

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 02nd day of September, 2004.

Original Application No. 217 of 2004 (U)

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Maj. Gen (Dr.) B.C. Roy, Additional Surveyor General
Survey of India, C-1, Hathi Barkala, Survey Estate,
Dehradun- 248001 (Uttaranchal).

.....Applicant

Counsel for the applicant :- Sri A.C. Tiwari
Sri Ashish Srivastava

V E R S U S

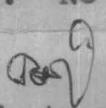
1. Union of India through Secretary, M/o Science and Technology, New Hehrauli Road, New Delhi-10016.
2. Surveyor General of India, Surveyor General's Office, Dehradun- 248001 (Uttaranchal).
3. Dr. Prithvish Nag, Surveyor General Of India, Surveyor General's Office, Dehradun-248001 (Uttranchal).
4. Secretary, M/o Defence, Govt. of India, New Delhi.

.....Respondents

Counsel for the respondents :- Sri Shyamal Narain
Sri Saumitra Singh

O R D E R

This O.A is directed against suspension order. When the matter came on 31.08.2004, it was adjourned due to illness slip of Sri Ashish Srivastava, learned counsel for the applicant though Sri Shyamal Narain, learned counsel for the respondents submitted that the impugned suspension order dated 27.02.2004 has been revoked on 30.06.2004. Today none has appeared for the applicant. I have no reason to doubt the statement made on behalf of the respondents that the suspension order has been revoked. In the facts and circumstances, the O.A seeking quashment of the order dated 27.02.2004 is dismissed as having rendered infructuous. No costs.


Vice-Chairman.

/Anand/

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.**

Allahabad, this the 17th day of March, 2004

QUORUM : HON. MR. JUSTICE S. R. SINGH, V.C.
HON. MR. D. R. TIWARI, A. M.

O.A. No.217 OF 2004

Maj Gen. (Dr.) B.C. Roy, Additional Surveyor General,
(Survey of India), C-1, Hathi Barkala, Survey Estate,
Dehradun-248001 (Uttaranchal).Applicant

Counsel for the applicant : Sri A.C. Tiwari/Ashish Srivastava

Versus

1. Union of India through Secretary, Ministry of Science and Technology, New Mehrauli Road, New Delhi-110016.
2. Surveyor General of India, Surveyor General's Office, Dehradun-248001 (Uttaranchal).
3. Dr. Prithvish Nag, Surveyor General of India, Surveyor General's Office, Dehradun-248001 (Uttaranchal).
4. Secretary, Ministry of Defence, Govt. of India, New Delhi.Respondents

Counsel for the respondents : Shri R.C. Joshi

ORDER

BY HON'BLE MR. D. R. TIWARI, MEMBER-A

By this O.A. filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the order dated 27.02.2004 (Annexure A-1) by which he has been put under suspension with consequential relief to discharge his duties as Additional Surveyor General of India at Dehradun.

2. By way of interim relief, he has prayed to stay the effect and operation of the order dated 27.02.2004 (Annexure A-1) and the respondent no.1 & 2 may be restrained

D. R. Tiwari

from interfering in his working as Additional Surveyor General (DMC) Dehradun as if no suspension order has ever been passed.

3. The facts, in brief, are that the applicant was working as Additional Surveyor General in Survey of India under the Department of Science and Technology, Government of India. He is governed by the "Survey of India (Group 'A' posts) Service Rules, 1989" (herein after called) the Rules 1989). The applicant is to superannuate on 30.06.2004. The applicant was transferred by order dated 26.12.2003 from Dehradun to Jabalpur which was stayed by this Tribunal on 30.12.2003.

4. The applicant has assailed the suspension order basically on three grounds. Firstly, he is a permanent commissioned officer and the Army rule would apply in his case. Secondly, he has attributed malicious attitude of respondent no.2 towards him and has impleaded him as a party in person. Lastly, the order of suspension has been passed by the incompetent authority.

5. We have heard the counsel for the parties. The learned counsel Sri Shyamal Narain, appearing for the respondents vehemently argued against the grant of interim relief and opposed the contention of the applicant about the validity of the suspension order. We have given our anxious consideration to rival contention raised during the hearing of the case at admission stage.

6. The first argument of the applicant is that he being a permanent commissioned officer of Army the military rules would apply in his case. He has averred in the O.A. that he is governed by the "Rules 1989". Annexure II of

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the "Rules 1989" deals with the conditions of service for Defence Officer and para 3 (Page 30) is as under:-

"An officer in Civil employment is not under the jurisdiction of the Chief of Army staff and so is not subject to any military authority. He himself is not entitled by virtue of his military rank to exercise any military authority in the army."

From the above, the claim of the applicant disappears. It is undisputed that the applicant is serving Survey of India and is in civil employment of the Government of India. In view of this, his contention that Military rule would apply cannot be countenanced.

The Second Contention of the applicant relates to the allegation of malice and malafide. The applicant, being a law abiding citizen and responsible senior most officer, taking the risk of the annoyance of the respondent nos.1,2,3, made certain complaints. He has exposed grave financial and administrative irregularities. He made complaints to the Cabinet Secretary by a letter dated 19.09.2003 with a copy to the C.V.C. and Director C.B.I. The complaint basically related to cases of corruption and blatant misuse of power. He also wrote to the Defence Secy. and Secretary, Science and Technology (Annexure A-VII). The Survey General of India has also sought the explanation from the applicant (Annexure A-VII). On the basis of all the complaints, the applicant, asserts that the respondents got annoyed and entertained malice towards him. Be that as it may, in the absence of reply statement from the respondents, it is not possible to agree with the contention of the applicant. It may not be out of place to mention that as far as malafides are concerned, it may be stated that in accordance with the settled principles of law, malafide should be specific with a proper foundation and against whom it is alleged, the person is to be identified. Mere averment of malafide would

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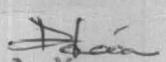
not be valid compliance. Hence his assertion of malafide is not tenable at this stage.

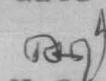
Lastly, he has assailed the order on the ground that order has not been passed by the competent authority. He contends that his appointing authority is the President of India and only he could put him under suspension. We are not impressed by this argument. The order has been passed under Rule 10(1)(a) read with proviso which is in order.

7. The only crucial question which falls for our consideration is that whether his prayer for stay of the suspension order dated 27.2.2004 be agreed to or not. It is the settled legal position that suspension is not the punishment but is only one forbidding or disabling an employee to discharge the duties of office or post held by him. The suspension is resorted to refrain the employee to avail further opportunity to perpetuate the alleged misconduct or to prevent an opportunity to the delinquent officer to obstruct the enquiry or the investigation. We are of the considered view that his prayer for stay of operation of suspension order is not liable to succeed. We are fortified in our opinion by the Apex Court's judgment in UP Rajya Krishi Utpadan Mandi Parishad & Others vs Sanjiv Ranjan 1994(1) SLJ SC 28 wherein it was held that court should not interfere with the orders of suspension unless they are passed malafide or without there being even a *prima facie* evidence on record connecting the employee with the misconduct.

8. In view of the discussion held in preceding paras, the prayer for interim relief is devoid of merit and is rejected.

List the O.A. on 17.5.04. Counter reply may be filed within four weeks and R.A. by the date fixed.


A.M.


V.C.

Asthana/