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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 26th day of May, 2000.

Original Application No. 408 of 2000.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member
Hon'ble Mr. M.P. Singh, Administrative Member

Kesheo Prasad Dubey son of Sri A.N. Dubey,
Divisional Forest Officer/Deputy Conservator
of Forests, Obra Forest Division, Obra,
District Sonbhadra.

.....Applicant

C/A Sri Arun Tondon, Sri S.K. Mishra
Versus

Versus

1. Union of India through Secretary
Environment and Forests, New Delhi.
2. State of Uttar Pradesh through
Principal Secretary Forests, Lucknow.
3. Principal Chief Conservator of Forests
U.P. Lucknow.

.....Respondents

C/R Sri K.P. Singh

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O R D E R

By Hon'ble Mr. M.P. Singh, A.M.

This application has been filed against the order dated 11.4.2000 passed by the respondent no. 2 placing the applicant under suspension.

2. The brief facts of the case are that the applicant was appointed as a member of Indian Forest Service on 6.7.1987. He completed his training at Indira Gandhi National Academy, Deharadun and was placed on probation for the period from April 1989 to May 1990. Thereafter, he worked in various capacities such as DCF/Deputy Director of Forest, Divisional Forest Officer etc upto June, 1997. He was appointed as Divisional Forest Officer Obra District Sonbhadra in 1997. The work and performance of the applicant since his initial appointment has been highly satisfactory. He has been awarded a special appreciation letter by the Principal Chief Conservator of forest with reference to his work done by him under the World Bank Super-visory U.P. Forestry Project. During his entire service not even a single adverse entry/remark/warning has

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been communicated to the applicant nor any disciplinary proceedings have been initiated against him.

3. It is stated that the applicant has been placed under suspension by an order dated 11.4.2000 issued by the Principal Secretary Forest U.P. Shashan, Lucknow. The impugned order has been passed in exercise of powers under Rule 3(1) (a) of All India Services (Discipline and Appeal) Rules 1969. According to the applicant, an order of suspension under Rule 3(1) (a) can only be passed after Articles of charges have been drawn and the nature of charges so drawn is such that the Government deem it necessary or desirable to place the member of service under suspension. In the present case no articles of charge have been drawn against the applicant. Consequently the State Government cannot be said to have arrived at reasonable decision to place the applicant under suspension in ^{the} absence of articles of charges. In view of the aforesaid factual position the impugned order of suspension is patently illegal and contrary to requirements of Rule 3(1) of All India Services (Discipline and Appeal) Rules 1969. Aggrieved by this, the applicant has filed this original application seeking following reliefs.

i) issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order of suspension dated 11.4.2000 issued under the signatures of the respondent no. 2.

ii) issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the working of the applicant as Divisional Forest Officer, Obra, District Sonbhadra in pursuance of the

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impugned order of suspension dated 11.4.2000 in any manner whatsoever.

iii) issue any other suitable writ, order or direction which this Hon'ble court/Tribunal may deem fit and proper in the facts and circumstances of the case.

iv) award costs of the petition in favour of the applicant.

4. The respondents in the reply have mentioned that there were complaints against the applicant about illicit mining in his jurisdiction, lack of proper command, control and supervision to the subordinate staff, non payment of the wages at the rate sanctioned by the Government, and non payment of bonus. The allegations were inquired by the conservator of forests, Vindhya circle and the applicant was given opportunity to explain his conduct. The applicant's laxity of control and supervision over the subordinate staff resulted into illicit felling of trees. The applicant was warned by the respondent no. 3 for not performing his duties with alertness and devotion and advised to improve his work vide letter dated 25.9.98. During the surprise checking of the Chopan Barrier on 23.3.99 the conservator of Forests, Vindhya Circle found that three unauthorised young man were collecting illegal/unauthorised money from trucks carrying forest produce. The explanation given by the concerned

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subordinate staff was utterly unsatisfactory, even then the applicant failed to take suitable action against them even after a lapse of ten months.

5. The allegation made against the applicant were inquired by the Chief Conservator of Forest Eastern Zone Allahabad through conservator of Forests, Vindhya circle, Mirzapur and after due inquiry the charges were Prima facie established. The report was sent to the Govt. for necessary action. After going into the report, the charges were established against the applicant. He was, therefore, suspended vide order dated 11.4.2000 issued by respondent no. 2. As per Rule 3 of All India Service (Discipline and Appeal) Rules 1969, if State Govt. is satisfied that it is necessary or desirable to place under suspension a member of service, against whom disciplinary proceedings are contemplated or are pending, the Govt. may pass an order placing him under suspension. The order of suspension made under this Rule which has not been extended will be valid for a period not exceeding 90 days and an order of suspension which has been extended will remain valid for a period not exceeding 180 days, at a time, unless revoked earlier. According to them the suspension order is in contemplation with the departmental proceedings. The applicant will be served charge sheet in due course of time. It is very important to mention here that the applicant has not exhausted the remedy available to him under All India Services (Discipline and Appeal) Rules 1969. As such the present Original Application is premature and liable to be dismissed on this ground alone.

6. Heard Shri S.C. Budhwar learned counsel for the applicant and Shri K.P. Singh learned counsel for the respondents and perused the record.

7. During the course of arguments the learned counsel for the applicant draw our attention to the judgement of the Apex court AIR (1994) SC 2296 in the case of State of Orissa Versus Bimal Kumar Mohanty. In this case the Hon'ble Supreme Court has observed as follows:-

"It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or

defalcation of funds of serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee."

8. In this case the preliminary inquiry has been conducted by the disciplinary authority before taking the decision to place the applicant under suspension. It is true that no charge sheet has been issued to the applicant before he is placed under suspension. According to the respondents the allegations made against the applicant were inquired and it was only after the charges were Prima-facie established that he was placed under suspension. It is stated by them that the disciplinary proceedings are contemplated and the charge sheet will be served on him shortly. The Hon'ble Supreme Court in Civil Appeal No. 2338 of 1968 in the case of Govt. of India Versus T.N. Ghosh vide judgement dated 12.2.71 has observed that :-

"In substance disciplinary proceedings can be said to be started against an officer when complaints about his integrity or honesty are entertained and followed by a preliminary enquiry into them culminating in the satisfaction of the Government that a prima facie case has been made out against him for the framing of charges. When the order of suspension itself shows that Government was of the view that such a prima facie case for departmental proceedings has been made out the fact that the order also mentioned that such proceedings were contemplated makes no difference. Again the fact that in other rules of service an order of suspension may be made when "disciplinary proceedings were contemplated" should not lead us to take the view that a member of an All India Service should be dealt with differently. The reputation of an officer is equally valuable no matter whether he belongs to the All India Service or to one of a humbler cadre. It is the exigency of the condition of service which requires or calls for an order of suspension and there can be no difference in regard to

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this matter as between a member of an All India Service and a member of a State Service or a Railway Service."

9. From the records placed before us by the respondent no. 2 we are satisfied that the preliminary inquiry has been conducted by the respondent no. 2 before arriving at a decision to place the applicant under suspension. The charges against the applicant are of very grave nature, involving integrity of the applicant. It has been stated by the respondents that the applicant has not exhausted the remedy available to him under AIS (Discipline and Appeal) Rules, 1969. In this case the order of suspension has been passed on 11.04.2000 and the applicant has challenged that order in the Tribunal on 17.4.2000. It is obvious that the applicant has not submitted any appeal against the order and has thus not exhausted all the remedies available to him in the Department.

10. In view of the above, we do not find any merit in the case and the OA is, therefore, dismissed accordingly at the admission stage.

11. There shall be no order as to costs.

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Member-A

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Member-J

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