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THE CENTRAL ADMINISTRATIVE OFFICER
ALLAHABAD BENCH ALLAHABAD

Original Application No.675 of 1993

Jagat Prasad Applicant

versus

Union of India and others Respondents
-:-

HON'BLE MR MAHARAJDIN, MEMBER(J)
HON'BLE MISS USHA SEN, MEMBER(A)

(By Hon'ble Mr Maharajdin, Member-J)

This application has been filed under Sec.19 of the Administrative Tribunal Act challenging the validity and legality of order dated 15-01-93, 24-02-1993 & 26-02-93 refusing the right to appoint a Defence Assistant to the choice of the applicant.

The applicant is working as Slinger in Field Gun Factory, Kanpur. He was placed under suspension vide order dated 18-07-92. The applicant was served with the charge-sheet dated 28-07-92 (Annexure A-4) and he submitted the reply to the Enquiry Officer. The applicant vide application dated 29-12-1992 informed the Enquiry Officer two names of the Government Servants posted at Jabalpur for being permitted to act as his Defence Assistant. The Enquiry Officer rejected the names of the said employees on the ground that they are posted at a distant place, so delay would be caused in the enquiry proceedings as they would not be able to appear frequently to participate in the enquiry proceeding and the applicant was advised to engage a Defence Assistant locally posted at Kanpur. The applicant however submitted the name of local Defence Assistant, but the Enquiry Officer refused to accept the request. Therefore, the applicant has approached this Tribunal during the course

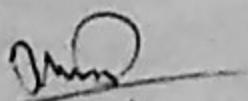
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of enquiry proceedings to quash the order of the Enquiry Officer about providing the Defence Assistant to him and direction be issued to the Enquiry Officer/Disciplinary Authority to permit the applicant to engage a Defence Assistant locally.

We have heard the learned counsel for the parties and perused the record.

The Enquiry Officer at the very outset proceeding with the enquiry afforded an opportunity to the applicant to engage the Defence Assistant if he likes. As referred to above the applicant proposed the name of two persons who ^{were} ~~was~~ stationed at Jabalpur for being engaged as Defence Assistant. The enquiry Officer rejected both the two names as they were posted at a distant place and conveniently ^{could} ~~cannot~~ be able to attend the enquiry proceedings frequently, with the result he was apprehending that the delay in the proceedings would be caused. It has been suggested that the applicant should engage a Defence Assistant from Kanpur itself. The applicant though had given the name of Defence Assistant who was posted locally at Kanpur, but by that time it is said that the enquiry proceedings were at an advance stage. So in these circumstances the Enquiry Officer rejected the request of the applicant to proceed the enquiry de-novo. Moreover, the Court cannot interfere in the inter locutory order passed by the Enquiry Officer/Disciplinary Authority and if any irregularity or illegality is done in conducting the enquiry, the same can be challenged before the court of law after final decision of the disciplinary proceeding. So the application of the applicant is pre-mature and we do not feel it just and proper to interfere in the enquiry



proceedings till the disciplinary proceedings are finalised. The learned counsel for the applicant has cited the order passed in O.A. No. 1669/92 decided on 18-12-1992 by this Bench of Allahabad Tribunal in which it has been observed that the respondents may consider the request of the applicant for providing the Defence Assistant for whom there is no difficulty and let them do so. Such observations made in the O.A. is ignored in the light of the pronouncements made by the Hon'ble Supreme Court in a case reported in Judgment Today - 1992(2)16 Supreme Court - 532 : Union of India and others versus A.N. Saxena in which it was held that :

".....If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrong-doer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated March 13, 1989 shall be proceeded with according to law."

In the light of the discussions made above we dispose of and dismiss the application of the applicant at admission stage.

Ushak

MEMBER-Administrative

Dhruv

MEMBER-Judicial

Dated: Allahabad, December 15, 1993.
(VKS PS)
