

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 20th day of February 2002

Original Application no. 741 of 2001.

Hon'ble Maj Gen K.K. Srivastava, Member (A).

Sri Prem Chandra, S/o Late Awadesh Chandra,
General Manager Government Opium & Alkaloid works,
Ghazipur.

... Applicant

By Adv : Sri S. Singh & Sri Pradeep Saxena

V E R S U S

1. Union of India through Secreatry,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
2. Under Secretary to the Govt. of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
3. Chief Controller, Government Opium and Alcaloid
Factories, Gwalior/ New Delhi.
4. Sri S.K. Goel, Chief Controller of Government
Opium and Alkaloid Factories,
Gwalior/New Delhi.

.... Respondents

By Adv : Km S. Srivastava & Sri Pradeep Saxena

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the A.T.
Act, 1985, the applicant has challenged the impugned
suspension order dated 24.5.2001 and has prayed that the

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impugned order dated 24.5.2001 be quashed and suitable direction be issued to the respondents not to appoint/transfer any other person at Ghazipur in his place till the disposal of present O.A.

2. The facts in short are that before joining Govt. Opium and Alkaloid Works Ghazipur the applicant was working as Factory Manager Govt. Medical Store, Bombay. In response to an advertisement dated 4.3.1989 by Union Public Service Commission (in short UPSC) for the recruitment of one post of Central Service Group 'A' of General Manager in the Govt. Opium and Alkaloid works Neemuch/Ghazipur, the applicant applied and was duly selected. He was relieved from his earlier assignment on 16.8.1991 and joined as General Manager Opium & Alkaloid Works Ghazipur on 27.8.1991. The Presidential order to this effect was issued on 7.10.1991 (Ann 4). Initially the applicant was on probation for one year. The probation period was further extended by one year and as per applicant he was deemed to be confirmed since August 1993. On 23.6.2000 one Sri Arun Tandon Additional Commissioner Central Excise, Hyderabad was posted vice him and the applicant was transferred to Chief Controller Office Gwalior. The applicant challenged the transfer order through OA no. 736 of 2000 before this Tribunal and since the transfer order dated 23.6.2000 of Sri Arun Tandon vice applicant was cancelled during pendency of OA it was rendered infructuous and it was dismissed by order dated 25.8.2000. However, the Tribunal awarded cost of Rs. 500/- to the applicant. The applicant ^{he} filed a detailed ~~& detailed~~ representation ^{he} on 29.6.2000 with prayer to cancel the order dated 23.6.2000

transferring him to C.C.F. Office Gwalior. The order dated 23.6.2000 was cancelled as the applicant filed OA 736 of 2000. Unhappy with the action of the applicant in approaching Tribunal, the respondents with malafide intention have placed the applicant under suspension vide impugned order dated 24.5.2001 and have changed the Headquarter as CCF office Gwalior. The applicant on 29.5.2001 filed an application to change his Headquarter but respondents have not taken any action. Hence this OA. This has been resisted by the respondents by filing counter affidavit.

3. Heard Sri Saumitra Singh, learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents and perused records.

4. Sri Saumitra Singh, learned counsel for the applicant submitted that UPSC advertisement dated 4.3.1989 was for the post of General Manager in the Govt. Opium and Alkaloid Works Neemuch/Gwalior. The applicant applied for the same and was selected. Hence the applicant could not be transferred to any other place except Neemuch. Therefore, changing the Headquarter of the applicant from Ghazipur to Gwalior is absolutely unjustified and illegal. The applicant has alleged malafide against Sri S.K. Goel, respondent no. 4. Respondent no. 4 is an IRS Officer and the applicant a technocrat, Sri Goel tried to bring one Sri Arun Tandon, an IRS Officer in his place through order dated 23.6.2000. Applicant got relief by filing OA 736 of 2000 as the operation of order dated 23.6.2000 was stayed. Since the department cancelled the order dated 23.6.2000, the OA became infructuous. Still the Tribunal awarded cost of Rs. 500/- by order dated 25.8.2000. This infuriated respondent no. 4 and he has been instrumental in getting the applicant suspended and Headquarter

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shifted to Gwalior. Sri Samumitra Singh argued that this is further demonstrated by the fact that after the suspension of the applicant charge of General Manager should have been given to next senior Sri B.K. Sinha but one Sri S.K. Sinha another I.R.S. officer was broughtⁱⁿ. Sri S. Singh submitted that malafide intention is further proved by the fact that till the date of filing of OA i.e. 19.06.2001 the applicant has not been served with any notice or charge sheet. The entire action of the respondents is illegal, arbitrary and against the principles of natural justice. Applicant moved an application on 29.5.2001 to change his Headquarter from Gwalior to Ghazipur but no action has been taken by the respondents. Not only this Respondents refused to grant any leave to attend the court case at Ghazipur on 16.6.2001.

5. Sri S. Singh learned counsel for the applicant finally submitted that there was no requirement to shift the headquarter of the applicant from Ghazipur to Gwalior as the applicant had no occasion to influence the witness. As per the provisions contained in CCS (CCA) Rules 1965, change of headquarter can only be done by the competent authority. The order of suspension has been signed by Under Secretary to the Govt. of India whereas the status of the applicant is that of Deputy Secretary. Besides as per rules the headquarter of a suspended employee can be changed on two grounds only i.e. either on own request or in public interest. In the case of the applicant neither of the ^{two} conditions is satisfied. The respondents have not even reviewed the suspension order after 6 months as is required under law. The applicants suspension, which is based on the complaint of Smt. Saroj Srivastava, wife of the applicant that the applicant contracted

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another marriage, is unjustified and illegal. Complaint of Smt. Saroj Srivastava is frivolous. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in State of Karnataka & Ors Vs. T Venkataramanappa (1996) 6 SCC 455 in which the apex court has revoked the suspension allowing the departmental enquiry to continue in case of bigamy.

6. Contesting the claim of the applicant Km Sadhana Srivastava, learned counsel for the respondents submitted that though the applicant was selected for appointment as General Manager at Ghazipur but he is holding a transferable post with all India liability as per the advertisement (Para 6 Ann 2). The charge sheet has been served on 30.6.2001 and the allegation that the entire action of the respondents specially respondent no. 4 is malafide is not correct and borne on facts. Km Sadhana Srivastava, contended that there is no illegality, arbitrariness or violation of principles of natural justice in respondent's action. The applicant has been suspended on serious charge of bigamy, which is against service and conduct rules and punishable under section 494 of IPC.

7. Km. Sadhana Srivastava, further submitted that the request of the applicant for change of headquarter was considered by the competent authority as directed by this Tribunal but the same was not accepted. The applicant has joined at Gwalior.

8. Km. Sadhana Srivastava argued that the order dated 23.6.2000 posting one Sri Arun Tandon as General Manager at

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Ghazipur was cancelled on the specific request of Sri Arun Tandon. There is no link between the transfer order dated 23.6.2000 of Sri Arun Tandon and applicant's suspension order dated 24.5.2001. The Chief Controller of Govt. Opium and Alkaloid factories, New Delhi received a complaint dated 23.11.2000 from Smt. Saroj Srivastava wife of applicant alleging that the applicant had contracted second marriage with Miss Nalani while he has a living spouse. The matter was investigated and when it was established that prima facie case for violation of Rule 21 (2) is made out, the impugned suspension order dated 24.5.2001 was passed and also the charge sheet issued vide officer's Memo dated 27.6.2001.

9. Regarding malafide on the part of respondent no. 4, Miss Sadhana Srivastava submitted that a vague and bald allegation has been made out. She has relied upon the law laid down by Hon'ble Supreme Court in various judgments. In case of M. Shankar Narain Vs. State of Karnataka 1993 SCC (L&S) 122 it has been held that the inference of malafide must be based on factual matrix and such factual matrix cannot remain realm of insinuation, surmises or conjectures. In the present case requirement of the aforesaid condition to establish malafide are not satisfied. She has also relied upon the judgments of the apex court in Probodh Sagar Vs. Punjab Electricity Board (2000) SCC 630 and the judgment of Constitution Bench reported in 1974 SCC (L&S) 165. Learned counsel for the respondents also cited number of judgments of the Hon'ble Supreme Court in support of her argument.

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10. Miss Sadhana Srivastava, raised objection against Misc. Stay application no. 3155 of 2001 dated 16.7.2001 mainly on the ground that the applicant cannot press the application on the basis of affidavit filed by one Sri Mahendra Kumar alleging himself as Pairokar of the applicant who could not have the personal knowledge of official documents.

11. The learned counsel for the respondents finally submitted that the operation of order dated 8.2.2001 of District and Session Judge Ghazipur has been stayed by Hon'ble High Court of Allahabad in the revision no. 900/01 filed by Smt. Saroj Srivastava, wife of the applicant and therefore, the benefit of the order dated 8.2.2001 of District and Session Judge Ghazipur cannot accrue to the applicant. The suspension of the applicant is justified and legal. The departmental enquiry is bound to bring out the act of misconduct of applicant beyond doubt on the basis of entries in electoral roll (Ann SC A-7 & 8), Ration card application (AnnSCA 9) and ^{entries in} ~~entres~~ in the school register etc.

12. I have given due consideration to the submissions of the counsel for parties and have carefully perused the records. I have also considered ^{the} case law quoted by the applicant's counsel. There is force in the arguments of learned counsel for the respondents that Misc. Appl. no. 3155 of 2001 dated 16.7.2001 for stay of impugned order dated 24.5.2001 by means of which the applicant has been suspended ⁱⁿ ~~be rejected~~ and his headquarter has been changed from Ghazipur to Gwalior. The applicant should have filed affidavit himself. The affidavit filed by one Sri Mahendra Kumar alleging himself as Parokar of the applicant is liable to be ignored. The

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Misc. Appl. 3155/01 dated 16.7.2001 is rejected and the averments made by Sri Mahendra Kumar are ignored having no legal base.

13. The main question to be addressed are whether a case of malafide against the applicant is made out and also whether the action of the respondents in changing the headquarter is correct and according to law. The learned counsel ^{for the applicant} has failed to convince me that respondent no. 4 was interested to post as IRS officer at Ghazipur vice applicant. The allegation made against respondent no. 4 are vague and not sustainable in the eyes of law. No factual matrix of malafide against Sri S.K. Goel respondent no. 4 has been nargated. In the light of judgments of the apex court cited by the learned counsel for the respondents, the plea of the malafide is not tenable. I do not find that the action of the respondents in any way suffers from error of law. According to applicant's own pleading the dispute started between applicant and his wife Smt. Saroj Srivastava for contacting the marriage with Miss Nalni, Smt. Saroj ^{if the} Srivastava, lodged a complaint on 23.11.2000 and ^{case of} bigamy is proved the applicant cannot continue in service. Contacting a second marriage during the life time of living spouse is certainly a misconduct and the respondents are legally correct to enquire into the matterⁱⁿ. The competent authority has taken a decision to put the applicant under suspension and shift his headquarter from Ghazipur to Gwalior, in my opinion, is as per the extant rules and therefore, ^{in submission of} unassailable. The learned counsel for the applicant ⁱⁿ submission that the applicant has been acquitted by District

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and Sessions Judge Ghazipur and therefore cannot continue under suspension in the light of judgment of Hon'ble Supreme Court in State of Karnataka & Ors Vs. T Ventakramanappa (supra) has no force because the order of District and Sessions Judge Ghazipur dated 8.2.2001 has been stayed by Hon'ble High Court of Allahabad vide order dated 4.4.2001. It is a settled legal position that departmental action can continue independently of the criminal proceedings and therefore, the impugned order dated 24.5.2001 suspending the applicant has been issued. The impugned order dated 24.5.2001 does not suffer from any legal infirmity.

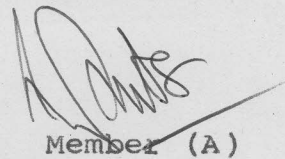
14. The next question before me to address is about change of headquarter of the applicant from Ghazipur to Gwalior. As per rules the respondents have powers to change the headquarter of a suspended official. Since the applicant has already shifted to Gwalior as informed by the learned counsel for the respondents this question loses its significance. The judgment of the Hon'ble Supreme Court cited by the learned counsel for the applicant will not be helpful in view of my observations. However, the ends of justice shall be better served if the disciplinary proceedings are concluded expeditiously.

15. In the facts and circumstances and aforesaid discussions, I do not find any good ground to intervene. The OA is devoid of merits and accordingly dismissed. However, in the interest of justice Secretary Ministry of Finance, Department of Revenue, North Block, New Delhi is directed to take steps to ensure that the disciplinary proceedings initiated against the applicant are concluded within six months from the date of communication of this order....10/- and is also directed to co-operate in finalisation of disciplinary

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months from the date of communication of this order.
The applicant is directed to co-operate in finalisation
of disciplinary proceedings.

16. There shall be no order as to costs.


Member (A)

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