

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 154/2011

This the 23rd the day of March, 2017

**Hon'ble Mr. Justice V.C. Gupta, Judicial Member,
Hon'ble Mr. O.P.S. Malik, Administrative Member.**

Sunil Kumar Saxena aged about 50 years S/O Sri S.P. Saxena R/O 554/Ka/92, Arjunnagar, Alambagh, Lucknow.

....Applicant

By Advocate: None.

Versus

Union of India through

1. Secretary, Ministry of Defence, South Block, New Delhi.
2. Principal Director, Defence Estates, Central Command, Kariappa Road, Cantonment Lucknow.
3. Defence Estates Officer, Lucknow Circle, Cantonment, Lucknow.

...Respondents.

By Advocate: None

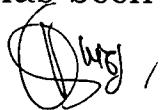
ORDER (ORAL)

Justice V.C. Gupta, JM

The case taken up. None for the parties is present. Adjournment slip has been moved by counsel for the applicant. The matter is cognizable by Division Bench. Counsel for the respondents is also not present to address the court. In this case interim order is operating. Hence, the case is being decided under Rule 15 & 16 of CAT (Procedure) Rules, 1987 on the basis of pleadings and material available on record.



2. The brief facts giving rise to this petition are that the applicant was initially appointed as SDO Grade-III in 1981 and was promoted in Grade-II in the year 2006 and in 2007 he was transferred to Allahabad in the same capacity which was subsequently changed and modified to Lucknow Circle. An FIR was lodged against the applicant in 2007 with regard to discharge of their duties in between 2003-2005 alleging against the applicant that he had forged and fabricated the signatures of Defence Estates Officer and had conspired for cutting of 55 trees from the Military Station and also fraudulently sold the trees. The amount was not deposited in the Government accounts. According to the applicant the auction was done in accordance with the law. He preferred a Criminal Writ Petition No. 1115 of 2007 in re Sunil Kumar Vs. State of Uttarakhand and others. As per order of the Hon'ble High Court direction was issued to the police not to arrest the applicant in the aforesaid criminal case. The charge sheet has been issued against the applicant by initiating the departmental inquiry. Aggrieved by issuance of the charge sheet on the ground that once the criminal case is pending the departmental inquiry cannot be initiated and prefer an original application No. 137/2010. By an order dated 15.4.2010 status-quo was directed to maintain in respect of the charge sheet. Since then the applicant is working on the post. Suddenly he was prevented to discharge his duties as SDO by an order dated 10.03.2011. The applicant was directed by respondent no. 3 not to conduct any auctions and work relating to financial transactions till further orders and work for action entrusted to Sri R.K. Rawat. Thereafter by an order dated 31.03.2011 certain correction was carried out. However, it has been pleaded that this direction was issued on the basis of direction of the Principal Director, Defence Estates, Central Command to the respondent no. 3 to cancel all orders by which the applicant has been assigned the work of auctions of

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• trees and financial transactions. Aggrieved by this order this petition has been filed. The order has been challenged on the ground that the respondent no. 3 had not applied his mind while withdrawing the work of the applicant and he acted on the advice of his superior.

3. The counter affidavit has been filed by the respondents. The factual matrix in the OA is not in dispute. However, it has been contended that as per discretionary powers conferred to the authorities to prevent further losses and for transparent functioning the order impugned was passed. It is not in dispute that the applicant is subjected to departmental inquiry but the same has not been concluded due to intervention of court order. He is also facing criminal case with charges for forgery and corruption.

4. Rejoinder has been filed wherein earlier allegation made were reiterated.

5. During the pendency of this petition, this Tribunal vide an order dated 17.04.2014 issued an interim direction whereby the operation of impugned order dated 10.03.2011 and corrigendum dated 31.03.2011 were suspended and made inoperative till the next date of listing. Perusal of order reveals that the impugned order remained operative till the order of suspending the same. Thereafter the case was adjourned on several occasions and interim order was allow to continue.

6. As none is present for parties we are going to decide this petition after exercising powers conferred under Rule 15 & 16 of CAT (Procedure) Rules, 1987 on the basis of pleadings and material available on records.

7. The factual matrix is not in dispute that the applicant was subjected to criminal prosecution for committing financial irregularities and fabricating documents which have nexus with discharge of official duties by the applicant. The

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• departmental inquiry has also been initiated against him and same has not yet concluded. In such a situation if the decision has been taken by the respondent no. 3 even as per advised given by superior authorities, it cannot be said to be illegal exercised of discretionary power by authorities. Nothing has been shown that the impugned orders are against any statutory rules or instruction. The discretion exercised by respondents cannot be categorized as non judicious or against the settle judicial norms. As such no interference is warranted in the decision taken by authorities by way of impugned orders.

8. We are of the view that this petition lacks merit and accordingly dismissed. Interim order stands discharged.

9. There shall be no order as to costs.



(O.P.S. Malik)
Administrative Member

(Justice V.C. Gupta)
Judicial Member

JNS/-

O.R.
 Judgment has
 not been yet signed
 by any of the members
 member (A), hence another
 order was passed on 27.3.17 8
 O.A is dismissed as withdrawn
 27.3.17