as per Annexure-1 and to declare that said order dated 29.8.2005 as illegal, arbitrary, actuated with *mala fide* and is not in consonance with the direction issued by the Hon'ble High Court of Orissa in OJC Nos.12461/99 & 13305/1999. In other words, due to delay in concluding the disciplinary proceedings initiated against him under Rule 8 of AIS (D&A) Rules, 1969 he seeks to quash the same.

2. At the out set we may state that though the applicant seeks the benefit of an order of the Hon'ble High Court but copies of the said order of the Hon'ble High Court have not been annexed to this OA or produced in course of hearing.

3. However, fact of the matter is that for certain incidents which allegedly took place in the year 1999, vide memorandum in Annexure -1 dated 29th August, 2005 he was called upon to show cause as to why inquiry under Rule 8 of AIS (D&A) Rules, 1969 shall not be held against him. In Annexure-2 letter dated 21.09.2005, Applicant denied the charges levelled against him in Memorandum of charges under Annexure-1 dated 29th August, 2005. In consideration of the reply of the Applicant, Respondents decided to proceed with the enquiry and accordingly issued order in Annexure-3 dated 25th July, 2006. While the matter stood thus, in exercise of the power conferred under Sub rule (3) of Rule 3 of the All India Services (Discipline & Appeal) Rules, due to criminal charges, the applicant was placed under suspension with immediate effect vide order under Annexure-4 dated 27th July, 2006.

Adv

Appeal preferred by the Applicant seeking revocation of the order of suspension was rejected; for the reasons mentioned in the letter under Annexure-5 dated 19th November, 2009. The main contention of the Applicant in support of his prayer to quash the disciplinary proceedings initiated against him, is the abnormal delay in concluding the proceedings.

4. Government of Orissa (Respondent Nos.2&3) filed their counter opposing the prayer of the Applicant. In the counter affidavit, it has been contended that there was no delay and the delay, if any, occasioned was not intentional or deliberate but was due to exigencies of the Government work and development took place such as the Government in GA Department vide order dated 25.7.2006 appointed Shri S.P.Nanda, IAS, the then Principal Secretary to Government, Forest and Environment Department and Shri A.K.Sahay, Superintendent of Police, CBI, SCB Kolkata as IO and PO respectively to enquire into the charges levelled against the Applicant. Shri A.K.Sahay, Superintendent of Police, CBI, SCB, Kolkata vide letter dated 3.10.2006 expressed his inability to present the case in the departmental proceedings initiated against the applicant. Accordingly, Government in GA Department vide letter dated 28.10.2006 requested the Deputy Inspector General, CBI, Kolkata to nominate a suitable officer for appointment as PO. Since no reply was received, reminder was issued requesting early nomination of the name of the PO. In response to the request, the Superintendent of

Alle

Police, CBI, SCB, Kolkata vide letter dated 11.4.2007 intimated the Government that an officer from the State Government be nominated as the PO in this case. Thereafter vide order dated 10.5.2007 the GA Department issued order dated 10.5.2007 appointing Shri SPNanda, IAS (RR-75), Agriculture Production Commission, Orissa as IO and Shri P.K.Mishra, OAS I Senior Branch, Deputy Secretary to Government, GA Department as Presenting Officer in place of Shri A.K.Sahay, Superintendent of Police, CBI, SCB Kolkata.

Further contention of the Respondents 2&3 is that the Deputy Inspector General of Police, CBI, SCB, Kolkata was requested vide GA Department letter dated 10.8.2007 to furnish papers/documents in connection with the present case. On receipt of the authenticated copies of the required statements/documents vide letter dated 28.9.2007 of the Superintendent of Police, CBI, SCB, Kolkata, the GA Department in letter dated 17.10.2007 forwarded copies thereof to the IO and PO for proceeding with the enquiry. Meanwhile IO, Shri Nanda was appointed as the Member Board of Revenue. Because of change of the designation of the IO necessary order was required to be passed and was accordingly issued. For the above reason, the Respondents denied the allegation of *mala fide* attributed by the Applicant and have accordingly prayed for dismissal of this OA.

5. No separate counter was filed by the Government of India (Respondent No.1) despite service of notice and adequate opportunity

W.A.

being granted to the ResopndentNo.1. However, Mr. U.B.Mohapatra, Learned SSC for the Union of India has made appearance for and on behalf of Respondent No.1.

6. Heard the respective stand of the parties and perused the materials placed on record. Also perused the decision of the Hon'ble Apex Court in the case of **P.V.Mahadevan v M.D.Tamil Nadu Housing Board, AIR 2006 SC 207** and relied on by Learned Counsel for the Applicant in support of his payer that due to delay and such delay being attributable to the Respondents, the departmental proceedings initiated against the applicant is liable to be set aside. Before going to the merit of the matter keeping in mind the law laid down by the Hon'ble Apex Court that each case has its colour and fragrance and, therefore, before applying a decision, it is necessary to examine as to how the particular case is fitted to the case which comes for decision. It is seen that charge sheet was issued to the applicant in the said case on 08.06.2000 alleging committing omission and commission in the year 1990 without giving any satisfactory explanation for the delay in issuing the charge sheet. Whereas in the case in hand, the alleged incident was of 9.7.1999. This incident was the subject mater of the Writ petition filed before the Hon'ble High Court of Orissa praying CBI enquiry into the matter and charge sheet was issued to the Applicant on 29th August, 2005 and the reason for the delay including the enquiry, though not fully satisfactory, has been explained by the Respondents. Hence the plea of the Learned

Atta

Counsel for the applicant that as the present case is covered by the decision of the Hon'ble Apex Court in the case of Mahadevan (supra) and as such the proceedings initiated against the applicant is liable to be quashed is held to be without any merit.

7. However, according to the Respondents, the GA Department vide order dated 25.7.2006 appointed Shri S.P.Nanda, IAS, Principal Secretary to Government, Forest and Environment Department and Shri A.K.Sahay, Superintendent of Police, CBI, SCB Kolkata as IO and PO to enquire into the charges levelled against the Applicant. Shri A.K.Sahay, Superintendent of Police, CBI, SCB, Kolkata vide letter dated 3.10.2006 expressed his inability to present the case in the departmental proceedings initiated against the applicant. Accordingly, Government in GA Department vide letter dated 28.10.2006 requested the Deputy Inspector General, CBI, Kolkata to nominate a suitable officer for appointment as PO. Since no reply was received reminder was issued requesting early nomination of the name of the PO. In response to the request, the Superintendent of Police, CBI, SCB, Kolkata vide letter dated 11.4.2007 intimated the Government that an officer from the State Government be nominated as the PO in this case. Thereafter vide order dated 10.5.2007 the GA Department issued order dated 10.5.2007 appointing Shri SPNanda, IAS (RR-75), Agriculture Production Commissioner, Orissa as IO and Shri P.K.Mishra, OAS I Senior Branch, Deputy Secretary to Government, GA Department as Presenting Officer

W.M.

in place of Shri A.K.Sahay, Superintendent of Police, CBI, SCB Kolkata to enquire into the allegation made against the Applicant. The Deputy Inspector General of Police, CBI, SCB, Kolkata was requested vide GA Department letter dated 10.8.2007 to furnish papers/documents in connection with the present case. On receipt of the authenticated copies of the required statements/documents vide letter dated 28.9.2007 of the Superintendent of Police, CBI, SCB, Kolkata, the GA Department in letter dated in letter dated 17.10.2007 forwarded copies thereof to the IO as well as the PO for proceeding with the enquiry. Meanwhile the IO, Shri Nanda, was posted as the Member Board of Revenue. Because of the change in designation of the IO, necessary order was issued. Even after issuance of fresh order (not known what was the date of the order) changing the designation of the IO, there appears no progress in the enquiry. It reveals that the Inquiry Officer (Shri S.P.Nanda, IAS) was appointed to act as IO on 25-07-2006 when he was Principal Secretary to Government, Forest and Environment Department. Thereafter, his designations/postings have kept on changing. Learned Counsel for the Respondents were not able to provide any Rule/instruction to show that the inquiry officer was precluded from proceeding further with the conduct of the enquiry because of such changes in designation/posting. It is strange to note that no date for even preliminary enquiry has been fixed by the IO so far though four years have elapsed from the date of his appointment as IO. This leads us to believe that the Respondents are not

Whee

serious enough to continue with the proceeding and to bring the same to its finality. As a result of this sluggishness, the disciplinary proceeding is hanging like a Damocles' sword on the applicant for the last six years and has given rise to the present litigation. Time without number, the Hon'ble Apex Court have deprecated the action of the authorities in keeping higher Govt. official under charges with unbearable mental agony and distress on the pretext of pendency of disciplinary proceedings. It has been held by the Hon'ble Apex Court that protracted disciplinary proceedings against Government employees should be avoided not only in the interest of Government but also in the interest of inspiring confidence in the minds of the employees.

8. In the light of the discussions made above, we are not inclined to quash the proceedings initiated against the applicant by issuing Annexure-A/1 dated 29th August, 2005. But keeping in mind the aforesaid dicta of the Hon'ble Apex Court **we direct the Respondents to conclude the disciplinary proceedings initiated against the applicant preferably by the end of 30th June, 2011, if necessary by holding inquiry on day to day basis; failing which the proceedings shall be deemed to have been quashed.** It is however made clear that the applicant shall also cooperate in all respects for finalization of the proceedings.

W/M

✓/8 -9-
9. With the aforesaid observation and direction this OA stands
disposed of. There shall be no order costs.

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

Patnaik
(A.K.PATNAIK)
MEMBER(JUDL)