

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.  
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Date of Decision: 20.08.92.

OA 1007/92

ALIT SINGH

... APPLICANT.

VS.

DELHI ADMIN. & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI S.C. JAIN.

For the Respondents ... SHRI RAVINDRA DAYAL.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporters or not ?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)).

The applicant was last posted as Kanungo in Land & Building Department of Delhi Administration and has been put under suspension by the impugned order dated 12.8.91 (Annexure A-1). This order appears to have been passed under Sub Rule 1 of Rule 10 of the CCS (CCA) Rules, 1965. By virtue of Rule 134 of the Delhi Land Revenue Rules, 1962, the provisions which are not expressly made in those Rules will be supplemented by CCS (CCA) Rules, 1965. This application has been filed by the applicant on 8.4.92.

On this application, the notice were issued to the respondents on admission. The respondents have

contested this application and filed their reply and the applicant has also filed rejoinder to meet the averments made in the counter. Since the pleadings are complete, with the consent of the parties the matter has been taken for final disposal at the admission stage itself.

The case of the applicant is that he was initially appointed as Patwari on 16.11.62 and in 1981 he was promoted to the next promotional post of Kanungo. He has been transferred to the Land and Building side of the Delhi Administration on 3.12.90. The learned counsel for the applicant has assailed this order of suspension on the ground that it has been passed by the authority, which is not competent to appoint him on the date of suspension; that it is in contemplation of a departmental inquiry but the same has not yet commenced; that in the reply filed by the respondents a plea has been taken that in view of pendency of a criminal case against the applicant he has been put under suspension.

The respondents contested the application and in the reply stated that DCO is a Cadre Controlling Authority of the applicant and is governed by Delhi Revenue Rules of 1962 where Rule 268 provides for imposing punishment on such employees appointed under

the provisions of Rule 14 read with Rule 84 of the said Revenue Rules. It is further stated that the applicant was involved in a corruption case by the Anti Corruption Branch and the charge-sheet when prepared shall be filed in the court of law. It is further stated that Land and Building Department is an organ of Delhi Administration and the applicant who is an employee of the Delhi Administration was transferred in the capacity of Kanungo who work in that unit and by this the Appointing Authority of the applicant is not changed.

I have heard the learned counsel for the applicant and have gone through the records of the case. It is a fact that the respondents have taken a contradictory stand while passing an order under Rule 10(1) of the CCS (CCA) Rules, 1965 and in their reply to the OA. The impugned order of suspension has been passed in contemplation of the disciplinary proceedings against him. As is envisaged in Sub Clause "a" of Sub Rule 1 of Rule 10 of CCS (CCA) Rules, 1965, while the counter discloses then the suspension order is under Sub Rule "b" of Sub Rule 1 of Rule 10 of the CCS (CCA) Rules, 1965. However, in the suspension order itself Sub Rule 1(a) has not been mentioned, only Sub Rule 1 is mentioned.

As regards competency of the Appointing Authority, the learned counsel for the applicant has

referred to the definition clause under Rule 2 of the CCS (CCA) Rules, 1965 and to Sub Clause "a" of Rule 2 inter-alia mentioned the Appointing Authority in relation to a Government servant. The applicant undoubtedly has been appointed under Delhi Rules of 1962 and DCO is the Appointing Authority, what is highlighted and stressed by the learned counsel for the applicant is that the moment the applicant is transferred to Land and Building Section then the Secretary of that Section is the Appointing Authority and not the original Cadre Controlling Authority i.e. DCO. I am not prepared to accept this contention as on the face of it that the applicant was only transferred by the Competent Authority in the same capacity with the same service conditions with which he bound.

The learned counsel, in the course of the arguments, has referred to the case of State of Haryana Vs. Bhajan Lal (AIR 1992 SC 37). But this authority relates to quashing of certain disciplinary action against the applicant and has come before the Hon'ble Supreme Court on an appeal having been allowed by the Bench of Haryana High Court on respondent Bhajan Lal in that case. In the present case, the question is of suspension. The Government has inherent right to take work or to suspend taking of the work from the employee by virtue of some stigma attached to him in the discharge of his official duties. Suspension by itself

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is not a punishment. It is to put of duty till such time the applicant faces charges departmentally or in trial in a court of law so that he may not gain unfair advantage by the discharge of his official duties and he is kept away from the work, he was assigned.

The learned counsel for the applicant also referred to the case of A.N. Antuley vs. UOI (1988 SC 1550). A.N. Antuley's case is totally on the point of adhering to strict principles of law for decision and passing an order. The same is observed while passing the order in the present case.

The learned counsel for the applicant has been asked the query as to whether an appeal is provided under Rule 22 of CCS (CCA) Rules, 1965, that an appeal lies against an order of suspension passed under Rule 10. The learned counsel stated that 45 days period is provided and there is an instruction of the Government of India that unless grounds of the material is communicated to the applicant, no appeal lies. The period of appeal that is not the point in the issue of the present case. Section 20 & 21 of the Administrative Tribunals Act, 1985 clearly bars the entertainment of an application that is the admission itself 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". There is a full

11

Bench Decision of CAT on this very point reported in Full Bench Decision Volume-II Lehari Bros. 1991 addition page 250. B. Parmeshwara Rao Vs. Divisional Engineer where the Tribunal has held that Tribunal could not entertain an application before the expiry of six months period allowed for disposal of an appeal etc. against the order in respect of service matters. Secondly, where the statute itself provides starting points for limitation, normally no application shall be entertained before that period. In view of Rule 2 of CCS (CCA) Rules, 1965 it was incumbent on the applicant, when read with Rule 20 of the Administrative Tribunals Act, 1985 to prefer an appeal against the impugned order to the Appellate Authority. It is admitted in arguments also also that no such appeal has been preferred. The learned counsel argued that the applicant was on the verge of starvation and so he has directly come to assail that order before the Tribunal. I do not subscribe to that this idea of starvation. A substantial amount to sustain an employee during the suspension period is paid. Though the remuneration are lowered but they are not reduced to nil.

In view of the above facts, I held that the present application is premature and is not entertainable and so dismissed at the admission stage itself with a right to the applicant to prefer an appeal against the

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12

- 7 -

impugned order, within a period of one month from today and the respondents shall decide the appeal irrespective of the period of limitation provided therein on merits. If the applicant is still aggrieved he shall be free to come against that order within the period of limitation.

In the circumstances, parties to bear their own costs.

*J. P. Sharma*

( J.P. SHARMA )  
MEMBER (J)  
20.08.92