

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Dated: This the 7th day of JULY 2006

Original Application No. 283 of 2006

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Mr. P.K. Chatterji, Member (A)

Syed Hasan Mustafa Rizvi, a/a 34 yrs,
S/o Shri S.Y.H. Rizvi,
R/o 27 A/1 Radha Gram, Ali Colony, Thakurganj,
LUCKNOW.

..... Applicant

By Adv: Sri A. Moin

V E R S U S

Union of India through

1. Comptroller General of India, NEW DELHI.
2. Accountant General (A&E) II, U.P. ALLAHABAD.
3. Deputy Accountant General (Administration),
O/O Accountant General (A&E) II, U.P.
ALLAHABAD.
4. Senior Accounts Officer, O/O Accountant General
(A&E), 10th Floor Kendriya Bhawan, Aliganj,
LUCKNOW.
5. A.L. Shah, Deputy Accountant General
(Administration), O/O Accountant General (A&E)
II, U.P. ALLAHABAD.

..... Respondents

By Adv: Sri P. Kumar

O R D E R

This OA No. 283 of 2006 has been filed by the
applicant, Shri S.H.M. Rizvi, impugning the
suspension order dated 06.06.2006 passed by the
respondent No. 3.

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2. The facts of the case briefly are that the applicant was initially appointed as clerk on 25.01.2004 under respondent No. 2 at Allahabad. On account of some personal problem pertaining to his family, the applicant had requested respondent No. 2 for his transfer to Lucknow office which was exceeded to by the respondent No. 2 vide order dated 16.06.1996. Thereafter, the applicant was posted at Lucknow by the order dated 17/18.04.2006, the applicant was again transferred from Lucknow to Allahabad. Aggrieved by this order, the applicant filed OA No. 196 of 2006, Syed Hasan Mustafa Rizvi Vs. Union of India & ors and the Tribunal vide its order dated 21.04.2006 directed status quo be maintained in respect of the applicant. Thereafter, the applicant was still not allowed to join his duties and so he preferred MA No. 987 of 2006 before the Tribunal where upon the Tribunal passed order dated 27.04.2006, which reads as under:

It has been mentioned that substitute of the applicant had already been joined Lucknow office on 19.04.2006. This means that in the same post, two persons have been accommodated. If rules provide for such accommodation in that event, there should be no difficulty for the respondents to allow the applicant to continue in the same post till the disposal of the OA. It is accordingly ordered let objection if any be filed before the next date of hearing and R.A., if any, may be filed within one weeks, thereafter. List the case for final hearing on 19.05.2006. Copy of the order be made available to the counsel for the parties."

In the averment made in the Original Application the applicant had inter-alia stated that there was no definite transfer policy and the averment of the

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respondents that the transfer is within the guidelines of the policy were misconceived and concocted.

2. The relief which has been sought by the applicant in this OA is as under: -

- a. "to quash the impugned suspension order dated 06.06.2006 as contained in Annexure A-1 to the O.A. with all consequential benefits.
- b. to award exemplary cost against the Respondent No. 3 for having passed impugned suspension order in malicious manner.
- c. to direct the respondents to pay the cost of this application.
- d. any other order which this Tribunal deems just and proper in the circumsances of the case be also passed."

3. The counter affidavit filed by Shri A.K. Chaturvedi, on behalf of the respondents is also controverted by the applicant in Misc. Appl. No. 1350 of 2006 in OA No. 196 of 2006, in which the applicant had even prayed for action under Section 95 of Cr.PC against Shri A.L. Shah. However, the Tribunal has not disposed of the case so far. Thus it would be seen that there was a background of acrimony and hostility between the respondents on the one hand and the applicant on the other arising out of the orders of transfer of the applicant.

4. On 06.06.2006 the order of suspension was served on the applicant by the respondents. It was based on the ground that some disciplinary

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proceedings against the applicant were under contemplation and hence the order of suspension. It has been contended by the applicant that the impugned suspension order was issued out of the displeasure cause by the applicant having recourse to the Tribunal for redressal of his grievances. The applicant has attributed the order of suspension to malice on the part of the respondents arising out of their forestation and displeasure.

5. The respondents have filed counter affidavit in which they have narrated the facts from their side. It has been averred that according to the the policy of the headquarters no member of staff should be kept in the same wing of the department for a period exceeding five years, except in exceptional circumstances with the permission of the Accountant General.

6. As per direction of the order dated 27.04.2006, the respondents are of the view that according to rules, it was not possible to accommodate two persons against one post at the time of issue of the order of the Tribunal dated 27.04.2006. Therefore, as a responsible person he should have complied with the order of his superiors and also of the Tribunal. Thereafter the respondents have narrated an incident arising out of which the suspension order was issued. On 31.05.2006 while the applicant was still

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at Lucknow, some officials from the office of Accountant General, Allahabad were visiting the office at Lucknow. The applicant entered the office and created obstruction to the office work and also misbehaved with some superiors in his Lucknow office by using abusive language. He also intimidated the visiting officials from Allahabad. The respondents have further stated in their counter affidavit that an FIR was lodged with the local police station under which the incident took place. The photo copy of the complaint lodged is also enclosed.

7. Pleadings from both the sides were heard on 06.07.2006. The point of decision is whether the impugned suspension order is to be questioned on the basis of the facts and circumstances narrated above. The incident was reported by a written statement by Sri Deputy Singh, Account Officer. It is seen that the respondents proceeded to place the official under suspension on the basis of this written statement and it is not on record anywhere that an inquiry was conducted to establish the charge prima-facie. It is true that suspension can be resorted to in the case of serious misconduct but it is desirable to assess the gravity of the misconduct by a preliminary inquiry. In this case it does not appear to have been done. We have also taken note of the other norms of suspension which are as under:-

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a. The suspension would be justified in a case where removal of the official concerned is contemplated.

b. Where it is apprehended that the charge official remaining in the office may prejudice the official and there is a likelihood of his trying to temper with the evidence.

8. In our view none of these above situation obtains in this case. Therefore, we are of the view that suspension is not warranted and should be revoked of course without any prejudice to the respondents taking appropriate disciplinary action in respect of misbehavior of the applicant after necessary enquiry.

9. With the above direction this OA is allowed of with no order as to costs.

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(P.K. Chatterji)

Member (A)

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(M. Kanthaiah)

Member (J)

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