

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 138/2009

This the 19th day of May, 2009

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

Bankatesh Bahadur Singh aged about 59 years son of late Mahabir Singh, resident of 2/8, Vishal Khand, Gomti Nagar, Lucknow.

Applicant.

By Advocate: Sri P.C. Rai for Sri Shishir Jain.

Versus

1. The Union of India, through Secretary, Department of Personnel and Training, Ministry of Public Grievances and Pension, North Block, New Delhi.
2. The State of U.P. through Principal Secretary (Appointment), Department of Personnel, Government of U.P., Civil Secretariat, Lucknow.

Respondents.

By Advocate: Sri S.P. Singh for Respondent No. 1
Sri A.K. Chaturvedi for Respondent No.2

ORDER

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

This is an application challenging the suspension order dated 25.11.2008 passed by the State Govt. in contemplation of a second disciplinary inquiry to be instituted against the applicant and the subsequent order dated 22.2.2009 made under Rule 3(8) (a) of All India Services (Discipline and Appeal) Rules, extending the suspension period till 30.4.2009, the date on which the applicant was to superannuate.

2. These orders have been assailed primarily on the ground that the charges on which the applicant has been placed under suspension are not attributable to him and that the suspension order was made on baseless and flimsy charges on account of political reasons and vendetta. It is alleged that the applicant has been wrongly perceived to be close to the political masters of the previous Govt. and, for that reason, the present dispensation is out to harass him. It is

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further claimed that the respondent No. 2 has acted in violation of the provisions contained in Rule 3(7) (b) and Rule 3(8) (a) of the aforesaid Rules.

3. The respondents have taken the following preliminary objections:-

i) that the applicant has not availed himself of the relief statutorily provided under the aforesaid Rules and not filed any appeal before the Central Govt. As such, this application is not maintainable in view of the provisions of Section 20 of the Administrative Tribunal Act, 1985;

The learned counsel for the applicant took the plea that by virtue of the order dated 16.3.2009 in O.A. No. 451/2008 filed by the applicant, the preliminary objection relating to availability of alternative remedy was considered and rejected. Therefore, according to him, the respondent No. 2 could not take the same plea again. It may be clarified in this connection that the objection which was rejected was specifically in the context of the suspension order dated 13.5.2007 in respect of which earlier this Tribunal had directed the applicant to file an appeal before the Statutory Authority, viz, the Central Govt. Since that appeal had not been disposed of even after a lapse of six months, it was observed that the applicant was well within his rights to file the O.A. challenging the impugned suspension order dated 13.5.2007.

In the same very order, a view was taken that the O.A. No. 117/2008 containing plural reliefs could not be entertained. In other words, a clear finding was given that there were two causes of action: one relating to suspension order dated 13.5.2007 and the other relating to the order dated 25.11.2008. The objection about the availability of alternative remedy was overruled only in respect of the suspension order dated 13.5.2007, it could not be stretched to include the suspension order dated 25.11.2008 which constituted a

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separate cause of action. Therefore, the objection made by the learned counsel for the respondent No. 2 that the appellant should have availed himself of the remedy of appeal under Rule 16(i) of All India Services Rules is well taken. We find that the limitation period of filing the appeal has expired. However, we give liberty to the applicant to file an appeal against the 2nd suspension order dated 25.11.2008, within a month if he so desires.

5. The second objection was that the applicant has already challenged the charge sheet dated 5.12.2008 which formalized the allegations constituting the basis for his suspension order. Further, the charge sheet was relied subsequently on 22.2.2009 for ordering extension of the suspension on getting the recommendation of the Review Committee. Since the charge sheet and the ensuing disciplinary proceedings have been challenged in the Allahabad Bench of the Tribunal before filing of this application, the applicant should have mentioned this fact in the O.A. itself. Therefore, he is guilty of concealment of material facts and this application, which suffers from such an infirmity, cannot be maintained. As the impugned suspension order dated 25.11.2008 was passed because a new disciplinary proceeding against the applicant was under contemplation and as a charge sheet has already been issued in respect of the allegations which led to the suspension order dated 25.11.2008, and as the charge sheet as well as the disciplinary proceedings emanating therefrom have been challenged in O.As. No. 321/2009 and 322/2009 before the Allahabad Bench of the Tribunal, the applicant could not have filed this application on the same set of facts and circumstances, in as much as his suspension order dated 25.11.2008 and the extension order dated 20.2.2009 have flowed directly from the allegations constituting the charges challenged in OAs filed before the Allahabad Bench of this Tribunal.

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6. At the time of hearing, the learned counsel for the applicant vehemently disputed that the O.As before the Allahabad Bench were filed prior to filing of this application. Therefore, we ordered on 3.4.2009 directing them to file affidavit about the actual date when the OAs were filed before the Allahabad Bench of the Tribunal. In pursuance of this direction, affidavits have now been filed stating that the OAs 321, 322/2009 before the Allahabad Bench were filed on 24.3.2009 whereas admittedly this application was filed on a later date on 26.3.2009.

7. In the circumstances, there is considerable force in the argument of the learned counsel for the respondents that the material facts were not revealed in this application and that the basis of the disciplinary proceeding including the suspension/extension orders has been challenged before the Allahabad Bench of the Tribunal and there could not be multiplicity of litigations on the same set of facts and circumstances.

8. In such view of the matter, we find that this application is not maintainable, hence, rejected at the admission stage. No costs.

Apri 28 19/05/09
(Dr. A.K.Mishra)
Member (A)

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(M. Kanthaiah)
Member (J)

HLS/-