

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. 367/2009,

This, the 15th day of September, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)

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

Sureman son of Pardesi aged about 57 years of age resident of Type III, GSI Colony, Sector Q, Aliganj, Lucknow presently working as S.T.A. (Survey) in the Environmental Project Division, GSI, NR, Sector E- Aliganj, Lucknow.

Applicant

By Advocate: Sri S.S.H. Rizvi.

VERSUS

1. Union of India through its Secretary, Govt. of India Ministry of Mines, Department of Mines, New Delhi.
2. The Director General, Geological Survey of India, 27, J.L. Nehri Road, Calcutta-16.
3. The Sr. Dy. Director General, Geological Survey of India, Northern Region, Sector E, Aliganj, Lucknow.
4. Sri Ravindra Kumar Singh presently working as the Sr. Dy. Director General, GSI, N.R., Sector E, Aliganj, Lucknow.
5. Sri Vikram Rai, Presently working as Geologist, and nominated Vigilance Officer, in GSI, NR, Sector E, Aliganj, Lucknow.

Respondents.

By Advocate: Sri S.P. Singh B/h for Dr. Neelam Shukla.

ORDER (ORAL)

By Hon'ble Ms. Sadhna Srivastava, Member (J)

The prayer made in this application is to quash the order dated 12.8.2009 (Annexure A-1) passed by respondent No.3., i.e. Sr.Dy. Director General, Geological Survey of India, Northern Region, Lucknow, whereby, the applicant has been put under suspension under Sub Rule 2 of Rule 10 of CCS (CCA) Rules, 1965. Further, there is a prayer to quash the order dated 13.8.2009 (Annexure A-2), which is in respect of payment of subsistence allowance.

2. The facts, in brief, are that the applicant while posted as Senior Technical Assistant (Survey) in the office of respondent No.3 an FIR was lodged against him (Annexure A-3). On 25.3.2009, the police arrested the applicant and took him in custody. He remained in custody till 16.4.2009. He was released on bail on 16.4.2009. As alleged in the Original Application, after release on bail on 15.4.2009, the applicant joined his duties on 16.4.2009. Thereafter, he did not



attend the office on the ground of illness of his wife. On 2nd July, 2009, he informed the respondent No.3 about his arrest and bail. Thereafter, the applicant made an application applying for leave w.e.f. 25.3.2009 to 15.4.2009. Then, the applicant was suspended vide order dated 12.8.2009 which is impugned in the instant O.A.

3. The applicant has challenged the suspension order on the ground that the FIR in question is a result of fraud, conspiracy and is bogus. Therefore, this should not be taken into account while passing the suspension order; that the entire action of the respondents are unlawful, illegal and the impugned order is in violation to Principle of Natural Justice.

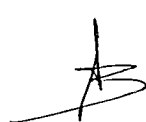
4. The counsel for respondents raised preliminary objection that the O.A. is not maintainable as the applicant has not exhausted the departmental remedy available to him. Admittedly, no appeal has been filed by the applicant against the suspension order.

5. Sub Rule (2) of Rule 10 of the Central Civil Service (Classification, control and appeal) Rules 1965 provides as follows:-


“(2) The Government servant shall be deemed to have been placed under suspension by an order of the appointing authority:-

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty eight hours;”

6. In as much as the applicant was in custody on a criminal charge for a period longer than 48 hrs., he was by reason of the aforesaid provision, deemed to have been suspended. Such deemed suspension operates automatically as soon as the continued detention for more than 48 hrs. is reported. Such formal order is generally made from a date subsequent to the date when the suspension is deemed to take effect. Having regard to the terms of the provisions afore quoted which are crystal clear, we do not find any ground to interfere in the matter. Since, the order of suspension is appealable, we grant liberty to the



applicant to file an appeal before the appellate authority if he so wishes, and the appellate authority, in turn, shall dispose of the appeal in accordance with the rules. With this observation, the O.A. is dismissed without any order as to costs.


(Dr. A.K. Mishra)
Member (A)


(Ms. Sadhna Srivastava)
Member (J)

HLS/-