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O.A. No. 660 of 2010

K.V. Swami.....Applicant

Vs

Union of India & Ors.....Respondents.

Order dated: 28.10.2010

CORAM:

Hon'ble Shri C.R. Mohapatra, Member (A)

The applicant, who is at present working as Anti Malaria Majdoor in ARC Hospital, Charbatia, has filed this O.A. challenging the order dated 21.09.2010 (Annexure-3) by virtue of which he has been placed under suspension by the Deputy Director (Administration), in exercise of the powers conferred under Sub-rule (1) of Rule-10 of the Central Civil Services (Classification Control & Appeal) Rules, 1965. In the circumstances, he has sought to quash the order of suspension (Annexure-3) and for direction to Respondents to pass order of reinstatement inter alia on the following grounds as contained in paragraph-5 of the O.A.:

“ i) For that as the applicant has not been afforded with an opportunity of hearing the preliminary enquiry based on which the final suspension order as per Annexure No.3 is passed is highly illegal, unjustified and not tenable in the eye of law.

ii) For that as neither the showcause notice nor also any other

paper supplied to the applicant is specific about the alleged occurrence indicating presence of any witness in support of the same in absence of this all the charge proves to be fake and motivated one.

iii) For that as the applicant was also not been allowed to participate in the alleged preliminary enquiry and moreover the procedure or contents of the computer typed paper has also not been explained to the Deponent in Oriya or Hindi under such circumstance the alleged preliminary enquiry has lost his legal sanctity and thus deserves for a kind interference by this Hon'ble Tribunal.

iv) For that as in the alleged fact finding enquiry the prosecutries or any other person were also not present and their statement in this regard has also not been taken such a cohesive order against the Applicant is thus highly excessive and disproportionate to the alleged charges and thus requires to be quashed by this Tribunal."

2. Heard Mr. Manas Chand, Ld. Counsel for the applicant and Mr. B.K.Mohapatra, Ld. Additional Standing Counsel for the Respondents and also perused the provisions governing the subject as envisaged in the CCS(CGA) Rules 1965.

3. It is needless to mention that in para 6 of the O.A., the applicant has given a declaration that he has

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availed of all the remedies available to him under the relevant service rules etc.

4. On the reference being made, it is noticed that the order of suspension under Rule 10 of CCS (CQA) Rules 1965 is appealable under Rule 23 of CCS (CQA) Rules 1965. Ld. Counsel for the applicant submits that no appeal has yet been submitted by the applicant and thus a wrong declaration has been made by the applicant in para-6 of the O.A.

5. The Ld. Counsel for the applicant submits that since there is a provision for appeal against the order of suspension, he would take up the matter with the Appellate Authority as per such provision.

6. Sri Mohapatra, Ld. A.S.C. appearing for the Respondents vehemently opposed the O.A. on the ground that the applicant has not exhausted the departmental remedies available to him under the service rules and hence the O.A. in its present form is not maintainable under Section 19 of the Administrative Tribunals Act, 1985.

7. I have considered the submissions made by the Ld. Counsel for the parties. Since the applicant has rushed to the Tribunal in a hasty manner without exhausting the

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departmental remedies, which fact is also admitted by Sri Chand, Ld. Counsel for the applicant, the O.A. is premature one and, as such, the same is dismissed at the very threshold, not being maintainable.

8. Send copies of this order to the Respondents and free copy of this order be handed over to the Ld. Counsel for the parties.


~~MEMBER (A)~~

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