

(1998) 10 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 13393 of 1998

State of Orissa and Another

APPELLANT

Vs

Orissa Administrative Tribunal, Bhubaneswar Bench and
Another

RESPONDENT

Date of Decision : 28-10-1998

Acts Referred:

Citation : (1999) 87 CLT 79

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.P. Misra, Addl. Govt, for the Appellant; Manoj Mishra, P.K. Das, S.K. Pradhan and L. Mishra, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Order passed by Orissa Administrative Tribunal (in short, the "Tribunal") quashing the order of suspension in passed in respect of opposite party No. 2 is the subject matter of challenge in this writ application.

2. A brief reference to the factual aspects would suffice. Originally a proceeding was initiated against opposite party No. 2 in which he has submitted his explanation. Subsequently another disciplinary proceeding was contemplated to be started and at that point of time order of suspension was passed. Challenging the order of suspension opposite party No. 2 filed Original Application No. 920 of 1998 which was taken up for admission on 18-6-1998. It was indicated in the order of the said date that the question of interim prayer for stay of operation of the order of suspension vide Annexure-14 to the Original Application shall be considered after service of notice on the Respondents. It was clearly indicated that the Respondents while making statement in the reply shall indicate the circumstances under which the headquarters of the applicant had been fixed at Koraput before his joining at Koraput. The matter was listed on 2-7-1998, and the learned Standing Counsel for Respondents wanted two weeks" time to file the reply. The matter was directed to be listed in the last week of July, 1998. The

matter was taken up on 31-7-1998 and finally on 4-9-1998 the impugned order Vide Annexure-I to the writ application was passed.

3. It is the stand of learned Counsel for State that under very unusual circumstances the impugned order has been passed. A prayer was made for grant of time, but the same was not accepted on the ground that the Respondents in the Original Application had availed sufficient time. It has been indicated in the order as follows:

When the order of suspension is impugned by the applicant on the ground of arbitrariness and oblique motive, having got sufficient time at their disposal the Respondents should have informed the Tribunal about the material on the basis of which they took the extreme step of placing him under suspension in contemplation of a proceeding...

4. Certain observations of the Tribunal have been assailed by the Respondents on the ground that they are contradictory to the settled position in law. The Tribunal has observed that when admittedly the applicant was proceeded against for a high degree of negligence, the Respondents could have placed him under suspension in the said proceeding. But having not chosen to do so, the subsequent order placing him under suspension without adequate justification is not tenable. The Tribunal was considering the question whether there was any necessity for placing the delinquent officer under suspension. Even if in an earlier proceeding the delinquent officer has not been placed under suspension, he can nevertheless be placed under suspension in the subsequent proceeding.

5. "Suspension" according to Oxford Dictionary means:

the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time from a function of privilege; temporary deprivation of ones office or position.

Suspension is an executive action whereby a Government servant is kept out of duty temporarily pending action being taken against him for acts of indiscipline, delinquency, misdemeanour etc. When allegations of serious nature are received against a Government servant and it is decided to initiate enquiries into such allegations, disciplinary proceedings must be considered to have been started against him and pending such an enquiry the officer concerned can be suspended as a first step even before any charges are framed against him.

Suspension pending departmental enquiry is a safeguard against the Government servant interfering with and hampering the preliminary investigation and tampering with material evidence-oral and documentary. An order of suspension of a Government servant does not put an end to his service under the Government.

6. Be that as it may, we find that the State was not granted adequate time for placing materials in support of its stand. In the circumstances, we set aside the impugned order vide Annexure-1 and remit the matter back to the Tribunal for

fresh hearing. We direct the parties to appear before the Tribunal on 12-11-1998 without any further notice. By that time, counter affidavit if any shall be filed by the State in the original application before the Tribunal and copy thereof shall be served on the learned Counsel for the applicant before the Tribunal. The matter shall be reconsidered by the Tribunal. If a prayer for early disposal is made, same shall be considered on its proper perspective by it.

7. The application is allowed to the extent indicated. Copies of the order be given to learned Counsel for State and opp. parties.

P. C. Naik, J.

I agree.

Application allowed.