

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 415/2008 and 416/2008

This the ^{21st} day of January, 2009

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

(415/2008)

Dr. Subdershan Kumar aged about 51 years son of late Shri Om Prakash Verma, resident of House no. A-1, Tower No. 11, Metro City, Paper Mill Compound, Nishatganj, Lucknow.

Applicant

By Advocate: Sri D.P.Srivastava

Versus

1. Union of India through Secretary, Department of Scientific and Industrial Research, Technology Bhawan, New Mehrauli Road, New Delhi-110016.
2. Council of Scientific and Industrial Research (CSIR), through its Director General, Anushandhan Bhawan, Rafi Marg, Kidwai Marg, New Delhi.
3. Director General, Council of Scientific and Industrial Research, through its Director General, Anushandhan Bhawan, Rafi Marg, Kidwai Marg, New Delhi.
4. Director, Central Institute of medical and Aromatic Plants (CIMAP), Post Office, CIMAP, Near Kukral Picnic Spot, Lucknow.
5. Director, National Botanical Research Institute (NBRI) Rana Pratap Marg, Lucknow.
6. Shri R.S. Antil, Ex- CVO, CSIR, Resident of K-8, 1st Floor, Type IV, Andrews Ganj, Extn., New Delhi (presently at Central Glass and Ceramic Research Institute) 196, Raja S.C. Mullick Road, Kolkatta-700032.)

Respondents

By Advocate: Sri P. Awasthi for Sri A.K.Chaturvedi
Sri K.K.Shukla for Dr. Neelam Shukla

(416/2008)

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By Advocate: Sri P. Awasthi for Sri A.K. Chaturvedi
Sri K.K. Shukla for Dr. Neelam Shukla

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application is directed against the order dated 16.6.2008 of respondent No. 3 imposing a penalty of censure on the applicant. The applicant has prayed to set aside this impugned order and also to give a direction to the respondents to extend all consequential benefits to the applicant as if the impugned order was never passed. Further a prayer has been made for passing an interim order to stay operation of the impugned order dated 16.6.2008.

2. The respondents have filed a preliminary objection stating that the applicant had alternative remedy available under the CCS (CCA) rules to file an appeal against the impugned before the prescribed appellate authority. Therefore, this application, premature in nature, should be dismissed as not maintainable.

3. As a matter of fact, there are two original applications, O.A. 415/2008 and 416/2008 filed by the applicant under similar circumstances involving direct application made under Section 19 of the Administrative Tribunal Act 1985 and the preliminary objections have been filed by the respondents in

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both the cases on same ground that the applicant had alternative statutory appeal available to him and on that ground the applications should be dismissed as non-maintainable.

4. In his reply, the applicant has submitted that the deponent who filed the objection is not competent to file the affidavit on behalf of Respondents No. 2 to 5. He is the administrative officer of the National Botanical Research Institute, Lucknow and the Director of this Institute has been arrayed as respondent No. 5. There is no document to indicate that Respondent No. 5 had authorized the deponent to file the objection on his behalf.

Respondents have placed the letter dated 24th May 1989 of the Council of Scientific & Industrial Research, authorizing the controller of Administration/Administrative Officer of National Laboratories/Institutes to sign all legal documents on behalf of CSIR. In view of such delegation of power, the deponent filing the objection affidavit, had the authority to do so on behalf of Respondents No. 2, 3 and 5.

5. On merits, it has been alleged that respondent No. 6 Sri R.C. Antil, who was the Chief Vigilance Officer with respondent No. 2 was the prime spirit behind initiation of disciplinary proceedings against the applicant and the Respondent No. 3, who is the Director General of Council of Scientific & Industrial Research, and in that capacity, the appellate authority for the applicant was influenced from the beginning under the extraneous pressure exerted by respondent No. 6 to initiate action against the applicant. Since, he was involved from the beginning, it would be difficult for the applicant to expect any relief from the appellate authority. Therefore, this application has been made directly, before this Tribunal.

6. Section 20(1) which deals with the subject is extracted below:-

"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance".



7. It says that ordinarily, no application should be admitted when statutory remedy is available under relevant service rules. Admittedly, this is a case involving imposition of minor penalty. Under Rule 23 of CCS (CCA) rules, the applicant has the remedy available for filing a statutory appeal before the appellate authority and the statutory authority according to the applicant happens to be respondent No. 3. It is to be seen whether the averments of the applicant that the respondent No. 3 is already influenced or prejudiced against the applicant raising reasonable suspicion in his mind not to expect fair consideration of his appeal has any merit.

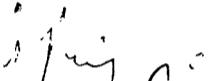
8. The learned counsel for the respondents submits that respondent No. 6 was not the CVO in the entire period taken for completing the impugned disciplinary proceedings. Neither is he the present incumbent in the office of CVO nor was he there at the initial stages. Therefore, the apprehension expressed by the applicant about the prevalence of overarching influence of respondent No. 6 who has also been arrayed in person is misplaced. Further, the incumbent respondent No. 3, holding office at the time of institution of disciplinary proceedings, is no longer there. There is no reason to believe that the present incumbent being such a high functionary will ever be subject to influence of a person who is no longer there in the vigilance office. It does not stand to reason that in all cases instituted at the instance of the vigilance, the employee concerned will not get fair treatment from statutory authorities.

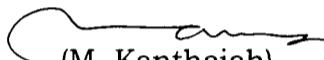
9. The counsel for the applicant submits that the appeal has to be made within a period of 45 days as prescribed under Rule 25 of CCS (CCA) Rules. The period of limitation is already over. Therefore, there is reasonable apprehension that this remedy will not be available to him as the appeal will be barred by limitation. Rule 25 which deals with limitation in filing appeal also says that an appeal also beyond the expiry of limitation period may be entertained if the authority is satisfied that there was sufficient cause for delay. However, this apprehension can be set at rest, if liberty is granted to him to file the appeal within a period of 45 days from the date a copy of this order is received by the respondent No. 3.

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10. In the circumstances, we do not find that there is any extraordinary situation which calls for direct interference of this Tribunal in this matter when alternative statutory remedy is available. It is only a case of minor punishment and the applicant should avail himself of statutory remedy provided under rules.

11. In the result, this application is dismissed on the ground of maintainability. However, liberty is given to the applicant to file the appeal within 45 days from the date a copy of this order is received by the respondent appellate authority. This order will also apply to the Original Application No. 416/2008 where a similar preliminary objection had been taken by the respondents.


DR. A. K. Mishra
Member (A)


(M. Kanthaiah)
Member (J)
22.01.09