

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of May, 2006

ORIGINAL APPLICATION No 148/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Manohar Singh Meena
s/o Shri Munshi Lal Meena,
aged 32 years,
c/o S.K.Jain, Advocate, Nanaji Ka Bagh,
Fateh Tiba Marg, M.D.Road, Jaipur,
working as Supdt. Surveyor,
r/o 99, Nityanand Nagar,
Jaipur.

.. Applicant

(By Advocate: Mr. S.K.Jain)

Versus

1. Union of India through
the Secretary to the Government of India,
Ministry of Science and Technology,
New Delhi.
2. Surveyor General of India,
Survey of India,
P.B.No.37,
Dehradun,
Uttranchal-248001.

.. Respondents

(By Advocate: Mr.Tanveer Ahmed, proxy counsel for Mr.
Bhanwar Bagari -caveator)

O R D E R

Per M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That by an appropriate order or direction, the impugned order of suspension dated 24.3.2006 Annexure A/1 be quashed and set aside forthwith and the respondents be directed to exonerate the applicant from the charges.
- ii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant, looking to the facts and circumstances of the present case.

2. Briefly stated, facts of the case are that the applicant while working as Superintending Surveyor, Rajasthan Geo-Spatial Data Centre, Jaipur was placed under suspension vide impugned order dated 24.3.2006 on the ground that disciplinary proceedings against him are contemplated. This order was passed by the Surveyor General of India. The applicant in para 6 of the OA has made the following averments:-

“That there is no remedy available to the applicant against the impugned subject. Hence, the above O.A. has been directly filed before this Hon'ble Tribunal by the applicant and the same is maintainable.”

The challenge has been made by the applicant on the ground that the applicant is Class-I officer of the Government of India, Department of Survey of India and is appointable by the President of India only and, therefore, the President is the only persons who is appointing authority of the applicant. It is further stated that the suspension order has been passed on the basis of preliminary enquiry conducted by the Board of Enquiry based on the complaint of Mr. Ashok

Prim, who is Head of the Department on current duty and who while forwarding the complaint against the applicant had recommended that enquiry be made into the incident at the S.G.O. level itself. Thus, the order of suspension has been passed without any application of mind and is wholly mala-fide and thus, liable to be quashed and set-aside. It is further stated that the applicant has also lodged complaint against Mr. Ashok Prim departmentally. It is further stated that no proper opportunity for personal appearance before the Board of Enquiry was given to the applicant as the notice was served on the applicant on 21.12.2005 whereas the enquiry proceedings were conducted by the Board of Enquiry on 22.12.2005. The applicant has further pleaded that previously he has highlighted inaction of the Department and has also filed various OAs in this Tribunal, as such, the order of suspension is an outcome of such action.

2.1 When the matter was listed on 10.5.2006, the attention of the learned counsel for the applicant was invited to the statutory remedy available to the applicant by way of appeal. Accordingly, the matter was adjourned at the request of the learned counsel for the applicant as he wanted of cite some judgments on the point of suspension. Thereafter, the matter was fixed for admission on 16.5.2006 when the same was again adjourned on the request of the learned counsel

for the applicant and finally the matter was heard on 23.5.2006.

3. At this stage, it may be relevant to mention that the respondents have also filed Caveat Petition No.8/2006 as they were apprehensive that the applicant may challenge the impugned order of suspension.

4. I have heard the learned counsel for the applicant at admission stage and gone through the material placed on record. Regarding non-exhausting of alternative remedy, the learned counsel for the applicant has cited Single Bench judgment of the Hon'ble M.P. High Court in the case of Suresh Kumar Purohit vs. State of M.P. and anr., 2006 LAB.I.C. 90, and argued that since the order of suspension has been passed without application of mind, the OA is maintainable. Another judgment cited by the learned counsel for the applicant is the judgment rendered by the Single Bench of the Hon'ble Rajasthan High Court in the case of Ramesh Kumar Tibra vs. State of Rajasthan and Ors., 2006 (1) ATJ 557 and contended that the order of suspension can be passed only after taking into consideration the record available and enquiry report submitted by the Enquiry Officer.

5. I have given due consideration to the submissions made by the learned counsel for the applicant and I am not at all impressed on the submissions so made by the

learned counsel for the applicant for the reasons stated hereinbelow:-

5.1 At this stage, it will be relevant to notice some of the statutory provisions which may have bearing on the issue involved in this case. Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as CCS(CCA) Rules] relate to suspension whereby power has been given to the appointing authority or any other 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, to place a Government servant under suspension- (a) where a disciplinary proceeding against him is contemplated or is pending; or (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial. In case where the suspension order is passed by the subordinate authority lower than the appointing authority, such authority have to inform the appointing authority. Admittedly, in this case the order of suspension has been passed by the Surveyor General of India, who is the Disciplinary Authority of the applicant as defined under Rule 2(g) of the CCS (CCA) Rules as it is not

disputed by the learned counsel for the applicant that Surveyor General of India can pass any of the penalties mentioned under Rule 11 and as such, the Disciplinary Authority who could have passed the order of suspension. Thus, the challenge of the applicant that order of suspension should have been passed by the appointing authority does not survive.

5.2 Now the question which requires further consideration is the requirements which are to be considered by the appropriate authority before passing the suspension order. Law on this point is settled well. It is also well established that suspension is not a punishment and it being an interim measure forbidding or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could let away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. During the period of suspension relationship of master and servant remained in existence and it is not

a case of termination. Normally, suspension order cannot be passed as an administrative routine or automatic, a moment misconduct has been committed by the concerned employee. It should have to be passed with application of mind by the authority. For that purpose, the competent authority should take all factors into account and exercise his discretion with due care. The guiding principle before exercising the power of suspension with utmost care and caution is the gravity of charge and the circumstances whether suspension is justified taking into consideration the factors like tempering with the witnesses or documents; whether continuance in office is likely to seriously subvert discipline in the office; whether continuance in office will be against the public interest e.g. involvement in corruption, embezzlement or misappropriation of Govt. money etc. Thus, the competent authority while exercising the discretion must take into consideration all factors into account.

5.3 Before advertting to examine the matter on this aspect, further question which requires consideration is whether this Tribunal can entertain the OA at this stage or in other words, whether cause of action has arisen in favour of the applicant especially when the applicant has not availed the statutory remedy by filing appeal before the Appellate Authority, who has been vested with powers under CCS (CCA) Rules.

5.4 I have given due consideration to the submissions made by the learned counsel for the applicant and I am of the firm view that the present OA is not maintainable at this stage as the cause of action has not yet arisen in favour of the applicant. The matter on this point is no longer res-integra. The same stands settled by the decision rendered by the Hon'ble Apex Court in the case of S.S.Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10. It is a decision rendered by the Constitution Bench of **seven judges** of the Apex Court. At this stage, it will be useful to quote relevant Paragraphs of the judgment which thus reads as under:-

“15. In several States the Conduct Rules for Government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. Section 20(1) of the Administrative Tribunals Act, 1985 provides :

“20.(1) 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 grievances.”

16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of S.20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down under S.20 of the Administrative Tribunals Act.

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18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant Service rules as to redressal are disposed of.

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20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six month's period from the date or preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arise. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

5.5 Thus, from the ratio as laid down by the Apex Court vis-à-vis powers of this Tribunal to entertain the OA under Administrative Tribunals Act, 1985, it is clear that cause of action shall be taken to first arisen not from the date of the original adverse order but on the date when the order of the higher authority where statutory remedy is provided for entertaining the appeal is passed or representation is deemed to have been rejected and exhaustion of remedy available under the service rules is condition precedent to maintain the claim under the Administrative Tribunals Act. Admittedly, the order of suspension is appealable under Rule 23 of the CCS (CCA) Rules. Further, under Rule 27(1) of the CCS (CCA) Rules, the Appellate Authority while disposing of the appeal has to take into consideration whether in the light of provisions of Rule 10 and having regard to the circumstances of the case the order of suspension is justified or not. Thus, the remedy of appeal is not a useless formality but the Appellate Authority has to apply its mind

having regard to the circumstances of the case including whether continuation of the applicant would seriously suffer discipline in the office in which he is working and also whether the competent authority has exercised its discretion with care and caution and ~~has~~ passed order after taking all factors into account.

Thus, according to me, the applicant is not remediless and he has got an effective and efficacious remedy by way of appeal. Further, the cause of action has not arisen in favour of the applicant as yet and the claim cannot be entertained at this stage, in view of the law laid down by the Apex Court in the case of S.S.Rathore (supra) relevant portion of which has been reproduced hereinabove. As such, I am of the view that the present OA is not maintainable at this stage.

5.6 Now let me consider the submissions of the learned counsel for the applicant based on the judgment of the Single Bench of the M.P.High Court in the case of Suresh Kumar Purohit (supra). That was a case which was entertained by the Hon'ble High Court in exercise of powers under Article 226 of the Constitution of India. The power of the Hon'ble High Court under Article 226 is very wide and Writ can be entertained, even if there is alternative statutory remedy available under the service rules whereas the Tribunals which are created under Article 323A of the Constitution of India have to act within the ambit and

scope of the provisions laid down under Administrative Tribunals Act, 1985. There is provision under Section 20(1) of the Administrative Tribunals Act, that the Tribunal shall not ordinarily admit an application unless it is satisfied that applicant has availed of all remedies available under the relevant service rules as to redressal of his grievance. Thus, the scope of interference under Article 226 of the Constitution of India and under Administrative Tribunals Act is entirely different. The Hon'ble High Court has got vast powers to entertain writ petition in appropriate case even if there are alternative remedy available. Thus, the applicant cannot draw any assistance from the decision rendered by the Single Bench of the M.P. High Court in the case of Suresh Kumar Purohit (supra). Further, one of the reasons given by the Single Bench in entertaining the Writ Petition was that in other two cases involving similar question the High Court has interfered in the matter and preliminary objection with regard to availability of alternative remedy was rejected by the Court in the case of Rajesh Tiwari. Thus, the applicant cannot draw any assistance from this authority more particularly, in view of the law laid down by the Apex Court in the case of S.S.Rathore (supra) which is directly applicable in the facts and circumstances of this case.

5.7 Further, the applicant can not draw any assistance from the second judgment cited by the learned counsel for the applicant in the case of Ramesh Kumar Tibra (supra). The learned counsel for the applicant on the basis of head note has argued that the order of suspension is passed without taking into consideration record available and enquiry report submitted by the Enquiry Officer and does not disclose any reason to support conclusions which is arbitrary and mechanical exercise of powers by the authority, thus, the order of suspension is required to be quashed. According to me, the head note of the judgment is mis-leading. That was a case where the petitioner was elected as Chairman of the Municipal Board, Jhunjhunu. While exercising powers under sub-section (4) of Section 63 the State Government has placed him under suspension. The validity of the suspension order was assailed and the Hon'ble High Court while admitting the Writ Petition for hearing stayed operation of the suspension order dated 22.5.99 and the petitioner was allowed to take charge of Chairman, Municipal Board, Jhunjhunu. The State Government decided to initiate enquiry by judicial officer as envisaged under Section 63 of the Rajasthan Municipal Act, 1959 against the petitioner. Accordingly, chargesheet was served upon the petitioner and after holding the enquiry, the order dated 4th September, 2000 was passed in exercise of

powers under Section 63 read with Section 64 of the Rajasthan Municipal Act, 1959 thereby declaring the petitioner ineligible to contest the election for next six years. It was this order which was under challenge before the Hon'ble High Court and the Hon'ble High Court has quashed this order. Thus, the Hon'ble High Court has not given any finding regarding suspension order of the petitioner passed on 22.5.99 but finding was given regarding the order dated 4.9.2000 whereby the petitioner was held ineligible to contest the election under Rajasthan Municipal Act for next 6 years. Thus, the contention raised by the learned counsel for the applicant that the order of suspension can be passed only when the enquiry report is submitted by the enquiry officer and must disclose reasons for suspension based on the judgment in Ramesh Kumar Tibra (supra) is misplaced and deserves out right rejection.

5.8 At this stage, it will be relevant to mention here that the incident took place on 9.12.2005 and the matter was reported by Mr. Ashok Prim to the higher authorities whereby it has requested that enquiry be made into the incident at the S.G.O. level and appropriate action be taken at the earliest in order to maintain the dignity of the work environment and to restore confidence in officers dedicated to doing the work. It is not on the basis of complaint of Mr. Ashok

Prim that the authority has suspended the applicant forthwith, rather Board of Enquiry was constituted and based on the report of the Board of Enquiry, the applicant was placed under suspension. The grievance of the learned counsel for the applicant is that the applicant has also subsequently made complaint about misbehaviour of Mr. Ashok Prim to the higher authorities vide letter dated 12.12.2005 followed by reminder dated 19.12.2005 but no action has been taken on his complaint whereas the applicant has been placed under suspension on the basis of complaint made by Mr. Ashok Prim, Additional Supervisor General. According to me, as already stated above, the applicant is not remediless. He can bring all these facts to the notice of the Appellate Authority including the fact that the discretion vested in the competent authority while suspending the applicant has not been exercised with due care and caution and after taking all factors into account including the fact that suspension may cause lasting damage to the reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct and order of suspension is not justified. The Appellate Authority is statutorily bound to take such things into consideration under Rule 27(1) of the CCS (CCA) Rules, and therefore, pass appropriate order. Thus, I am of the firm view that the applicant is not remediless and the present OA cannot be entertained at this stage, in view of the

law laid down by the Constitution Bench of the Apex Court in the case of S.S.Rathore (supra).

6. Accordingly, the OA is dismissed at admission stage.

7. Since the OA is dismissed at admission stage, no order is required to be passed on the Caveat Petition No.8/2006 filed by the respondents.


(M.L.CHAUHAN)
Member (Judicial)

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