

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 514 of 2007

ALLAHABAD THIS THE 29th DAY OF APRIL 2009.

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

Mohd. Akhtar S/o Late Karimullah,
R/o G-2/175 Armapur Estate,
Kanpur Nagar.

.....Applicant

By Advocate: Shri R.A. Mishra

Versus

1. Union of India through Director General Ordinance Services Branch Army Head Quarter DHQ, New Delhi.
2. Senior General Manager, Ordinance Factory, Kanpur Nagar.
3. General Manager, Ordinance Factory, Kanpur Nagar.

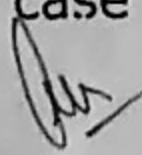
.....Respondents

By Advocate: Shri R.K Tiwari

ORDER

1. Perused the pleadings in the OA and the documents on record. Heard Shri R.K. Tiwari, on behalf of the respondents. He submitted that counter affidavit is ready. He has filed counter affidavit (sworn by one Kamlesh Kumar along with certain Misc. Applications. Counter reply is accepted. Misc. Applications filed along with counter affidavit shall be deemed to have been disposed of.

2. By means of this OA, the applicant seeks to challenge order dated 5.2.2007/Annexure-A-1 to the OA-Compilation-I. Perusal of the impugned order shows that the applicant was implicated in a criminal case under Section 323/342/302 IPC

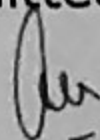


registered with Police Station Armapur, District-Kanpur, Case Crime No.80/1996; applicant was placed under deemed suspension is contemplated under relevant rules; suspension w.e.f. 13.1.1997. Subsequently suspension order was reflected and he was allowed to join duty on 26.10.2006. In view of order of acquittal from the court of Special Judge (SC/ST Act) vide judgment and order dated 21.08.2006 the department, however, serve show cause notice to submit his explanation with respect to the suspension period; applicant submitted representations/s dated 13.01.1997 to 26.10.2006). The impugned order clearly mentions that said period of deemed suspension shall not be treated in service, the applicant will be entitled to salary and allowances as payable to a suspended employee but said period of suspension shall not be treated as break in service subject however, to the condition that applicant will not be entitled to increment in salary, leave, pension and gratuity with respect of the said period of suspension.

3. Impugned order suffers more from manifest error apparent on the face of record on two score.

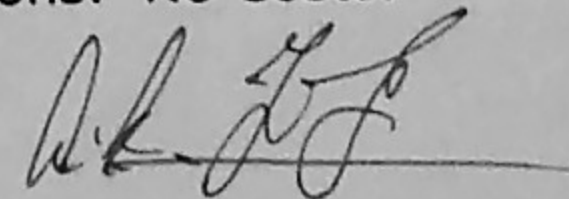
(i) The impugned order does not contain reason and does not show application of mind and for this reason the impugned order is thus a non-speaking order and hence a nullity. The impugned order cannot be sustained and liable to be set aside on this ground alone.

(ii) The deemed suspension having been revoked the applicant being acquitted by concerned court in the



criminal case and that, under impugned order itself, applicant be treated in service without break ignoring suspension period including the other conditions imposed casting, stigma/aspersion and other adverse consequence relating to pension, gratuity and salary etc. amounts to awarding punishment. Apparently no charge sheet was given and no departmental enquiry has been conducted. Punishment awarded is against violation of Principles of Natural Justice. The Impugned order dated 05.02.2007 is hereby set aside and respondents are directed to treat the applicant in service during the period of deemed suspension along with all consequential benefits treating the applicant to be in continuing in service throughout without break during the period of deemed suspension (13.01.1997 and 26.10.2006 etc.) and deemed suspension not to be treated adverse to the interest of the applicant for any purpose whatsoever. The applicant shall also be entitled to full salary in due course. Arrears shall be paid to the applicant within three months from the date of submitting the certified copy of this order.

4. OA allowed subject to above directions. No Costs.



Member-J