

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Bench at Nainital)

Original Application No. 331/00758/2019

Dated: This the 24th day of July, 2019.

PRESENT:

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Shrikant Sharma, aged about 55 years, S/o Late B.D. Sharma, R/o 33/1, Pathri Bagh, Dehradun, presently posted as Assistant in Geodetice and Research Branch, Survey of India, 17 EC Road, Dehradun.

... Applicant

By Adv: Shri Nandan Arya

V E R S U S

1. Union of India through Secretary, Ministry of Science and Technology, Government of India, New Delhi.
2. Surveyor General Office, Post Box No. 37, Dehradun, Uttarakhand, India.
3. Disciplinary Officer / Shri Naveen Tomar, Addl. Surveyor General, Spl Z.C.Z., EZ & NEZ, Post Box No. 200, Dehradun.

... Respondents

By Adv: Shri T.C. Agarwal

O R D E R

Delivered by Hon'ble Ms. Ajanta Dayalan, Member(A)

The present OA has been filed by the applicant Shrikant Sharma seeking quashing of impugned order dated 14.05.2019 (Annexure A-1) rejecting his request of change of Presenting Officer in the disciplinary case pending against him. The applicant has also sought direction to disciplinary authority that is respondent no. 3 to decide his fresh representation dated 01.07.2019 (Annexure A-5). He has also prayed for a direction to the disciplinary authority to keep in abeyance the disciplinary proceeding till decision on his representation dated 01.07.2019.

2. Learned counsel for the applicant stated that the applicant was appointed as Lower Divisional Clerk in the respondents department and joined in November 1983. In the year 2013, the applicant met with a serious accident and under-went surgery. The applicant took medical leave and got himself treated at various hospitals including All India Institute of Medical Sciences, New Delhi. The applicant's elbow and wrist are not functioning properly and as such he cannot write with his right hand. In view of his medical reports and physical condition, the respondent no. 2 transferred him to Library on 14.03.2017. Later, Chief Medical Officer, Dehradun issued disability certificate in his favour on 26.04.2017. Thereafter, on 08.08.2017 he was transferred from Library to Accounts Section without any reason. The applicant joined in Accounts Section but due to difficulty in performing written work with his right hand, he submitted an application dated 08.08.2017 requesting for his transfer to Library.

3. The applicant has challenged the transfer order by filing an OA No. 426/2018 before this Tribunal. During the pendency of the OA, chargesheet dated 20.12.2018 (Annexure A-2) was issued to him. Learned counsel for the applicant stated that the applicant was not issued any show cause notice and was not given any opportunity of hearing. The disciplinary authority also appointed Presenting Officer and Inquiry Officer. The applicant submitted representation dated 27.05.2019 (Annexure A-3) before the disciplinary authority against these appointments as the applicant was apprehensive that the proceedings would be not be conducted in a fair manner. After orders of this Tribunal dated 27.06.2019, he also moved representation dated 01.07.2019 (Annexure A-5). This was forwarded by the office on the same date vide Annexure A-6 stating that the charged officer has a right to be heard and recommending for change of Presenting Officer. This representation has been rejected vide letter

dated 12.07.2019 (Annexure A-7) stating that 'request for change of Presenting Officer has already been rejected by the disciplinary authority and I.O do not have authority to change Presenting Officer'.

4. Now, the case of the applicant is that the letter dated 14.05.2019 rejecting his request for change of Presenting Officer has been issued without giving any opportunity of hearing and without considering the evidence regarding influence. According to the counsel for the applicant, Presenting Officer is harassing the applicant and will influence the departmental proceedings as he is biased against the applicant. The counsel for the applicant has further stated that after the order dated 27.06.2019 passed by this Tribunal, the applicant made a representation which was supported by his superior officer, but still his request has been rejected. He has also stated that now the applicant has been issued order dated 16.07.2019 (Annexure A-9) directing him to attend day to day hearing in the disciplinary proceedings case. According to the applicant's counsel, this is illegal and unconstitutional.

5. On the other hand, learned counsel for the respondents stated that the earlier order of this Tribunal dated 27.06.2019 in OA No. 426/2018 is clear. He stated that as per this order, the relief sought by the applicant for change of Presenting Officer is not maintainable. He also stated that the request of the applicant for change of Presenting Officer has already been rejected as the same is not covered under CCS (CCA) Rules and the applicant has no locus-standi for seeking change of Presenting Officer. He states that the applicant is bound to comply with the order dated 16.07.2019 to attend hearing in disciplinary proceedings.

6. We have heard Shri Nandan Arya, learned counsel for the applicant and Shri T.C. Agarwal, learned counsel for the respondents at the admission stage and have gone through the pleadings in the OA.

7. We observe that basically the applicant is again seeking the same relief as sought by him in his earlier OA No. 426/2018 that is for change of Presenting Officer. To this purpose, he is seeking quashing of impugned order dated 14.05.2019 whereby his request for change of Presenting Officer has been rejected. He is also seeking direction of this Tribunal for decision on his representation dated 01.07.2019. We find that this representation also has the main prayer for change of Presenting Officer only. He has also sought holding in abeyance the disciplinary proceeding till decision on his representation. Hence, the sole issue before us narrows down to only whether change of Presenting Officer, as requested by the applicant, is permissible. This point has already been abundantly clarified in our earlier order itself wherein we have observed as under: -

‘5. We find that the relief sought by the applicant for changing the Presenting Officer is not maintainable. The Presenting Officer represents the view of the department. As such, it is not binding that he needs to be acceptable to the applicant. In case the applicant has grievance against the Presenting Officer, he is within his rights to make representation or appeal before Inquiry Officer and / or the Disciplinary Authority. Further, the learned counsel for the applicant has already stated that he does not have any grouse against the Inquiry Officer and the Disciplinary Authority. In the OA also, no such submission is made out’.

8. We have observed that in case the applicant has grievance against the Presenting Officer, he is within his rights to make representation or appeal before Inquiry Officer and / or the Disciplinary Authority. We have, however, categorically stated in the said order that the request of the applicant for change of Presenting Officer is not maintainable.

9. We also do not appreciate the conduct of the applicant in making repeated representations to the same purpose. The Inquiry Officer has no

authority to change Presenting Officer. The Presenting Officer is appointed by the disciplinary authority. Hence, representation of the applicant to the Inquiry Officer for change of Presenting Officer does not have any basis. There is no illegality in the impugned order dated 14.05.2019.

10. Accordingly, the OA is dismissed at admission stage itself being devoid of merits and we direct the applicant to co-operate in the inquiry and not to make unnecessary representations with the idea for delaying the proceedings.

(Rakesh Sagar Jain)

Member (J)

(Ajanta Dayalan)

Member (A)

Anand...