

Open Court.

In the Central Administrative Tribunal,
Allahabad Bench, Allahabad.

....

Original Application No. 1136 of 1999.

this the 18th day of May'2001.

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. Rafiq Uddin, Member (J)

Mohd. Nazeer, Monument Attendant, S/o Mohd. Jameer, C/o
Sri Munna Khan, 28/32 Pakki Sarai Tajganj, Agra.

Applicant.

By Advocate : Sri Arwind Kumar.

Versus.

Union of India through the Secretary, Ministry of Human
Resources Development, Department of Culture, Government
of India, New Delhi.

2. Superintending Archaeologist, Archaeological Survey
of India, Agra Circle, 22 Mall Road, Agra.

3. Sri D.V. Sharma, Superintending Archaeologist, Ar-chaeolo-
gical Survey of India, Agra Circle, Agra.

Respondents.

By Advocate : Sri Manoj Kumar.

O R D E R (ORAL)

S. DAYAL, MEMBER (A)

This application has been filed for a direction
to the respondents to bring-up the records of the case and
get the order dated 23.8.99 passed by the respondent no.3
be quashed. A further direction has also been sought to
permit the applicant to resume his duty as Monument Attendant
w.e.f. 29.6.1999 and pay him wages in accordance with law
from that date.



2. The case of the applicant is that he is working as Monument Attendant, Archaeological Survey of India, Agra Circle Agra. The applicant was bitten by dog and went on medical leave w.e.f. 31.1.99 and also went to his home town and thereafter he fell seriously ill. After he became fit, he was issued a medical certificate by Chief Medical Officer, G.M.H., Rewa, declaring fit w.e.f. 29.6.99. He submitted a letter enclosing the fitness certificate, but the Superintending Archaeologist issued a letter on 29.6.1999 itself doubting the genuineness of the medical certificate and asking for various prescriptions of the Hospital. The applicant was issued a memorandum dated 13.7.1999 to explain why he remained on leave on various occasions from 1993 to 1999. The applicant was treated as absent till 13.7.1999 when the memorandum was issued. In response to the memorandum, the applicant wrote a letter ^{dt. 14.7.99} to the respondent no.3 seeking permission to resume his duty as Monument Attendant. On 28.7.1999 another office memorandum was issued that he will not be permitted to resume duty till he submits the vouchers and other documents of the Hospital. The applicant claims that he left Agra on 15.1.99 after taking station leave permission from the competent authority. The applicant claims that the respondent no.3 is adopting a vindictive attitude because the applicant is a member of Archaeological Survey Mazdoor Union and is holding a 'Dharna' against him for his unfair labour practices. On 30.7.1999 another office memorandum was issued in which several other allegations were made against the applicant. The applicant wrote a letter on 9.8.1999 seeking wages from 29.6.1999. He also sent an explanation to office memorandum dated 30.7.99 on 14.8.99. The applicant received a letter on 23.8.1999 appointing the Enquiry Officer (E.O. in short) to enquire into the charges framed against the applicant. It is alleged that the said order has been passed without issuing any chargesheet as per Rule 14 of CCS (Conduct) Rules, 1965. The applicant claims that till date neither

he ^{has been} suspended nor any chargesheet was issued against him, but still he was not allowed to resume his duties.

3. We have heard the arguments of Sri Arvind Kumar, learned counsel for the applicant and Sri Manoj Kumar, learned counsel for the respondents.

4. We find from the office memorandum dated 29.6.1999 that the applicant was informed that his joining report dated 29.6.99 cannot be accepted till he submits the documents in support of genuineness of his medical treatment. On 13.7.1999 another office memorandum was issued in which it has been stated that the applicant was called-upon by the Superintending Archaeologist and was advised him to improve his habit particularly of wilful absence from duty and non-devotion to duty. It is also mentioned in the office memorandum dated 13.7.99 that the applicant is in habit of availing frequent leave ^{and had availed leave} on various dates in the year 1993, 1995, 1996, 1997, 1998 and ^{by} from 15.1.99, and he was asked to submit his explanation. The applicant was asked to supply for certain documents by memorandum dated 20.7.99. The applicant was given another office memorandum dated 30.7.1999 in which a number of allegations were made against him.

5. ^{find that it} We ^{is} clear from the documents on record that the applicant was not allowed to join his duty after submission of his fitness certificate. The letter dated 29.6.1999 (Annexure-2 to the O.A.) makes it clear that the applicant was prevented from joining his duty. The applicant has filed this O.A. on 22.9.1999 and on 14.10.99 and interim order was passed directing the respondents to allow the applicant to perform the duty henceforth and treat him on duty from the date he submitted his fitness certificate. The learned counsel for the respondents is unable to show any order passed after the interim order was served upon the respondents. The Reply given in Counter

affidavit in para 17 reveals that the respondents were more interested in seeking vacation of the interim order without complying with the directions given in this interim order. There appears to be pre-determined attempt by the respondent no.3 of preventing the applicant from joining his duty after he served the interim order.

6. There is another allegation made by the applicant in the O.A. that the E.O. was appointed to initiate into the charges framed against him without issuance of any chargesheet. The reply given in the Counter affidavit filed by the respondents is that the chargesheet had already been served in the form of office memorandum issued to the applicant. It is also mentioned that various office memorandums amounted to preliminary chargesheet and final chargesheet has been served on the applicant on 12.11.99. Thus, the fact of issuance of order of appointment of the E.O. before issuance of the chargesheet also suggests that the respondent no.3 has proceeded in a manner which is not sanctioned by the CCS (CCA) Rules. The learned counsel for the respondents has urged that if issuance of appointment of the E.O. before framing of the charges does not cause any prejudice to the employee due to breach of Rules, disciplinary proceedings and the conclusion thereon should not be quashed. The facts of the case of Karnataka Electricity Board. Vs. T.S. Venkatarangaiah (1992 (6) SLR 155) show the circumstances of the case where no such prejudice had been caused to the employee due to breach of rule. However, the circumstances of that case were that the employee filed a written statement and an enquiry was held in which the employee participated and raised no objection to the procedure adopted. The facts of the case before us are totally different.

7. The learned counsel for the respondents has also cited the decision in the case of A.S. Sethi Vs. Union of India & Others (AIR 1968 Delhi 26). The facts of this case are also different from the facts of the present case as

the appointment of Enquiry officer in that case was for the purposes for preliminary enquiry, but in the case before us, Enquiry officer was appointed under Rule 14(2) of CCS(CCA) Rules and it is clear that the case does not pertain to preliminary enquiry.

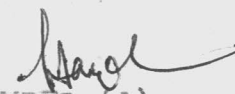
8. The fact of issuance of number of show-cause notices dated 29.6.99, 13.7.99, 20.7.99 and 30.7.99 cannot be taken as issuance of chargesheet. It is admitted before us that the chargesheet was served on the applicant only on 12.11.1999. We are not in doubt that the proceedings on the part of the respondent no.3 against the applicant were biased.

9. In the facts and circumstances of the case, we considered it appropriate to direct the Director General, Archaeological Survey of India, New Delhi to ensure that the applicant is allowed to join his duty immediately, incase he reports to Conservation Assistant, ^{Munad-ud-daula, A} Archaeological Survey of India, Agra within a period of two weeks from the date of receipt of copy of this order. The respondents are also directed to make payment of the wages from the date of submission of fitness certificate dated 29.6.99 within a period of two months from the date of communication of this order. The respondents may proceed with the enquiry against the applicant on the basis of the chargesheet dated 12.11.1999 in accordance with rules after giving the applicant two weeks time to file his reply thereto. However, the disciplinary authority shall be a person other than the respondent no.3. Thereafter, the disciplinary authority may appoint Enquiry officer incase the enquiry is considered necessary.

10. The O.A. stands disposed of as above with no order as to costs.


MEMBER (J)

GIRISH/-


MEMBER (A)