

(RESERVED)
On 18.03.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW.

This the 23rd day of April 2015.

ORIGINAL APPLICATION NO. 494 OF 2009.

HON'BLE MR. NAVNEET KUMAR, MEMBER- J.
HON'BLE MS. JAYATI CHANDRA, MEMBER- A.

Vijay Pratap Singh, aged about 56 years, son of late Sri Samar Bahadur Singh, presently working as Divisional Forest Officer, Sohailwa Wiled Life Division, District Balrampur, resident of 47/1-A Shiv Kuti, Allahabad.

.....APPLICANT

Advocate for the applicant: Shri Shireesh Kumar

VERSUS

1. Union of India, through Secretary, Ministry of Environment & Forest, Prayavaran Bhawan, C.G.O Complex, Lodhi Road, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan road, New Delhi.
3. State of U.P. through Principal Secretary, Department of Forest, Babu Bhawan, Civil Secretariat Lucknow.

.....RESPONDENTS

Advocate for the respondents: Shri S.P. Singh
Shri A.K. Chaturvedi
Shri M.K. Dubey

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ORDER

BY HON'BLE MS. JAYATI CHANDRA, MEMBER- A.

Through this Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant seeks the following relief(s):-

"i) set aside the impugned order dated 09.09.2009 contained in Annexure NO.1 to the original application.

iii) pass any such order or direction as the circumstances of the case may admit of.

2. The facts of the case as averred by the applicant are that he belonged to the State Forest Service of U.P. cadre who was considered for promotion to I.F.S. in the year 1996 against the vacancies pertaining to the year 1985 to 1995-96. There were series of litigation with regard to selection list and finally the select lists were notified on 10/14.09.2004 (Annexure A-3) in which the applicant's name is included in the select list of 1990. He was issued with a charge-sheet on 01.05.2004, which had only one charge issue of 29 'No objections' (NOCs) for mining lease in the restrictive forest area during his posting as D.F.O Obra w.e.f. 10.8.2002 to 13.11.2002 (Annexure A-4). The charge-sheet was issued under the provision of Rule 8 of All India Services (Discipline & Appeal) Rules, 1969. The applicant submitted his reply on 27.10.2004 denying the charges and enquiry was duly initiated in which he is participated. The Inquiry Officer in his enquiry report found the charges not

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proved (Annexure A-6). The copy of enquiry report was communicated to the applicant along with the State Government disagreement letter dated 25.5.2005 (Annexure A-7). The applicant submitted his explanation against the disagreement note in which he explained that he had been transferred even prior to the demarcation of the areas pertaining to which mining NOCs were issued, the State Government did not accept his explanation and proposed the punishment of censure coupled with stoppage of two increments temporally. The advice of UPSC was sought vide letter dated 09.08.2005 (Annexure A-9). The Union Public Service Commissioner after due consideration of the matter disagreed with the proposed punishment and proposed harsher punishment in its recommendation dated 19.3.2008 (Annexure A-10). In view of disagreement between the State Government and Union Public Service Commission regarding proposed punishment, the matter was referred to the Government of India under Rule 11 of All India Services (Discipline and Appeal) Rules, 1969 (Annexure A-11). Central Government, after examining the records, passed the impugned order dated 09.09.2009 by which the applicant has awarded the punishment of reduction by one stage in the time scale of pay for the period of ^{two} ~~year~~ years with further direction that he will not earn increments during the period of reduction and the reduction will have the effect of postponing his future increments. This punishment order was served to him along with copy of UPSC advice vide letter No. 12011/11/2009-AVU dated 09.09.2009.

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3. The applicant is aggrieved by the action of the respondent NO.1 on the ground that the proceedings are wholly without jurisdiction. The Inquiry Officer has found him guilty of alleged charges. The State Government, UPSC and Government of India have failed to appreciate the fact that the alleged violative identifying the land on which NOC was issued for mining purposes, could not be demarcated by the applicant as he was transferred from the post of Divisional Forest Officer, Odra soon after issuance of the NOCs, which were cancelled, that is say the lapse for which he has been charged consists of two parts (i) issuance of NOCs (2) identification of land pertaining to NOCs. The second part of the procedure took place under the watch of his successor.

4. The respondent NO. 3 has filed his counter reply in which apart from reiterating the procedure initiated against the applicant as averred in the O.A. The State Government not agreeing with the advice of UPSC, which was found to be harsher than the penalty recommended by the State Government, the matter was referred to the Central Government for his decision under Rule 11 of All India Services (Discipline and Appeal) Rules 1969. The Central Government after considering all facts of the case came to its conclusion vide order dated 09.09.2009 by which the penalty order was served upon the applicant. Further they have said that there was no procedure lapse and the applicant's conduct was found to

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be in violation of ^{Iu} ~~stipulated from~~ the provision of governing act for which he was charged. ^{sw}

5. The respondent NO.1 has also filed his counter affidavit through which he has stated that as the State Government did not agree with the advice of UPSC, the matter was referred to the Government of India under Rule 11 of All India Services (Discipline and Appeal) Rules, 1969. It is found that UPSC had examined the case in detail and found the charge is proved as the applicant was found guilty of issuing 29 NOCs for mining during a short period of his posting as DFO, Obra Forest Division, Sonebhadra for three months from 10.8.2002 to 13.11.2002. Thus, the applicant was found guilty of violating the Forest Conservation Act for which the penalty advised by the UPSC was found to be justified. The Ministry agreed with the advice of UPSC and passed the punishment order dated 09.09.2009. No counter affidavit has been filed by UPSC.

6. The applicant has filed his rejoinder affidavit reiterating the averments made in the O.A. that impugned order dated 09.09.2009 passed by respondent NO.1 suffers from error of law and procedure.

7. During the course of hearing, the learned counsel for the applicant amplified on the error of law committed by respondent No.1 inasmuch as the impugned order has been passed on 09.09.2009 passed by him. Under Rule 7 of All India Services (Discipline and Appeal) Rules, 1969,

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authority to initiate proceedings and to impose the punishment rest with the State Government. Rule 7 (b) (i) reads as follows:-

"Rule 7 Authority to initiate proceedings and to impose penalty- where a member of the service has committed any act or omission which remedies him liable to any penalty specified in Rule 6-

7 (a).....

7 (b) (i) If such act or omission was committed after his appointment to the Service –

- (i) While he was serving in connection with the affairs of a State, or is deputed for Service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of the State; or".

8. Central Government under Rule 16 of the said Rules is the Appellate Authority against any punishment imposed on an Officer under Rule 6 of the All India Services (Discipline and Appeal) Rules 1969. In the impugned order, the Central Government has acted as Disciplinary Authority thereby denying the applicant's constitutional right of appeal.

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9. The learned counsel for the applicant has relied on the judgment passed by the Hon'ble Supreme Court in ***Surjit Singh Vs. Chairman & Managing Director, United Commercial Bank and others (1995) 2 Supreme Court Cases 474*** has held that where the appellate authority has acted as Disciplinary Authority, the right of charged person to appeal against the order of the Disciplinary Authority has been denied to him. Most specifically, the Hon'ble Supreme Court has held the following:-

“6.....we are of the view that the contention advanced on behalf of the respondent – Bank that when an appellate authority chooses to exercise of power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted”.

10. Further in ***Union of India and other Vs. R.P. Singh – (2014) 7 Supreme Court Cases 340*** Hon'ble Supreme Court has held that in the case of Disciplinary Authority (in this case), Appellate Authority acting as Disciplinary Authority has chosen abide by advice of UPSC but the advice has not been communicated to the applicant. The said action of the applicant is bad in the eyes of law, as such non communication of the UPSC advice prior to imposing of penalty interference with natural right of presenting his side of the case against the UPSC advice. In this case the UPSC advice has been served along with the penalty order.

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11. In ***Electronics Corporation of India Vs. G. Muralidhar (2001) 10 Supreme Court Cases 43*** it has been held by the Hon'ble Supreme Court that if the appellate authority acts as Disciplinary authority, there is denial of right of appeal. In ***P.V. George and others Vs. State of Kerala and others - (2007) 3 Supreme Court Cases 557*** it has been held by the Hon'ble Supreme Court that law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. Thus, there is no prospective overruling unless it is so indicated expressly and in clearest possible terms.

12. We have heard the learned counsels for both the parties and have perused the records.

13. It is seen from the impugned order that the same has been passed by the Joint Secretary to the Government of India. In terms of Rule 7 of All India Services (Discipline and Appeal) Rules, 1969, State Government case is the Disciplinary Authority as the applicant has been working as DFO and has been charged for alleged violation of Conduct Rules as DFO Odra. In terms of Rule 16, the Central Government would be the Appellate Authority. In this case there has been disagreement between the State Government and the UPSC. Hence, under Rule 11 of the All India Services (Discipline and Appeal) Rules 1969, such a difference of opinion is required to be referred to the Central

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Government, who is mandated to settle such matters.
Rule 11 of the said Rules reads as follows:-

"11. Cases of difference of opinion to be referred to Central Government. When there is any difference of opinion between a State Government and the Commission on any matter covered by these rules such matter shall be referred to the Central Government for its decision".

13. Reading of Rule reveals that while the Central Government has to give its decision in favour of one or the other of the opinions expressed by the State Government or the Commission, it is not authorized to automatically assumed power of the Disciplinary Authority as vested with the State Government under Rule 7 (b) (i) of the All India Services (Discipline and Appeal) Rules, 1969. Therefore, in terms of pronouncements of Hon'ble Supreme Court in the case of Surjit Singh (supra), the impugned order requires interference.

14. At this stage, we are also compelled to note that in the case of a difference of opinion, the matter is to be required to be sent to the Central Government for his decision. At the same time, under Rule 16 of the All India Services (Discipline and Appeal) Rules, 1969 the Central Government is required to be act as an Appellate Authority. It is not clear from the Rules that in view of the dual role of the Central Government, (which is designated as Appellate Authority as also for acting as an adjudicator in case of ^{disagreement} between State Government and

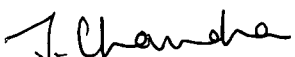
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UPSC that two different wings of the Central Government are vested with the two different roles. In the case of the same wing of the Central Government discharging both the roles (as in the case) one wonders how they can exercise that impartial scrutiny of the applicant's appeal should there be one having once disclosed their mind with regard to the penalty to be imposed on the charged officer by the Disciplinary Authority while acting under Rule 11. This is being the case, without going into the factual merits of the case we deemed it just and proper to quash the impugned order dated 09.09.2009. The matter is remanded to the respondents from the stage of referring the difference of opinion between the State Government and UPSC to the Central Government for giving decision under Rule 11 of the All India Services (Discipline and Appeal) Rules, 1969. Thereafter the penalty so decided may be imposed on the charged officer by the Competent Authority i.e. the State Government. The applicant will have the right to appeal against the order so passed to the Competent Authority to the Central Government. In order to maintain complete impartiality judicial applicability, the respondent NO.1 must designate different officers (including the Dealing Assistants) for scrutinizing the case for ^{future J.O.} action. While acting under Rule 11 and Rule 16 of the All India Services (Discipline and Appeal) Rules, 1969. It is further clarified that in case the applicant has retired from service, the proceeding will be deemed the proceeding under Rule 9 (2) (a) of CCS (Pension) Rules

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and penalty imposed need also be in accordance with the Act and Rules governing retired officers.

15. In view of the above, the impugned order dated 9.9.2009 is quashed. The respondents are directed to act in accordance with the directions given in the preceding para of this judgment. No costs.


(Ms. Jayati Chandra)
Member-A


(Navneet Kumar)
Member-J

Manish/-