

OPEN COURT

**Central Administrative Tribunal Allahabad Bench
Allahabad.**

ALLAHABAD THIS THE 10TH DAY OF DECEMBER, 2008.

1. ORIGINAL APPLICATION NO. 1258 OF 2006

Present:

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mrs. Manjulika Gautam, Member (A)

Laeq Ali Khan, S/o Late Mohd. Ishaq Khan, aged about 49 years, R/o 164, Tareak Tikaree, Shahjahanpur, U.P. Under working in Accounts Office, OCP, Shahjahanpur.

.....Applicant in O.A. NO.1258/06

By Advocate: Shri R.C. Pathak

Versus

1. Union of India through the Defence Secretary, Ministry of Defence, Government of India, South Block, D.H.Q. P.Q., New Delhi-110011.
2. The Controller General, Defence Accounts (C.G.D.A.) sector I West Block-5, R.K. Puram, New Delhi.
3. The Principal Controller Accounts (Factories), P.C. of A- (Pys) 10-A, Auckland Road, Kolkata (West Bengal).
4. The Principal Controller, Accounts Pension (P.C.D.A) (P) Draupati Ghat, Allahabad.
5. The Joint Controller Finance Accounts O.C.F.A Office of I/C O.C.F., Shahjahanpur.
6. The Incharge Accounts Officer Ordnance Clothing Factories Shahjahanpur (U.P).
7. Shri Rajendra Mohan, Inquiry Officer, B-177, Hill View Apartment Basant Bihar, New Delhi-57

.....Respondents in O.A NO. 1258/06

By Advocate: Shri S.Srivastava

ALONGWITH

2. ORIGINAL APPLICATION NO. 1249 OF 2008.

Laeq Ali Khan, S/o Late Mohd. Ishaq Khan, aged about 50 years, R/o 164, Tareat Tikarod, Shahjahanpur, U.P. Under working in Accounts Office, OCP, Shahjahanpur.

.....Applicant in O.A. NO. 1249/08

By Advocate: Shri R.C. Pathak/Shri Saurabh

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Versus

1. Union of India through the Defence Secretary, Ministry of Defence, Government of India, South Block, D.H.Q. P.O., New Delhi-110011.
2. The Controller General, Defence Accounts (C.C.D.A.) sector I West Block-5, R.K. Puram, New Delhi.
3. The Principal Controller Accounts (Factories), P.C. of A-(fys) 10-A, Auckland Road, Kolkata (West Bengal).
4. The Principal Controller, Accounts Pension (P.C.D.A) (P) Draupati Ghat, Allahabad.
5. The Joint Controller Finance Accounts O.C.F.A Office of I/C O.D.F., Shahjahanpur.
6. The Incharge Accounts Officer Ordnance Clothing Factories Shahjahanpur (U.P.).
7. Shri R.K. Chaudhary, Controller of Fin. & Account (Fys), Kanpur Group of Factories Kanpur.
8. Shri V.K Kohli IDAS ACFA (Fys) AO SAF, Kanpur.

.....Respondents in O.A NO. 1249/08

By Advocate: Shri S.C. Mishra.

AND:**3. CONTEMPT APPLICATION NO. 189 of 2006**

Laeq Ali Khan S/o Late Mohd. Ishaq Khan R/o 164, Tickle Shahjahanpur, Uttar Pradesh.

.....Applicant in CCA NO. 189/06

By Advocate: Shri R.C. Pathak

Versus

1. Shri Rajendra Mohan, Inquiry Officer, Dy. F.A Min. of Defence (Fin) (Retd) B-117 Hill View Apartment Vasant Vihar, New Delhi-110057.
2. Shri T.P Mandal Principal Controller of Defence Accounts (P) O/o the PCDA (P) Dropedi Ghat, Allahabad.
3. Shri M.C. Trivedi, A.O. the Presenting Officer, O/o P.C.D.A., (Pension) Dropati Ghat, Allahabad.

.....Respondents in CCA NO. 189/06

By Advocate: Shri S. Srivastava.

O R D E R**DELIVERED BY Hon'ble Mr. Justice A.K. Yog, Member (J)**

Heard learned counsel for the parties and with their consent aforementioned three cases are disposed of finally as the issues and cause of action arises from same bundle of facts.

2. In order to appreciate the controversy and raised in this case, requisite factual matrix, is given hereinafter.

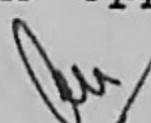
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3. Applicant before us was appointed as LDC (Lower Division Clerk) in the office of Account Officer, Ordnance Clothing Factory (O.C.F.) Shahjahanpur; in due course he was promoted to the post of Senior Auditor; he was transferred in April 2003 from Shahjahanpur to Allahabad; according to the applicant transfer order was the result of illegal, arbitrary exercise of power at the instance of the then Authorities; he claims to be on medical leave but pressurized to move on transfer; according to the Respondents since the Applicant was absconding-notice was published in daily newspaper/s requiring the applicant to report on duty; finally a chargesheet dated 17.12.2004 was issued proposing Disciplinary Enquiry; the applicant raised various issues regarding validity/competency of appointment of particular Inquiry officer as well as his status when he was on leave on medical ground, etc. and lastly the Respondents, plead that the applicant failed to cooperate with the Inquiry and he is to be blamed for the delay, if any.

4. Applicant filed O.A. NO, 1236/04 (Laeq Ali Khan Vs. Union of India and Others) challenging transfer order in question and it was decided vide order dated 11.11.2005 (Annexure A-11 to the above O.A. NO. 1258/06) whereby Tribunal set aside 'transfer-order' dated 2.4.2003 and directed the Respondents to decide the issue of unauthorized absence and Relevant para 11 of the said order reads:-

"It would be in the interest of justice, if the respondents fix up an appointment with

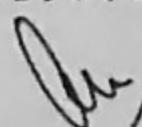


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any Medical Board constituted by at least three doctors in Shahjehanpur, of whom one shall be the Chief Medical Officer of the Government Hospital and communicate the date to the applicant in advance so that the applicant could subject himself to the medical examination of the Board. The Board shall consider whether the applicant needs any M.R.I. Test. If so, the applicant could be admitted as an in patient in any of the Govt. Hospital and the requisite advance be made available to the applicant for conducting the medical test. If in the opinion of the Board the applicant was really ailing which warranted rest right from April, 2003, the Board should certify also whether in view of such prolonged illness the applicant would be fit enough to resume duty of Senior Auditor or should he be medically invalidated from service. In case the applicant's health condition was such that the same warranted such a long period of rest and the applicant is now fit to resume duties, their opinion in this regard should be communicated in which event the applicant shall join forthwith the duties at Shahjehanpur and the period of absence till now would be regularized by grant of leave on medical grounds as per the medical attendance rules. However, if in the opinion of the Board the applicant's health conditions did not indicate that he needed that much rest from April, 2003 till now, the same should be so recorded and the report sent to the respondents for consideration of taking necessary action against the applicant on the ground that he had been absent without sufficient cause. As regards the complaint of his having private business, no opinion is expressed and it is for the respondents to deal with the same in a manner as they deem fit."

5. In Abovenoted O.A. NO. 1258/06, Applicant has primarily claimed following three relief(s):-

"(i) Issue suitable order or direction in the nature of CERTIORARI quashing the orders dated 10.8.2006, 26.10.2006, 7.6.2006 and 10.5.2006 shown as Annexure A-1, A-1A, A-2 and A-3 and daily order-sheets dated 7.2.2006, 10.3.2006, 21.3.2006, 19.5.2006, 23.5.2006, 1.6.2006, 14.6.2006, 28.6.2006



collectively shown as Annexure-A-4 to this O.A.

(ii) Issue suitable order or direction by way of MANDAMUS directing the respondents No.5 to regularize his leave and make payment with correct basic pay and D.A. etc. with arrears including 18% penal interest as per Hon'ble C.A.T. order dated 16.11.2005.

(iii) Issue suitable order or direction by way of MANDAMUS directing the respondent No.2,3 and 4 to decide all his representations dated 5.7.2006, 18.8.2006 and 5.9.2006, shown as Annexure-A-31, A-32 and A-35 by reason and speaking order within period of 15 days."

6. In this O.A. Tribunal passed ex-parte interim order dated 15.11.2006 which was to be operative in the next date of hearing but continued from time to time. Interim order dated 15.11.2006 (relevant extract reads:-

"The applicant has prayed for interim relief for stay of further proceedings. As a prima facie case has been made out and the balance of convenience and interest of justice are in favour of the applicant, by ways of this interim order, the respondents are restrained from proceedings with the disciplinary case of the applicant. This interim order shall continue till the next date of hearing scheduled on 30.11.2006 before which respondents shall file a short reply regarding interim relief".

7. According to the applicant, respondents attempted to proceed with the Inquiry inspite of aforesaid interim order and hence the abovenoted contempt petition- which is pending.

8. Considering nature of the case and the impugned order we are of the opinion that aforesaid ex parte interim order dated 15.11.2006 (passed in O.A. NO.1258/06) ought to have been revised and the respondents enabled to conclude 'Disciplinary proceedings' as expeditiously as possible.

(Signature)

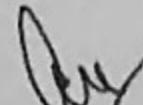
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9. It is needless to mention that the applicant, if aggrieved by order of Disciplinary Authority, he shall have a right to appeal under relevant Rules (as admitted by the learned counsel for the parties). Tribunals/Courts are not expected to intervene or interfere with Disciplinary Enquiry as and when delinquent Officer finds an excuse/pretext.

10. Be that as it may, the applicant has now filed abovequoted O.A. No. 1249/08 and claiming primarily two relief (s):-

- "(i) Issue suitable order or direction in the nature of CERTIORARI quashing the orders dated 19.9.2008, 10.8.2008, 26.10.2006, 7.6.2006 and 10.3.2006 shown as AnnexureA-1AA, A-1, A-1A, A-2 and A-3 and daily order sheets dated 7.2.2006, 10.3.2006, 21.3.2006, 19.5.2006, 23.5.2006, 1.6.2006, 14.6.2006, 28.6.2006 collectively shown as AnnexureA-4 to this O.A.
- (ii) Issue suitable order or direction by way of mandamus commanding to the respondents No.5 to regularized his leave and make payment with correct basic pay and D.A. etc. with arrears including 18% penal interest as per Hon'ble C.A.T. order dated 15.11.2005/.
- (iii) Issue suitable order or direction by way of mandamus commanding the respondent No.2,3 and 4 to decide the all his representations dated 5.7.2006, 18.8.2006, 5.9.2006, 20.9.2008, 15.10.2008 & 03.11.2008 shown as AnnexureA-31, A-32 and A-35 & A-46 to 48 by reason and speaking order within period of 15 days."

11. Relief claimed sought in O.A. NO. 1249/08- praying for a mandamus commanding the respondents 'to regularize his leave and make payment with correct basic pay and D.A. etc. with arrears including 18% penal interest' cannot be granted unless disciplinary Inquiry is completed. The applicant cannot in same breath blow 'hot and cold' i.e.- asking disciplinary proceedings to



be kept stayed and on the other hand, claim arrears, etc. with penal interest for the period in question. The applicant has also claimed a writ of mandamus commanding the respondent Nos. 2, 3 and 4 to decide his 'representations' filed from time to time (copies filed as Annexures A-31, A-32 and A-35 & A-46 to A-48. Admittedly 'Departmental proceeding' still pending; we are not inclined to enter into the merits of the issues raised in those representations. We have no doubt that preliminary objection/s (raised by the applicant) should be disposed of by the Inquiry officer/ Disciplinary Authority before deciding charges on merit particularly when the authorities are in possession of 'original record' which may be required for adjudication of those issues. Applicant concedes that Inquiry is yet to be concluded but he apprehends that the Inquiry shall be concluded arbitrarily ignoring his objection/s through representations and thus rendering these objection/s redundant. We find no basis or reason to harbour above apprehensions.

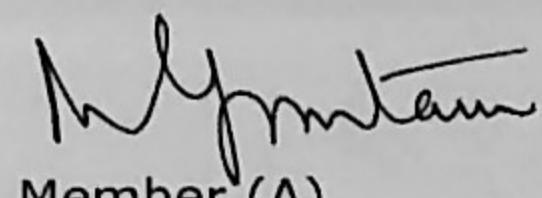
12. In view of the above, we direct the applicant to file an application containing- all his preliminary objection/s before Inquiry officer or concerned Competent Authority within 4 weeks from today alongwith certified copy of this order and in case a codified/comprehensive objection is filed, the concerned authority shall first decide the those objections and then the 'Merit of charges' while concluding disciplinary Inquiry. It is further directed, Inquiry be concluded within 06 months of receipt of certified copy of this order in accordance with law.

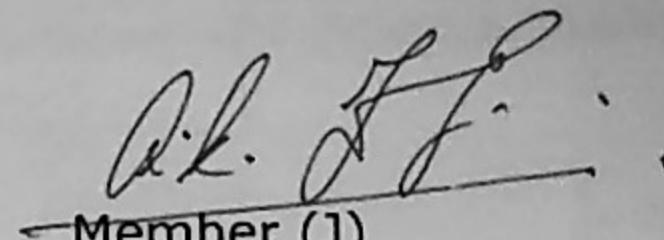
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13. Both above-noted O.As as well contempt application stands finally disposed, subject to the above directions. A copy of this order shall be kept in the record of other two cases also separately.

14. There shall be no order as to costs.


Member (A)


Member (J)

Manish/-