

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 137/2009

Lucknow, this the ^{19th} day of May, 2009

**Hon'ble Mr. M. Kanthaiah, Member (Judicial)
Hon'ble Dr. A. K. Mishra, Member (Administrative)**

Bankatesh Bahadur Singh aged about 59 years son of late Mahabir Singh, resident of 2/8, Vishal Khand, Gomti Nagar, Lucknow.

Applicant.

By Advocate: Sri P.C. Rai for Sri Shishir Jain.

Versus

- 1 The Union of India, through Secretary, Department of Personnel and Training , Ministry of Public Grievances and Pension, North Block, New Delhi.
2. The State of U.P. through Principal Secretary (Appointment), Department of Personnel ,Government of U.P., Civil Secretariat, Lucknow.

Respondents.

By Advocate: Sri S.P. Singh for Respondne No. 1
Sri A.K. Chaturvedi for Respondent No.2

ORDER

By Hon'ble Dr. A.K. Mishra, Member (A)

This is an application challenging the order of suspension dated 13.5.2007, and subsequent extension orders dated 08.08.2007, 07.11.2007, 30.01.2008, 02.05.2008, 30.07.2008, 23.10.2008 and 24.01.2009 passed by the Respondent No. 2 under Rule 3 of All India Service (Discipline & Appeal)Rules on the ground that the allegations which formed the basis for the suspension are not attributable to the applicant and that frivolous, baseless and flimsy charges have been framed against him due to political reasons as he was perceived by the present dispensation to be very close to the erstwhile political masters of the state of U.P. Further, it is claimed that the impugned orders are arbitrary, illegal and an outcome of malafide as well



as political vendetta against the applicant and being violative of the statutory rules deserve to be quashed.

2. The learned counsel for the respondents raised preliminary objections to the maintainability of this application. He argued that the applicant who had earlier filed O.A. 177/2008 before this Tribunal preferred an appeal dated 23.6.2006 before the Central Government in compliance to the direction given by the Tribunal. The appeal was admittedly pending before the Central Government at the time of filing of this O.A. During the pendency of this appeal, according to him, the applicant could not file another O.A. on the same subject matter. He could seek a direction of this Tribunal for expediting the hearing of his appeal, or alternatively, file an application under Contempt of Court Act against the authorities sitting over his appeal petition. But he could not file another O.A. till conclusion of his appeal petition.

2.1 The learned counsel for the applicant pointed out the provisions of Section 20 (2) of the Administrative Tribunal Act, 1985, which clearly say that "for the purpose of sub section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances;

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such persons in connection with the grievance; or

(b) **where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."**



2.2 Admittedly, more than 6 months have elapsed since the filing of the appeal before the Central Government; therefore, the applicant has a right to file this O.A. In view of the clear provision of Section 20(2) of the Administrative Tribunal Act, 1985, the argument of the learned counsel for the respondent No. 2 does not hold any water.

3. The second argument is that the applicant has filed O.A. 325/2009 before the Allahabad Bench of this Tribunal challenging the charge sheet dated 21.6.2007, which led to the initiation of the disciplinary proceedings against him and which was based on the allegations which led to the impugned suspension order dated 13.5.2007. Undisputedly, the impugned order was passed, *prima facie*, as a disciplinary proceeding was being contemplated on the basis of those allegations which were later on converted into the articles of charges. The charges brought against the applicant have been challenged in O.A. 325/2009 filed before Allahabad Bench prior to filing of the present O.A. before Lucknow Bench. The learned counsel for the applicant vehemently disputed this fact. Therefore, we directed in our order dated 3rd April 2009 to file an affidavit about the exact date of filing of the Original Application before Allahabad Bench. The applicant has filed an affidavit stating that the O.A. challenging the charge sheet dated 21.6.2007 has been filed on 24.3.2009. The present O.A. was filed on 26.3.2009. The learned counsel for the Respondent No. 2 forcefully contends that material facts which have relevance in adjudication of issues posed by the present application before us have been concealed. Since, the basis of the disciplinary proceedings initiated against the applicant as contained in the charge sheet dated 21.6.2007 is under challenge before Allahabad Bench, the applicant could not file another application on the same set of facts and circumstances which led to passing of the impugned suspension and extension orders.



6. Admittedly, the suspension order dated 13.5.2007 was based on certain allegations and was made under Rule 3 of the AIS (Discipline & Appeal) Rules when a disciplinary proceeding was contemplated. The suspension order, therefore, flows from the allegations which were formulated into specific charges in the charge sheet dated 21.6.2007. The subsequent extension orders, admittedly, were based on the charge sheet dated 21.6.2007. Since, the charge sheet itself is the subject matter of a challenge in the O.A. 325/2009 filed before Allahabad Bench and that O.A. was filed before initiation of the present O.A., the objection to maintainability of the present O.A. has considerable force. It is trite law that there should not be multiplicity of proceedings on the same set of facts and circumstances.

7. In the result, we sustain this objection and reject the O.A on the ground that another O.A. on the same set of facts and circumstances has been filed before the Allahabad Bench and this material fact was concealed in the present application before us. No costs.

Appld on 19/05/09
(Dr. A.K.Mishra)
Member (A)

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(M. Kanthaiah)
Member (J)