

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 456/2008

This the ^{22nd} day of January , 2009

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

N.K. Tiwari aged about 55 years son of Sri Markandeo Tiwari resident of T-II/37, Kendranchal Colony, Aliganj, Lucknow (presently working as Assistant in the office of Inspector General, Frontier Headquartr ,Sashastra Seema Bal, Kendriya Bhawan, 11th Floor, Aliganj, Lucknow-U.P.

Applicant

By Advocate: Sri R.C. Singh

Versus

1. Union of India, through the Secretary, Ministry of Home Affairs, New Delhi.
2. Director General, Govt. of India, Ministry of Home Affairs, Sashastra Seema Bal, East Block-V, R.K. Puram, New Delhi.
3. Inspector General, Govt. of India , Ministry of Home Affairs, Frontier Headquarters , Sashastra Seema Bal, Kendriya Bhawan, 11th Floor, Aliganj, Lucknow (U.P.).
4. Sri Satyavrat , Inspector General, Govt. of India, Ministry of Home Affairs, Frontier Headquarters, Shastra Seema Bal, Kendriya Bhawan, 11th Floor, Aliganj, Lucknow (U.P.)

Respondents

By Advocate: Sri K.K.Shukla for Dr. Neelam Shukla

ORDER

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

This application has been made against the order of suspension dated 19.12.2003 passed against the applicant by the respondent



No. 3, when the applicant was working as Assistant in the pay scale of Rs. 5500-9000 in the establishment of respondent No.3.

2. The main grounds taken by the applicant are:

- i) The respondent No. 3 is not the competent authority under CCS (CCA) Rules 1964 to impose the penalty of suspension on the applicant;
- ii) The impugned order is a bald one which does not reveal the reasons which led to the decision for putting the applicant under suspension;
- iii) The suspension order is dated 19.12.2003 which could not be passed against the applicant after his promotion to the post of Assistant on 3.4.2008.

2. The respondents have clarified that the contention of the applicant that he is a Group 'C' employee is not correct. Subsequent to his promotion to the post of Assistant in the pay scale of Rs. 5500-900, he belongs to Group 'B' non-gazetted rank. As per the Govt. notification dated 20th November, 2006 of the Ministry of Home Affairs, Respondent No. 3 is the Chairman of the Departmental promotion Committee which considers promotion and appointment to the post of Assistant in his establishment. The delegation of power as per Schedule 27 prescribes that I.G. is the appointing authority for Group 'B' non-gazetted post. Therefore, there is no illegality in issuance of impugned suspension order under the authority of respondent No. 3. This point was conceded by the learned counsel for the applicant at the time of hearing.

3. Learned counsel for the applicant placed reliance on the judgment of Allahabad High Court in Sher Jung Dubey Vs. the Regional Manager and others reported in 1983 (1) LCD 200 in support of his contention that a bald order of suspension which does not indicate any reason cannot be sustained in law. He also cited the



case of Dr. Avneesh Kumar Vs. Director , Indian Veterinary Research Institute, Izatnagar, Bareilly and others reported in 1999 (17) LCD - 419 in which it was held that any order which is non speaking, even if administrative in nature, is to be held as arbitrary and violative of principles of Article 14 of the Constitution of India. This judgment considered the observations of the Hon'ble Supreme Court in the case of Mohinder Singh Gill and another Vs. Chief Election Commissioner reported in AIR 1978 SC 851 to the effect that the validity of an order is to be judged by the reasons so mentioned in the order itself and it cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In other words, if an order is bad in the beginning, it cannot be validated by additional grounds ^{furnished} later on.

4. The relevant portion of the impugned order is extracted below:-

"Whereas, a disciplinary proceedings against Sri N.K. Tewari ,Assistant is contemplated . Now, therefore, the undersigned in exercise of the powers conferred by sub rule (1) of Rule 10 of the Central Civil services (Classification, Control and Appeal) Rules, 1965 hereby places the said Shri N.K. Tiwari , Asst. under suspension with immediate effect...."

5. It has been stated that a disciplinary proceeding was contemplated against Sri N.K.Tewari and on that basis , he has been put under suspension in exercise of power vested in respondent No. 3 by sub rule 1 of Rule 10 of CCS (CCA) Rules, 1965. Clearly a mention has been made that a disciplinary proceedings is being contemplated against him. In that view of the matter, it cannot be held that the order is bald one. The learned counsel for the respondents cited the judgment of the Hon'ble Supreme Court in Punjab National Bank Vs. D.M. Amarnath reported in (2000) 10 Supreme Court Cases, 162 which states as follows:-

"In our opinion the law does not require that the suspension order must on its face disclose that any disciplinary proceedings



were contemplated or were pending or that any criminal offence was under investigation, inquiry or trial. It would be sufficient if the competent authority recorded in its proceedings that the conditions mentioned in Regulation 12.1 were in existence".

6. The Hon'ble Supreme Court was referring to the regulation of the Bank concerned. However, Rule 10(ii) (a) of the CCS (CCA) Rules 1965 which governs the present case, states as follows:-

"10. Suspension

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) "where a disciplinary proceedings against him is contemplated or is pending ; or

7. The respondent No. 3 has stated in the impugned order that a disciplinary proceedings ~~are~~ is being contemplated against the applicant. Further, the learned counsel for the respondents submitted that a format has been prescribed under Rule 10 (i) of the aforesaid Rules in the Ministry of Home Affairs O.M. NO. 234/18-65-ABD (ii) dated 5th March, 1996 and the respondent has faithfully followed the prescribed format in the impugned order. He further pointed out a Govt. clarification issued in O.M. No. 35014 dated 19th November 1982 of the erstwhile Department of Personnel and Training which deals with the case of suspension on the ground of contemplated disciplinary proceedings. It refers to the fact that a Govt. employee has a right to appeal against the order of suspension under Rule 23 (i) of the aforesaid Rules. Therefore, every efforts should be made to finalise the charges against the Govt. servants within 3 months from the date of suspension and in that event, the employee will have full knowledge about the details of the reasons which led to his



suspension and can exercise his right of appeal. In the present case, the respondent has issued a memorandum on 12.1.2009 enclosing the articles of charges, a statement of imputations of alleged misconduct and a list of documents by which the article of charges is proposed to be sustained. Since full-fledged disciplinary proceedings have already been initiated against the applicant and a charge sheet has been issued to him relating to the misconduct of bigamy, he has full opportunity to make representation against the suspension order and it could not be maintained that there was any denial of reasonable opportunity or consequential violation of natural justice in the present case.

8. He has stated that reference of 19.12.2003 made in the application is only an inadvertent error. The suspension order, in fact, was issued on 19.12.2008 not ^{on} 19.12.2003 as claimed by the applicant. Since he was promoted to the post of Assistant only in the month of April, 2008, by no stretch of imagination could it be argued that charge sheet dated 19.12.2003 could be issued against him on his present post of Assistant. He has mentioned about entries in peon book and the subsequent order dated 13.12.2008 granting subsistence allowance to the applicant to support that the charge sheet was, in fact, issued only on 19.12.2008 and the mention of 2003 is an inadvertent error.

9. Rules state that an officer can be placed under suspension if disciplinary proceedings are contemplated against him, and in the present case, the impugned order has specifically mentioned that disciplinary proceedings are contemplated against the applicant. Further, there is no miscarriage of natural justice in view of the fact that a charge sheet has been issued immediately thereafter on 19.1.2009 and the applicant has the full opportunity in filing an appeal against the impugned suspension order. The Hon'ble Supreme Court in the case of Punjab National Bank (Supra) have




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gone to the extent to say that a suspension order can be justified if the competent authority recorded the reasons in their file and did not make any specific mention of it in the suspension order itself. Since in the suspension order, it is mentioned that disciplinary proceedings were being contemplated against the applicant, it cannot be held that it was an arbitrary and bald order and that there was no justification for passing the impugned order.

10. In the short C.A., the respondents have stated that the O.A. which is pre-mature in nature and devoid of merit should be dismissed. He has further submitted that the respondent No.3 has issued the impugned order in his official capacity after being satisfied that disciplinary proceedings were being contemplated against the applicant. No ground has been stated why the respondent No.3 again has been arrayed byname in his personal capacity. Impleading him by name is not justified either from the facts and circumstances of case or from the pleadings in the application. Therefore, it is urged that his name should be deleted from the array of the parties.

11. From the foregoing discussions, we find that the applicant has full opportunity to make an appeal against the impugned order before the statutory authorities as prescribed under CCS (CCA) Rules. Therefore, the objection of the respondents that this application is pre-mature is sustained. Accordingly, the application is dismissed as not being maintainable on the ground that alternative remedy is available to the applicant in the matter. No costs.


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

HLS/-


(M. Kanthaiah)
Member (J)

22.01.09