

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 189 of 2010

A.K.Gautam Applicant

Versus

Union of India & Others Respondents

.....

1. Order dated: 29.04.2010.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

MA No. 238 of 2010

Heard Mr. J.M.Patnaik, Learned Counsel for the Applicant and Mr. S.Mishra, Learned ASC for the Union of India appearing for the Respondents on notice and perused the materials placed on record. Prayer made in this MA 238 of 2010 seeking amendment stands allowed and is accordingly disposed of.

Member (Admn.)

2. Order dated: 29.04.2010.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

Heard Mr.J.M.Patnaik, Learned Counsel for the Applicant and Mr. Subasis Mishra, Learned Additional Standing Counsel for the Union of India appearing on notice for the Respondents on the question of admission and grant of ad interim order prayed for in this Original Application and perused the materials placed on record. Applicant (Shri Ashok Kumar Gautam) presently working as Commissioner of Income Tax (ITAT), Cuttack by filing this Original Application under section 19 of the Administrative Tribunals Act, 1985 prays for the following relief:

P

“To quash the disciplinary proceedings initiated against the applicant and kindly order for all consequential benefits with retrospective effect.

Pending final decision on this OA, the Applicant by way of ad interim order, seeks the following direction.

“To stay the departmental proceeding initiated against the applicant and direct the respondent no.1 not to proceed with the charge memo served on 05.01.2010 to the applicant till disposal of the criminal proceeding pending before the Learned Special Judge (CBI), New Delhi vide CC No.3 of 2010.”

ii. The main contention of the Applicant in support of the above prayers of the Applicant is that not only the charges under trial in the CBI Case No.RC 6(A)/2005/ACU-IV,CBI, New Delhi are the same and similar in the Disciplinary Proceedings initiated against him vide Memorandum No. C-14011/26/2001-V&L dated 23.12.2009 communicated vide Letter No.CCIT/Vig./2009-10/708 dated 04.01.2010 involving completed question of fact and law, the witnesses and documents based on which the Respondents seek to substantiate the allegations are also same. According to the Applicant the nature of charge in criminal case is grave and complicated question of fact and law are involved and as such, disclosure of his defence in departmental proceedings (conclusion of which would be based on the basis of preponderance of probability) prior to culmination of the CBI Case which would strictly be based on evidence on record, would seriously jeopardize his interest in defending his case in criminal case. Further stand of the Applicant is that charges in disciplinary proceedings cannot be segregated from the charges in CBI case. To buttress his claim, Learned Counsel for the Applicant has placed reliance on the DOP&T instruction dated 1st April, 2007 providing that where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court quoted in the aforesaid instruction. This was vehemently opposed by Mr. Mishra, Learned Additional

Standing Counsel appearing for the Respondents. Learned ASC raised the question of maintainability of this OA; as the applicant has approached this Tribunal without availing the opportunity available to him by way of making representation to his authority at the first instance. Second stand of the ASC is that merely because the charges and the witnesses/documents are same and similar in both the cases, cannot be a valid and justifiable ground to quash the disciplinary proceedings. The third contention of the ASC is that since the charges levelled against the applicant are very serious in nature, this Tribunal should not interfere in the matter at this stage. Accordingly, Learned ASC opposed the contentions raised by the applicant in support of his prayer made in this OA.

ii. Be that as it may, I find the contention of the Learned ASC is supported by the provision of Section 20 of the A.T. Act, 1985 in which it has been provided that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant Service Rules as to redressal of grievance. In view of the above, I am not inclined to admit this OA and proposing to place the matter before the Bench consisting of two Members but Learned Counsel appearing for the Applicant submitted that he will be satisfied if this Original Application is disposed of at this stage with liberty to the Applicant to make representation and the same shall be considered and disposed of by the Respondents within a stipulated period. No objection was put forward by Learned ASC appearing for the Respondents to the above suggestion of Learned Counsel for the Applicant.

iii. In view of the above, without expressing any opinion on the merit of the matter, this Original Application is disposed of at this admission stage with liberty to the Applicant to put up his grievance through

representation (taking all the points raised in this OA in support of his prayer) within a period of 15 (fifteen) days before the Respondent No.1/Disciplinary Authority. If such a representation is made within the above time frame, the Respondent No.1/Disciplinary Authority is hereby directed to consider the same with reference to the DOP&T instructions available on the subject and the points raised in this OA and pass a reasoned order with intimation to the applicant within a period of 45 (forty five) days from the date of receipt of such representation. Till a decision is taken and communicated to the Applicant, as directed above, the disciplinary proceedings, in question, including enquiry shall be kept in abeyance.

iv. Copies of this order, along with copies of the OA & MA be sent to the Respondents, for compliance, by post, at the cost of the Applicant; for which Learned Counsel for the Applicant undertakes to furnish/file the postal requisite, in the Registry, within seven days hence.


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