

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 863 of 2003

Quashed this the 8th day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

D.M. Gaur (Durga Mandu Gaur),
S/o. Late Shri R.N. Gaur, aged about 46
Years, working as U.D.C. in Ordnance
Factory, Etarsi, Distt. Hoshangabad, M.P. Applicant

(By Advocate – Shri V.K. Shukla)

Versus

1. The General Manager, Govt. of
of India, Ministry of Defence, Ordnance
Factory, Etarsi.
2. The Election Commissioner,
Govt. of India, New Delhi.
3. The District Election Officer,
Hoshangabad M.P. (The Collector,
Hoshangabad). Respondents

(By Advocate – Shri Om Namdeo for respondent No. 1 and Shri K.K.
Trivedi for respondents Nos. 2 & 3)

ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the
following main reliefs :

“8.1.1 to quash the order of suspension Annexure A-1 dated
2.12.2003 by which the applicant has been placed under
suspension in reference to the order passed by the Distt.
Election Officer, Hoshangabad,

8.1.2 to declare that the order of suspension is illegal and
arbitrary,



8.1.3 to direct the respondents not to implement the order of suspension and to continue the applicant on service.”

2. The brief facts of the case are that the applicant was appointed as Lower Division Clerk on 9.12.1985. By letter dated 13.11.2003 the respondent No. 1 had informed the applicant that he has been assigned duty as Poll Officer No. 1 in the Assembly Elections, 2003. It was also informed that the training is scheduled on 15.11.2003 at 3 P.M. in Patrakar Bhavan, Etarsi. The applicant was directed to remain present for training on the aforesaid date. The applicant is not keeping good health and is suffering from diabetes and high blood pressure and is undergoing treatment at Indore etc. The applicant submitted his application alongwith the Doctor's certificates immediately on the next date before the training on 14.11.2003 before the Assistant Returning Officer, Etarsi to exempt from election duty. But no order was passed on this application by the Assistant Returning Officer. He was served with another order from the office of the respondent No. 3 by which he was informed that his duty has been assigned at Bhensdehi Distributing Center at Betul. He was directed to appear on 28.11.2003 at 8 A.M. The applicant made representation and reminded that he had not attended the training and he may kindly be exempted from the election duty. The respondent No. 3 did not take any action on the representation of the applicant. The date was fixed on 28.11.2003 to proceed for Betul district. On 27.11.2003 the respondent No. 3 had issued a letter and considered the representation of the applicant and directed the applicant to appear on 2.12.2003 at 2 P.M. alongwith all medical certificates. The applicant appeared on the said date and produced all the necessary medical certificates. Again he sent a reminder on 3.12.2003. The respondent No. 3 did not take any decision in respect of the applicant's application for exemption from election duty and issued an order of suspension on 2.12.2003. It was surprising for the applicant that vide letter dated 27.11.2003 the date for hearing was fixed after the poll on 2.12.2003 at 2 P.M. and from the order at Annexure A-1 it is clear that the applicant has been suspended from 2.12.2003 itself. There is no consideration or application of mind to the apphcant's documents.



Aggrieved by the aforesaid the applicant has filed the present Original Application.

3. Heard the learned counsel for the parties and perused the records carefully. The respondents Nos. 2 & 3 did not file the return, hence, their right to file the reply was forfeited vide order dated 2.9.2004. MA No. 1125/2004 filed by the respondents Nos. 2 & 3 on 15.09.2004 seeking permission to file return on their behalf and also to recall the order dated 2.9.2004, was rejected vide order dated 26.10.2004. However, the learned counsel for the respondents Nos. 2 & 3 was permitted to argue the case.

4. The learned counsel for the applicant argued that the applicant was directed to appear on 28.11.2003 at 8 A.M. for election duty. He moved an application dated 23.11.2003 with the contention that the applicant is suffering from several serious disease. Hence, he would not be able to appear before the respondents on 28.11.2003 at 8 A.M. Further, vide letter dated 27.11.2003 the applicant was informed by the Collector and the District Election Officer, Hosliangabad that after considering the representation of the applicant dated 23.11.2003 he is directed to appear in his office on 2.12.2003 at 2 P.M. with all concerned documents regarding his illness. The applicant moved an application on 2.12.2003 to the Collector and District Election Officer, Hoshangabad in which he mentioned that he remained present in his office on 2.12.2003 from 2 P.M. to 5.30 P.M. but the respondent No. 3 was said to be busy in other duties. The applicant moved another representation on 3.12.2003 Annexure A-10 and he has also filed the medical certificates but the respondent No. 1 passed the impugned order dated 2.12.2003 (Annexure A-1) whereby he was ordered to be placed under suspension in compliance with the letter of the respondent No. 3 dated 29.11.2003. This suspension order was passed by the respondent No. 1, while the applicant was directed to appear before the office of the Collector and District election Officer on 2.12.2003 at 2 P.M. in his office vide letter dated



27.11.2003 and he appeared on that date and also moved an application on the next date i.e. on 3.12.2003. He also moved another application but the respondent No. 3 issued a letter to the respondent No. 1 much earlier than 2.12.2003 i.e. on 29.11.2003 for the suspension of the applicant which is malafide and illegal.

5. In reply the learned counsel for the respondent No. 1 has argued that the applicant was informed to attend the election duties according to the orders of the respondent No. 3. The appointment letter dated 19.12.2003 was received by the applicant on 23.11.2003 and he had submitted an application on 23.11.2003 addressed to the Collector and Election Officer, Hoshangabad with a copy to the District Election Officer, District Betul expressing his inability to perform the election duty as he is a patient of many serious disease. He had also applied for leave from 27.11.2003 to 29.11.2003 vide his application dated 27.11.2003. The Collector and District Election Officer, Hoshangabad vide letter dated 29.11.2003 instructed the respondent No. 1 to suspend the applicant. Accordingly, the applicant was placed under suspension vide order dated 2.12.2003 by respondent No. 1.

6. The learned counsel for the respondents Nos. 2 & 3 argued that the election duties are very important and the employees generally tries to avoid it on various grounds. As the applicant was regularly attending his official duties, thus was in a position to attend the election duties also. But he failed to attend the duty. Hence, the letter dated 29.11.2003 was issued by the respondent No. 3 to the respondent No. 1 for suspending the applicant.


7. After hearing the learned counsel for the parties and on careful perusal of the records we find that the applicant had submitted an application dated 23.11.2003 Annexure A-7 to the Collector and District Election Officer, Hoshangabad, stating that he is suffering from several disease and he is unable to attend the office on 28.12.2003 as directed. Vide letter dated 27.11.2003 (Annexure A-8) the Collector and the

District Election Officer, Hoshangabad informed the applicant that the representation of the applicant dated 23.11.2003 was considered by him and he is directed to appear in his office on 2.12.2003 at 2 P.M. with all documents relating to his said serious disease. The applicant then moved an application to the Collector and District Election Officer, Hoshangabad on 2.12.2003 in which he has clearly mentioned that he was present in his office from 2 P.M. to 5.30 P.M. on 2.12.2003 and it was told to him that the respondent No. 3 was busy with several other duties. He also moved an application dated 3.12.2003 to the Collector and District Election Officer, Hoshangabad, wherein he has submitted the photo copies of the medical certificates of his disease. But before 2.12.2003 the respondent No. 3 had already issued a letter to the respondent No. 1 dated 29.11.2003 for suspending the applicant and to inform him accordingly without waiting the appearance of the applicant on 2.12.2003 at 2 P.M. in his office, as the Collector/District Election Officer, Hoshangabad himself directed the applicant vide his letter dated 27.11.2003 to be present in his office. The respondent No. 3 should have passed any order after 2.12.2003. We also find that the applicant appeared in his office on 2.12.2003 and moved an application to respondent No. 3. The applicant has also filed the medical certificates regarding his serious disease but the letter dated 29.11.2003 (Annexure R-3) was issued before 2.12.2003 asking the respondent No. 1 to suspend the applicant and in compliance of this letter the respondent No. 1 has passed the suspension order of the applicant. It apparently seems to be a malafide action on behalf of the respondent No. 3 as there was no negligence on the part of the applicant. There is a vast difference between the regular duties performed by the applicant in the office of the respondent No. 1 and the election duties as the election duties are generally very tough in nature. Hence, the impugned order of suspension deserves to be quashed and set aside.

8. Accordingly, the Original Application is allowed and the impugned order dated 2.12.2003 (Annexure A-1) is quashed and set aside.



2.12.2003



Issued
On 14-12-09

प्रतिलिपि **दत्ते स्थितः—**

- (1) सचिव, उच्च न्यायालय, एच.एस.एस.एन, जयपुर
 - (2) आवेदक श्री/श्रीमती/श्रीमान को प्रार्थना
 - (3) प्रत्यक्षी श्री/श्रीमती/श्रीमान को प्रार्थना
 - (4) अध्यक्ष, बोर्ड, जयपुर को प्रार्थना
- सचवा एवं आवेदक प्रार्थना की

V. K. Shukla Div-3 Br
an Dean Sec Div-2 B
K. K. T. S. Div
B

उप रजिस्ट्रार