

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 309/2009

This the 11th day of August, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A.K. Mishra, Member(A)

Dr. Surdershan Kumar, Aged about 51 years, S/o late Sri Om Prakash Verma, R/o House No. 1, First Floor, Tower No.11, Metro City, Paper Mill Colony Compound, Nishatganj, Lucknow presently posted as Scientist E-1 (Group IV (3)) National Botanical Research Institute (NBRI), Rana Pratap Marg. Lucknow.

.....Applicant

By Advocate: Sri O.P. Srivastava and Sri A. Moin

Versus

1. Director, National Botanical Research Institute (NBRI), Rana Pratap Marg, Lucknow.
2. Director General, Council of Scientific & Industrial Research, Anushandhan Bhawan, 2- Rafi Ahmad Kidwai Marg, New Delhi.
3. Union of India through the Secretary, Department of Scientific & Industrial Research, Government of India, Technology Bhawan, New Behrauli Road, New Delhi.
4. Dr. Rakesh Tuli, Director, National Botanical Research Institute (NBRI), Rana Pratap Marg, Lucknow.

.....Respondents

By Advocate: Sri H.K. Mishra and Sri S.P. Singh

ORDER

By Dr. A.K. Mishra, Member-A

The applicant has challenged the suspension order issued against him on 27.7.2009 by the respondent no.1, who has been arrayed in his personal capacity as respondent no.4. He has alleged that the respondent no.4 is carrying a personal vendetta against him since the time the applicant was a serious rival contender for the post of Director, National Botanical Research Institute (NBRI), a post which the respondent no.4 is holding at present. The respondent no.4 is apprehensive of the



strong presence of the applicant, who is a scientist of international repute, in the Institute as a threat to him, and is trying his best, taking advantage of his present position as the disciplinary authority of the applicant, to get him involved in false investigations and frivolous disciplinary proceedings.

2. A preliminary objection was made by the learned counsel for the respondents at the time of hearing that this application is not maintainable under Section 20 of the Administrative Tribunals Act, 1985 as the impugned suspension order is appealable under CCS (CCA) Rules, and the applicant should exercise his right for statutory relief before the appellate authority.

The learned counsel for the applicant submits that in the absence of any disclosure of specific allegations constituting misconduct, it is not possible for the applicant to rebut the allegations and seek relief from the appellate authority.

3. The learned counsel for the respondents drew our attention to Rule 10 [1] of the aforesaid Rules, which empowers the disciplinary authority to place a government employee under suspension if a disciplinary proceeding is contemplated against him. In the present case, he submits that there are materials before the disciplinary authority that the applicant was indulging in acts of misconduct, subversive of the discipline of the organization and, on that basis, a regular disciplinary proceeding is being contemplated against him. The disciplinary authority would issue a chargesheet, in due course, before expiry of 90 days from the date of suspension order. The same grounds that the applicant has taken in this application, could be raised by him before the appellate authority. He further states that there is no infirmity in the impugned order and the Tribunal could not, at the present stage, exercise its power of judicial review.

4. Section 20 of the Administrative Tribunals Act says that the Tribunal shall not 'ordinarily' admit an application unless it is satisfied that the applicant had availed himself of the

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remedies available to him under the relevant service rules for redressal of his grievance. The interpretation of word 'ordinarily' has been examined by us in O.A. no. 267/2009 wherein relying on **Kalish Chand Vs. Union of India AIR 1961 SC 1346**, **Teeta Garh Paper Mils Limited and Another Vs. State of Orissa and others AIR 1983 (SC) page 603**, and **S.S. Rathore Vs. State of Madhya Pradesh AIR 1930 (SC) 10**, it was held that since the applicant had not availed himself of statutory remedy of appeal under Rules of 1969, the OA was not maintainable in view of the provisions contained under Sub Section (1) of Section 20 of the Administrative Tribunals Act, 1985. A Full Bench of Hyderabad of this Tribunal held, in **O.A.No.27 of 1990 B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and another**, that the expression "ordinary" used in sub Section (1) did not mean "normally" and "usually". The remedy of appeal against suspension is not an alternative remedy but it is a remedy which has to be exhausted in view of the provisions contained under Sub Section (1) of Section 20, before coming to the Tribunal under Section 19. There is nothing special or extraordinary which is alleged for admitting the OA without exhausting that remedy of appeal.

5. The learned counsel for the applicant has filed a number of citations to the effect that there should be some indication of the nature of misconduct in the suspension order when it is passed in contemplation of a departmental enquiry.

6. The respondents have relied upon the decision of Hon'ble Supreme Court in **Punjab National Bank Vs. D. M. Amar Nath reported at 2000 (10) SCC 162** in which it has been held that even if, no mention was made in the suspension order about



disciplinary proceedings being contemplated or was pending, such an order could not be set-aside simple on the ground of such non-mention in the suspension order. The Apex Court held that it would be sufficient if the competent authority recorded in its own file that there were materials and a disciplinary proceeding was being contemplated against the employee. We are not going to look into the merits of the validity of suspension order at this stage in the O.A. Therefore, there is no need to discuss the other grounds taken in the application.

We hold that the statutory remedy is available to the applicant under Rule 23 of the CCS (CCA) Rules and the appellate authority is no less than Director General of CSIR, who happens to be an eminent personality in the field of science and research in the country. There is no reason to dis-believe that the appellate authority will not look into the contentions of the applicant fairly and dispassionately. We have been taking this consistent stand and there is no reason to take a different view in this case.

8. In the result, we find that this application is not maintainable on the ground of availability of statutory remedy. However, liberty is given to the applicant to file an appeal before the appellate authority within a period of 30 days from the date of this order and the appellate authority is directed to dispose of the appeal of the applicant on merits within a period of one month from the date of receipt of appeal petition from the applicant.

9. The O.A. is disposed of accordingly. No costs.

A. K. Mishra 12/08/09
 (Dr. A.K. Mishra)
 Member-A

S. Srivastava
 (Ms. Sadhna Srivastava)
 Member-J