

OPEN COURT

**Central Administrative Tribunal Allahabad
Bench Allahabad.**

Allahabad This The 28th Day Of April, 2009.

ORIGINAL APPLICATION NO. 108 OF 2007.

Present:

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

Amar Nath Singh, Assistant Audit Officer, Son of Late Narayan Singh, Village- Chhitauha, Post Office Gauwapar, District Ballia (U.P), employed in the office of Director of Audit, Air Force, 107 Rajpur Road, Dehradun (Uttanchal)
.....Applicant

By Advocates: In person

Versus

1. The Controller & Audit General of India, 10, Bahadur Shah Zafar Marg, New Delhi 110 002.
2. The Director General of India, Defence Services, New Delhi, L-II Block, Brassey Avenue, New Delhi-110 001.
3. The Principal Director of Audit, Air Force & Navy, New Delhi, M-Block Church Road, New Delhi-110 001.
4. Director of Audit, Air Force, 107 Rajpur Road, Dehradun-248001.
5. Union of India through Secretary Ministry of Defence, South Block, New Delhi.

.....Respondents

By Advocate: Shri S. Chaturvedi

O R D E R

Heard Shri Amar Nath Singh/applicant in person and Shri Pankaj Srivastava, Advocate (holding brief of Shri S. Chaturvedi, Advocate/Standing Counsel) representing the respondents. Perused the pleadings and documents annexed with the O.A.

2. Relief claimed in the O.A. vide para 8 read:-

- "(a) Issue a direction to the respondents to promote the applicant maintaining his seniority.*
- (b) Issue a direction to the respondents to pay the previous salary, T.A. , Medical Bills to the applicant and continue to pay as and when it falls due.*
- (c) Issue a direction to the respondents to transfer the applicant to (at)Allahabad from Dehradun.*
- (d) Issue a direction to the respondent NO. 1 to decide the representation/appeal dated 28.04.2006 expeditiously within stipulated period.*
- (e) To grant any other relief as may be deemed fit in the facts and circumstances of the case.*
- (f) To allow the application with cost".*

3. Above reliefs have been claimed, pleading inter-alia, amongst other, on the ground that applicant has been serving in the office of Respondents Department is being transferred arbitrarily/illegally as the punishment with oblique motive on the part of Higher Authorities. He is being harassed in many ways (including withholding transfer and promoting juniors) withholding of payment of T.A., medical bills and stoppage of salary; he filed various representations against illegal and arbitrary action of the respondents' Authority in transferring him; aforementioned action is prejudiced to the applicant aimed to harass him mentally, financially and physically.

4. It is not in dispute that chargesheet was given to the applicant; enquiry report was submitted and thereafter an order of punishment dated 22.11.2005 was passed by Principal Director of Audit Air force, New Delhi (respondent NO. 3 in the O.A.). According to the applicant, said order is not passed by a competent Authority. Being aggrieved, he filed O.A. NO.99 of 2006 (U); said OA was finally dismissed vide order dated 29.3.2006; in the said O.A.

Am,

No. 99/06, applicant claimed promotion to the post of Audit Officer, stoppage of salary etc. restoration of seniority and to quash the office order part II NO. 441 dated 22.11.2005 passed by respondent NO. 3; said O.A. was dismissed as not maintainable and for convenience perusal para 5 and 6 of the order of the Tribunal are being reproduced below:-

- "5. *At the time of hearing, a pointed question was put forth to the applicant who presented his case in person as to whether he had filed any appeal against the impugned order. The answer was in negative. As such, the O.A. suffers from non-exhaustion of the statutory remedy under section 20 of the A.T. Act. His submission in para 6 of the O.A. that he has availed remedy by way of representation upto CAG is of no avail as these cannot substitute statutory remedy and more over in the course of hearing, it transpired that these representation were anterior to the date of order of penalty.*
6. *In view of the above, the O.A. is dismissed as not maintainable, however, with liberty to the applicant to exhaust the departmental remedy and thereafter, approach the Tribunal if any grievances still subsist. Cost easy".*

4. For convenience, para 4.6 of the O.A. No. 99/06 (referred in the aforequoted para 5 of the Tribunal's Order) is also reproduced:-

- "4.6 *The applicant conducted the audit of the Air Force Station Bamrauli, Allahabad in March 2004. The applicant, therefore, expected and was hopeful that he would get the audit of the Garrison Engineer (Air Force) Bamrauli too. The applicant was interested too, because his family (wife and daughter) was residing at Allahabad. But the applicant was not provided the audit of the Garrison Engineer (Air Force) Bamrauli, immediately, perhaps, because it was not due at that time"*

5. The applicant fairly informed (orally-as there is nothing on record) that above-referred Tribunal order was challenged by filing writ petition, which was dismissed. It is, therefore, an admitted fact that said order of the Tribunal dated 29.3.2006 was affirmed by Allahabad High Court.

6. According to the applicant, after above order of Tribunal/High Court, he filed representation dated 28.04.2006 (Annexure A-13/Compilation I to the present OA). This representation is addressed to the Comptroller and Auditor General of India, New Delhi. Applicant was required to read said representation and point out as to how that 'How' said 'Representation' can be said to be an Appeal against order of punishment dated 22.11.2005 was assailed (as contemplated in Tribunal order dated 29.3.2006 in O.A. NO. 99 of 2006). Applicant fails to show that order of punishment dated 22.11.2005 was challenged on any ground including the ground of jurisdiction. Said representation, infact, is nothing but (more or less) repetition of the earlier representation submitted prior to passing of 'punishment order' in Disciplinary proceedings. Apparently applicant grievances, (with respect to transfer, seniority promotion etc.) were outcome of 'disciplinary proceedings' culminating into order of punishment dated 22.11.2005.

6. Respondents have filed counter reply. In para 19 of the said counter reply reads:-

"19. That in reply to contents of paragraph No. 4.18 of the Original Application it is submitted that the representation of the applicant dated 28.04.2006 was

considered and a reply had already been given to him by the D.G.A. Officer vide letter No. 18581/A. Admn/3158 dated 10.01.2007. The contents of the representation shows the fact that the applicant is not aware of rules/orders in force regarding disciplinary authority. Though the copy of orders in this regard was also supplied to him in November, 2006 i.e. well before his submitting the fresh Original Application before this Hon'ble Tribunal. Yet the applicant has made it an issue which shows his ignorance of departmental rules/orders. A copy of the letter No. 81581/A. Admn/3158 dated 10.1.2007 is being filed herewith and marked as Annexure No. CA-7 to the counter affidavit".

7. For convenience, order dated 10.1.2007 is also reproduced:-

"To,

*Sh. A.N. Singh,
Assistant Audit Officer,
Office of the Director of Audit (AF),
107, Rajpur Road
Dehradun.-248 001*

Sub: Irregular withholding of promotion and conducting of departmental inquiry.

I am directed to invite a reference to your representation to the C&AG of India, New Delhi dt. 18.10.2005 and 28.04.06 on the above noted subject and to state that due to initiation of a disciplinary proceeding, you have not been promoted as Audit Officer. Postings and transfers are effected according to administrative convenience and your representation would be watched suitably.

*(S.L. Verma)
Audit Officer,
Defence Services"*

8. Tenor of the order dated 10.1.2007 is a communication with reference to two representations of the applicant including above referred representation dated 28.04.2006 in the matter of seniority, promotion, transfer etc. This order cannot be said to be an order deciding the

statutory appeal contemplated under Rules. There is no dispute that the case of the applicant is governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965.

9. It is more than clear to me that no appeal, as contemplated under statutory Rules earlier and required under 'Tribunal Order' was preferred by the applicant till date. It appears that the applicant has not been given 'proper advice' in seeking redressal of this grievance or that he is otherwise not keen to take recourse to 'Appellate remedy' and an attempt is being made to same how whether any time. May be it is because he is 'frustrated' or 'depressed' being a 'victim' of circumstances.

10. The Applicant, in no uncertain term, expressed that he is not interested to file appeal and exhaust- Departmental- statutory remedy a couple of year (in pursuing the present O.A.) have already elapsed. Whatever be the reason,

11. I cannot ignore order of the Tribunal dated 29.3.2006 in O.A. NO. 99/06 (U), which has attained finality and binding upon the parties (without requiring him for filing departmental appeal). Order of the Tribunal dated 29.3.2006 (in O.A. NO. 99/06) cannot by-passed and rendered redundant it shall be already a travesty of 'judicial procedure/system.

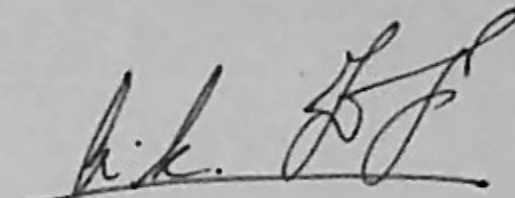
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12. It has also come on record that the applicant, according to him initially tried to join duties and also submitted leave application/s etc. but to no avail and subsequently he is waiting for this O.A. to be decided did not join his duty. Applicant is not being paid salary. According to the Respondents, he is willfully abstaining from duties. I have no intention to enter into this issue. Shri P. Srivastava, learned counsel for the respondents has filed supplementary affidavit bringing on record that 'new facts' with respect to fresh Disciplinary-proceedings-against the Applicant for failing to join duties

13. Taking into account also the facts in totality, I am of the opinion that the applicant should not be 'non-suited' and given an opportunity to file 'departmental appeal' to be decided by the concerned authority under Statutory Rules and on merit without taking objection of limitation (provided under Rules) if any not given in this way and appeal shall be decided on merit provided it is filed alongwith a certified copy of this order within 2 months from today before respondent NO. 1/ The Controller & Audit General of India, 10, Bahadur Shah Zafar Marg, New Delhi 110 002 and the said Appellate Authority shall decide said appeal on merit by passing reasoned and speaking order in accordance with law within a period of 6 months from the date of receipt of a copy of this order. Decision so taken shall be communicated to the applicant forthwith. No costs.

[Signature]

14. In view of the order passed today and that this O.A. is finally decided. I direct the respondents' Authorities to maintain status quo as on date subject to the 'final decision' in 'Appeal' provided it is filed and decided as directed above. It is further clarified that respondent NO.1 while deciding the appeal shall also consider and pass appropriate orders regarding period of absence and payment of arrears (if any) in accordance with relevant Rules. No costs.


Member (J)

Manish/-