

(2)

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

\*\*\*\*\*

Original Application No. 159 of 2006

Allahabad this the 2nd day of March 2006

Hon'ble Mr. K.B.S. Rajan, Member (J)

Nagendra Prasad, Aged about 38 years, S/o Sri Ram Deo Sharma, R/o IV/II, CPWD Colony, Jayantipur, Sulemsarai, Allahabad, presently working as Executive Engineer (P), Allahabad Central Circle Central Public Works Department, Allahabad.

Applicant

By Advocate Shri S.C. Mandhyan

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi-110001.
2. The Director General (Works), Central Public Works Department, Nirman Bhawan, New Delhi.
3. Chief Engineer Northern Zone II, Central Public Works Department, Kendriya Sadan, Sector 'H', Aliganj, Lucknow.
4. Superintending Engineer, Central Public Works Department, Allahabad Central Circle, 841 University Road, Allahabad.
5. Sri A.K. Garg, Superintending Engineer, Central Public Works Department, Allahabad Central Circle, 841 University Road, Allahabad.

Respondents

**O R D E R**

By Hon'ble Mr. K.B.S. Rajan, J.M.

This application has been filed challenging the Order dated 01.07.2005 as well as 24.11.2005 passed respectively by

G

Superintending Engineer C.P.W.D., Allahabad and Chief Engineer, C.P.W.D., Lucknow. By formal order, the Assistant Engineers have been directed to submit their files directly to the Superintending Engineer instead of through Executive Engineer (applicant). While the letter is an Order warning the applicant to be careful in future in view of his violating the Rule 3 (1) (ii) of C.C.S. (Conduct) Rules.

2. Briefly stated, the applicant is functioning as Executive Engineer at Allahabad Central Circle since May 2005. On 27.06.2005 he was served with a memorandum calling for his explanation as to delay in disposing few cases. The applicant gave his explanation on 01.07.2005. It is on the same day that impugned order dated 01.07.2005 was passed by respondent no.4. On the basis of the explanation given by the applicant, the Chief Engineer had passed the other impugned order dated 24.11.2005. Aggrieved by the aforesaid orders, the applicant has moved this Original Application for quashing of the same.

3. Arguments have been heard. The applicant's counsel has stated that the order dated 01.07.2005 amounts to suspension of the applicant. Again he has submitted that after order dated 24.11.2005 has been passed, the respondent no.4 ought to have withdraw his Order dated 01.07.2005 as otherwise same amounts to withdrawal of entire powers of the applicant.

4. The Order dated 01.07.2005 had been addressed to the Executive Engineer and other concerned authorities. The applicant's explanation dated 01.07.2005 has been considered by the higher authority namely the Chief Engineer, who has passed the impugned order dated 24.11.2005. In so far as the Order dated 24.11.2005 is concerned, if the applicant so chooses he should prefer an appeal by way of representation to the higher authority.

This has not been done. Similarly as regards to the Order dated 01.07.2005, if the applicant is aggrieved, he must have taken the matter with the higher authorities against the same. Both the impugned orders are administrative orders passed by the respective authorities under their ~~ostensible~~ <sup>ostensible</sup> ~~astenable~~ authority. As a Superintending Engineer-respondent no.4 has to ensure proper disposal of the case within a reasonable time and incase the applicant has not been able to deliver the goods and has been holding the files, the Superintending Engineer cannot be a silent spectator for the same. As such, the action on the part of the Superintending Engineer in passing the Order dated 01.07.2005 cannot be faulted with. As a matter of fact that the Superintending Engineer has acted bonafide is evident from the Order dated 24.11.2005, as his own higher authority namely the Chief Engineer himself is not all that happy with the performance of the applicant. The two impugned orders have been passed keeping in view the administrative necessities. Such a power cannot be deprived of from the higher authorities. After all there must be free play at the joints. It has been held in the case of 'Fasih Chaudhary V. D.G., Doordarshan (1989) 1 SCC 89' that while fair play in action in such matters is an essential requirement, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere. As a matter of fact, the Apex Court in a number of cases has held that such a discretion and free play in the joints should be made available in administrative sphere (Association of Registration Plates Vs. Union of India [2004] 5 SCC 364).

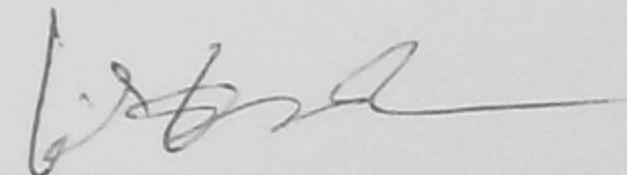
5. By virtue of the impugned orders, none of the rights of the applicant have been taken away. The act on the part of the respondents has not affected the applicant's pay or seniority or any other service condition. Perhaps the Superintending Engineer may at his own discretion review the situation by modifying or

(5)

withdrawing the Order dated 01.07.2005 but the same is left to his own discretion, which it is hoped, would be judiciously invoked. If an Officer is not able to perform his duties to the extent, it is expected, ~~all~~ with due regard to his status and experience, the remedy lies not in taking away all the responsibilities from him but in ensuring that certain amount of work is entrusted upon him to see how diligently and with dedication the Officer is performing his duties. However, this is left purely to the authorities concerned taking into account the ground realities prevailing in their administrative domain.

6. Annexure-1, Order dated 01.07.2005 is such that the same cannot be agitated before this Tribunal. If at all, remedies are to be exhausted before approaching this Court. Annexure-2, Order dated 24.11.2005 could at best be viewed as a minor penalty in which case also remedies exist. The application is thus premature.

7. In view of the above, the O.A. is thoroughly devoid of merit ~~too~~ and is, therefore, dismissed with no order as to cost.

  
Member (J)

/M.M./