

(22)

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1244 of 2002

Thursday, this the 30th day of July, 2009

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

Pharendar Rai Son of Late Mahatim Rai Quarter No. 11, A.G. (Air Force), Varanasi Cantt.

Applicant

By Advocate: Sri M.M. Sahai

Vs.

1. Union of India Through Secretary, Ministry of Defence, New Delhi.
2. The Command Works Engineer, Allahabad.
3. The Assistant Garrison Engineer, Office of the AGE (MES) Varanasi.

Respondents

By Advocate: Sri R.C. Shukla

ORDER

By Hon'ble Mr. Ashok S. Karamadi, J.M.

In the present case, grievance of the applicant is that the respondents have issued a show cause notice to the applicant dated 20.08.2002, received by the applicant on 02.09.2002, calling upon him to file a reply for the said show cause notice within 15 days. The respondents have passed the order on 17.09.2002, which is impugned in this O.A., claiming that as the applicant has not filed any reply to the show cause notice within 15 days, his promotion order has been withdrawn w.e.f. 17.09.2002. Learned counsel for the applicant submits that after

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receipt of show cause notice by the applicant, he has submitted his reply on 12.09.2002, and there is endorsement made on his reply (annexure A-5/page 19), wherein stamp of the department along with initial dated 12.09.2002 is seen. Learned counsel for the applicant further submits that even though the applicant has submitted reply to the show cause notice, the respondents' authority proceeded to pass the impugned order, therefore, act of the respondents is illegal.

2. Learned counsel for the respondents submits that the competent authority in the respondents' department passed the Order in accordance with law as there is no reply on behalf of the applicant before the authority concerned within the stipulated time, therefore, he has passed the impugned order in just and proper manner. Hence, they sought for dismissal of the O.A.

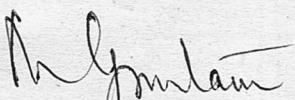
3. Having regard to the aforementioned facts, we are of the opinion that since the applicant has received a show cause notice and submitted his reply on 12.09.2002, if that being so, the order impugned in the present O.A. is exparte one as the contents taken by the applicant in his reply dated 12.09.2002, while deciding his case, has not been considered, which caused prejudice to the applicant. As the order dated 17.09.2002, passed by the respondents' authority, is non-speaking order and without considering the reply dated 12.09.2002, submitted by the applicant, same is liable to be set aside. Accordingly the order dated 17.09.2002 is set aside. The matter is remitted back to the competent authority in the respondents' establishment to take



24

afresh decision in accordance with law after considering the reply dated 12.09.2002 submitted by the applicant, within a period of two months from the date of receipt of a copy of this order.

4. With the above directions, O.A. stands allowed. No order as to costs.



(Manjulika Gautam)
Member-A



[Ashok S. Karamadi]
Member-J

/M.M/