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**(2009) 08 AHC CK 0078**  
**In the Allahabad High Court**

Shashi Mohan Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 20-08-2009

**Acts Referred:**

**Citation :** (2009) 08 AHC CK 0078

**Hon'ble Judges :** D.P. Singh, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

D.P. Singh, J.—Heard learned Counsel for the petitioner and the learned Standing counsel.

2. This petition is directed against an order of suspension dated 9.1.2008.

3. Petitioner was working as a Fisheries Development Officer at Braielly when he was transferred by the Deputy Director of Fisheries, Braielly to Fatehpur vide order dated 29.6.2007 but it appears that he did not join and subsequently the Director of Fisheries vide order dated 31.7.2007 cancelled the said transfer order for a period of one year. Subsequently, vide order dated 22.9.2007 the petitioner was attached with the Assistant Director of Fisheries, Pilibhit but again he did not join and made various representations to the Director etc. In the meantime, the petitioner was placed under suspension, vide the impugned order dated 9.1.2008, in contemplation of an enquiry and subsequently the attachment order dated 22.9.2007 was cancelled in view of a Government order dated 26.11.2007.

4. It is urged on behalf of the petitioner that he has unblemished record and the impugned suspension order passed by the Deputy Director of Fisheries is mala fide and against the spirit of the order of the Director dated 31.7.2007 and therefore, should be quashed.

5. A counter affidavit has been filed on behalf of the State and also the Deputy Director of Fisheries disclosing that the petitioner did not have an unblemished

record and in fact was awarded adverse entry for the session 2001-2002 for being a disciplined employee and the said entry was upheld when the representation of the petitioner was rejected by the Director vide order dated 26.2.2003. Again another adverse entry was given to the petitioner for the year 2002-2003 and his integrity was not certified and yet again his representation against the said entry was rejected by the Director of Fisheries vide order dated 25.1.2005. Large number of complaints have been received against the petitioner, some of which are dated 23.2.2007, 11.6.2007 and 22.6.2007 etc. which have been annexed with the counter affidavit. In fact the District Magistrate, Braielly vide his letter dated 27.5.2006 had requested the Secretary of the Fisheries Department to transfer the petitioner as his indifference to work was hampering achievement of the targets imposed by the Government.

6. Apart from that the Assistant Director of Fisheries, a superior officer had also complained against the petitioner vide his demi official letter dated 23.6.2007 that the petitioner had threatened and misbehaved with him. Certain pisciculturalists of the area had also made complaints against the petitioner for not supplying the fish seeds even after receiving the money from them. So far as his attachment at Pilibhit is concerned it is explained in the counter affidavit that his attachment to Pilibhit was necessitated because the Assistant Director, Pilibhit vide his letters dated 10.7.2007 and 13.8.2007 etc. had requested the Deputy Director at Braielly to send at least two Fisheries Development Officer to Pilibhit since there was acute shortage of staff at Pilibhit and the copy of the said attachment order dated 22.9.2007 had also been sent to the Director of Fisheries for information regarding the arrangement.

7. Great stress has been laid by the counsel for the petitioner that once the transfer order of the petitioner transferring him from Bareilly to Fatehpur had been cancelled for one year and the petitioner was allowed to stay at Bareilly, the Deputy Director could not have attached him to Pilibhit. As already noted hereinabove, the Deputy Director has given cogent reasons which necessitated the attachment of the petitioner to Pilibhit. The Deputy Director is an officer on the field and has to monitor and look after the entire work of his zone and Pilibhit was also a part of that and once the requirement was there, mere attachment of the petitioner to that place would not ipso facto mean that there is any violation of the orders of the Director or that the Deputy Director was prejudiced. In any event, the Director was informed of the arrangement but he raised no objection.

8. Assuming for a moment that the order was irregular or against the spirit of the order of the Director dated 31.7.2007 but, that by itself would not mean that the petitioner would have a right to ignore the order of the Deputy Director. It is not denied that the Deputy Director was the superior officer of the petitioner and once he had passed the order, the petitioner was bound to abide by it and he ought to have reported at Pilibhit and which, admittedly, he did not. The obstinate attitude of the petitioner is evident from this fact also that despite his transfer to Fatehpur vide order dated 29.6.2007 the petitioner did not join at

Fatehpur for more than a month before the transfer was cancelled. No justification has been given why orders were not obeyed. In fact, when the charge sheet dated 16.4.2008 was sought to be served by the enquiry officer through a registered post, the petitioner refused to accept it and which endorsement is available on record. The charge sheet was then affixed at the residential house of the petitioner and a report to that effect of the Assistant Director is also on record. In fact, even the suspension order had to be published in two newspapers as the petitioner did not receive it.

9. An employee is bound by the order of his superior or the handling authority even if the order is not to his liking or is incorrect or irregular. No doubt he can challenge it before the appropriate forum but he himself cannot sit in appeal over it, otherwise heirachy of the department would break and its working would collapse.

10. On a pointed query by the Court as to why the petitioner was not taking part in the enquiry proceedings, the reply was that since the charge sheet has not been officially served on him till date, therefore, he is unable to take part in the enquiry. Copy of the charge sheet is annexed with the counter affidavit which was duly served on the counsel for the petitioner in May, 2007 and the rejoinder affidavit was filed in July, 2008 but yet there is no demand even before this Court that the copy of the charge sheet may again be served officially in court.

11. All these facts when considered together leave no doubt to hold that the Deputy Director of Fisheries, Bareilly was acting reasonably and on requirement of the factual situation and was not driven by any prejudice. The charges against the petitioner are serious and he would be well advised to take part in the enquiry.

12. At this stage it is prayed that the petitioner is not being paid his subsistence allowance. However, the learned Standing counsel points out that the petitioner has till date not reported to the office where he has been attached for the enquiry and according to law until and unless he reports his presence and complies with the requirement of giving an undertaking that he is not gainfully employed elsewhere the subsistence allowance could not be paid. Considering all the facts, the petitioner may report to the enquiry officer at the place where he has been attached for the purposes of enquiry whereupon the respondents will take action for release of his subsistence allowance in accordance to law. In case the petitioner files his reply to the show cause notice and takes part in the proceedings, the enquiry, which is already held up for more than a year, may be concluded within a period of three months from the date of submission of a certified copy of this order.

13. Subject to the aforesaid directions and observations, writ petition is dismissed, but no order as to costs.