

Central Administrative Tribunal  
Principal Bench: New Delhi

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OA No. 1360/97

New Delhi, this the 6<sup>th</sup> day of July, 1998

Hon'ble Shri.T.N. Bhat, Member (J)

Hon'ble Shri S.P. Biswas, Member (A)

In the matter of:

S.K.Nanda, IAS.  
Project Director NRY and  
Secretary SUDA, Govt. of Haryana,  
Chandigarh.

...Applicant

(By Advocate: Smt. Meera Chhibber)

Versus

Union of India through

1. Secretary,  
Ministry of Personnel, Public Grievances  
& Pensions, Deptt. of Personnel & Training,  
North Block,  
New Delhi.

2. Secretary to Govt. of India,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.

3. State of Haryana through  
Chief Secretary to Govt. of Haryana,  
Haryana Civil Secretariat,  
Chandigarh.

...Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)-

The applicant, who is an IAS Officer belonging to the Haryana Cadre, was appointed on deputation as Private Secretary to the then Minister of Health and Family Welfare by the order dated 15.1.1990, as at Annexure A-1. However, by the letter/order dated 2.4.1990 (Annexure A-2) issued by the Ministry of Health and Family Welfare the applicant was asked to hand over the charge of Private Secretary to one Shri S. Pradhan

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and by the order dated 26.4.1990 the

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repatriated to Haryana. He made several representations thereafter against the alleged curtailment of his central deputation which according to the applicant should have continued for five years. Although subsequently the Govt. of Haryana did include his name in the list of officers for central deputation, the applicant was not so deputed and he continued to make representations. The applicant, instead, received a charge-sheet on 15.9.1992 which had been issued on 19.8.1992 by Respondent No. 1 and the applicant sent a reply thereto, as at Annexure A-8. A supplementary reply was also submitted by the applicant on 8.10.1992 (Annexure A-9). However, the applicant's request for being appointed on central deputation did not bear any fruit and, according to him, the disciplinary proceedings were also kept pending against him, while many officers junior to him were empanelled for the post of Joint Secretary to Govt. of India while the applicant's name was not included.

2. The charge against the applicant was based on a letter of Feb., 1990 issued by the petitioner in his capacity as President of Haryana Sports Acrobatics Association and by this letter addressed to several agencies the applicant had sought advertisements for the Sports Souvenir to be issued later on. According to the applicant, the aforesaid letter and the chargesheet were the only grounds on which the applicant's request for appointment to the central deputation post was not considered and that his pre-mature repatriation was also, therefore, punitive in

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✓ nature. It is further averred by the applicant that he has been discriminated against as no similar action in the nature of disciplinary proceedings has been taken against other members of the service who had been elected as Presidents of different Sports Associations and had also issued similar letters for collecting advertisements and funds. According to the applicant, even though he issued the letter for collection of advertisements no funds were actually collected.

✓ 3. Another charge against the applicant was that he had not sought any permission for being elected as an office bearer/President of the aforesaid Sports Association. In this regard, the applicant states that since he was the founder President of the said Association and there was actually no election for the post he could not seek prior permission. However, according to the applicant, he had intimated the Chief Secretary to the Govt. of Haryana on the very day of his "appointment" as President of the Sports Association and his continuance as President was never objected to by the State Government till 1992.

○ 4. The applicant had earlier also approached the Chandigarh Bench of this Tribunal by filing OA No. 458-CH/95 on 26.4.1995 but the same was dismissed by the order of the said Bench of the Tribunal dated 5.1.1996. The S.L.P. filed by the applicant before the Hon'ble Supreme Court also proved abortive and was dismissed on the ground that in the meantime final orders in the

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disciplinary proceedings had already been issued by which the penalty of censure had been imposed upon the applicant. The punishment order was passed on 1.7.1996.

5. The applicant submitted a Memorial to the President of India against the punishment order dated 1.7.1996 but the President also rejected the same. In the O.A. he has assailed both the punishment order as also the order of the President of India rejecting his memorial.

6. The applicant has prayed for the following reliefs:

"(i) That punishment of censure issued to the applicant vide letter dated 8.7.1996 (Annexure A-13) and letter dated 26.4.1990 (Annexure A-3) may be quashed and the Respondents may be directed to make up the deficiency in the Central deputation of the applicant which was curtailed vide letter dated 26.4.1990 by re-calling and re-appointing him in his proper place of Central deputation for the remaining period and the respondents may be further directed to consider the applicant for empanelment of his name alongwith his batch-mates as Joint Secretary to Government of India w.e.f. February, 1995 with all the consequential benefits;

(ii) Any other relief to which the applicant is found entitled to in law and equity may also be granted in his favour.

(iii) Cost of the case may be awarded in favour of the applicant."

7. We may state that we have given only a brief summary of the contentions raised by the applicant in his O.A. running into 56 pages. The salient

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features of the pleas raised by the applicant have been reproduced by us as we feel that there is no need to reproduce the entire details given in the O.A.

8. It appears that the respondents in a bid to match the volume of the averments made in the O.A. have filed an equally long counter running into 41 pages. Briefly put, the contention of the respondents is that there was sufficient evidence for holding the applicant guilty of the charges levelled against him in the chargesheet and that the disciplinary authority had been lenient to the applicant in awarding only the penalty of censure. In this regard, the respondents have averred that there was no evidence furnished by the applicant to prove that he had ever sought prior permission for becoming the President of the Sports Association or had even intimated the State Government after his becoming President. According to the respondents there was also no evidence produced before the disciplinary authority to support the contention of the applicant that for collecting advertisements the applicant had sought the permission of the competent authority, namely, Central Government where he was working at the relevant time. In this regard it is further contended that although the applicant had used the letter head of the Association yet misusing his position as Private Secretary to the Minister for Health he had mentioned his designation as Private Secretary. It is emphatically denied by the respondents that the applicant had under the relevant rules the right to continue on deputation for five years. In this regard, the respondents have stated that the applicant was

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appointed with the stipulation that he would be on deputation for three years or till he worked as Private Secretary to the Minister, whichever was earlier, and that on 31.3.1990 the Minister decided that he did not require the services of the applicant. It was also indicated by the Ministry concerned that the Minister for Health and Family Welfare did not wish to offer another post in the Ministry to the applicant, and it was for this reason that orders for repatriation of the applicant were issued on 2.4.1990.

9. In reply to the applicant's plea that he ought to have been placed in the panel for appointment as Joint Secretary the respondents have contended that the name of the applicant was considered along with others but in view of initiation of two disciplinary proceedings, one for major penalty and the other for minor penalty, initiated against the applicant by the respondents, he was not found suitable and he did not obtain the prescribed bench mark for empanelment.

10. The applicant has also filed a rejoinder which, again, is a fairly lengthy one and wherein he has reiterated the contentions raised in the O.A. In addition to that he has raised certain additional pleas which, in our view, are not relevant for consideration in order to adjudicate upon the controversy involved in this O.A. These contentions relate to releasing of super time scale to the applicant from the due date and the alleged failure on the part of the State Government to send the ACRs of 1986-87 and 1989-90 to the Government of India.

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11. We have heard at length the arguments of the learned counsel for the parties and have also gone through the written submissions filed by them.

12. We may, at the very outset, state that most of the contentions raised in this O.A. have already been examined and adjudicated upon by the Chandigarh Bench of the Tribunal. A copy of the judgement thereof has been annexed by the applicant to the O.A. A perusal of the judgement (Supra) clearly reveals that in that O.A. the applicant had raised identical pleas. The first relief prayed for in that O.A. was that the letter dated 26.4.1990 by which the applicant was ordered to be relieved of his duties as Private Secretary to the former Union Minister for Health and Family Welfare and the applicant was also repatriated to the State of Haryana should be quashed and the respondents should be directed to make up the deficiency in the Central deputation of the applicant which, according to the applicant, had been curtailed by the applicant's pre-mature repatriation.

13. The second relief claimed was that the respondents should be directed to empanel the applicant for promotion as Joint Secretary to the Govt. of India and to expedite the disciplinary proceedings, as due to these proceedings the claim of the applicant for such empanelment was being rejected.

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14. The applicant had also sought the relief that the disciplinary proceedings be quashed as the applicant had not collected any funds in pursuance to the letter seeking advertisements for the Sports Association and had also not really been elected as President but was only chosen as such.

15. Upon consideration of the rival contentions raised by the parties in that O.A., the Chandigarh Bench rejected all those contentions. It was, firstly, held that this was not a case of de novo enquiry as the earlier enquiry held by one Shri G.V. Gupta in May, 1990 was not at all an enquiry in the eyes of law. It was further held that there has really been no delay in issuing chargesheet which could be fatal to the disciplinary proceedings. In this regard, it was also held that there were no grounds for quashing the chargesheet and the disciplinary proceedings at the interlocutory stage and that the disciplinary proceedings should continue. However, a direction was issued to the respondents to expedite the enquiry and to finalise the proceedings within three months from the date of receipt of a copy of the order/judgement in that O.A.

16. Lastly, it was held on facts that the applicant's name was considered for empanelment for his posting on Central deputation and on consideration of all the records by the concerned Screening Committee the applicant was not found fit for the same. On the question as to whether posting on deputation is an enforceable right the Tribunal held that no such right

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vests in the applicant, considering the fact that the Minister concerned who had initially got the applicant appointed as his Private Secretary had later directed that the applicant should be repatriated and in these circumstances the Tribunal could not compel the borrowing department to have the applicant attached with it on deputation nor had any such rule been brought to the notice of the Tribunal.

17. Most of the points raised by the applicant in the instant O.A. having already been raised before the Chandigarh Bench which rejected those contentions, this O.A. is quite clearly hit by the principle of res judicata. In our considered view, the only question that survives would be the validity of the order of punishment which event took place after the judgement of the Chandigarh Bench was delivered. On this question the learned counsel for the parties made their submissions at some length. The first contention of the learned counsel for the applicant is that the Articles of Charge mentioned in the chargesheet do not constitute any contravention of the Conduct Rules. In this regard, it is contended that several IAS officers of the Haryana Cadre are heading various Sports Associations and no action has been taken against them, even though the cases of those officers were brought to the notice of the respondents by the applicant. We are afraid, this contention cannot be accepted, for the simple reason that non-initiation of disciplinary action against other officers cannot be reason enough for exonerating the applicant if, on facts alleged against the applicant, contravention of the All India Service

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(Conduct) Rules, 1968 is made out. We are not impressed by the arguments of the learned counsel for the applicant that the applicant was not elected as the President of the Sports Association. It is urged before us that since there was no contest and the applicant was "chosen" unanimously the act of the applicant would not amount to contravention of Rule 13. Contest or no contest, "choosing" of the applicant would certainly amount to his election.

18. Similarly, the fact that the applicant did not actually collect any funds though he issued a letter soliciting advertisements from the addressees would not by itself be sufficient to exonerate the applicant. Rule 10 makes the act of asking for such contributions a misconduct although acceptance of such contributions would make the offence graver. The other contention of the learned counsel for the applicant that the letters had been addressed only to such organisations which were run by the Government is also not acceptable, as rule 10 does not make any distinction between a private organisation and an organisation which is either wholly or partly owned by the Government. Furthermore, it has been established by evidence collected by the disciplinary authority that a private party, namely, M/s Cadbury's had offered a substantial amount for the advertisement in the Sports Souvenir that was to be published by the Sports Association headed by the applicant. The applicant's contention that he had not directly sought advertisement from that private agency

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and that the said agency was approached wrongly by the Head of the Red Cross Society would not make any difference.

19. Another point of the applicant is that he after being elected/chosen as President, informed the Chief Secretary concerned about this fact and for this he relies upon a copy of a letter which is annexed with the O.A. But on going through the documents relied upon by the disciplinary authorities, the U.P.S.C. while submitting its opinion, and the President of India while dismissing the Memorial, we find that the State Government had denied having received any such communication from the applicant. Had such a letter been really sent by the applicant informing the Chief Secretary of Haryana Government that he had been elected as President of the Sports Association there is no reason why the same should not have been in existence in the records of the State Government. We, therefore, agree with the findings recorded by the disciplinary authority and the President of India that there is no proof of the fact that the aforesaid letter was at all received by the addressee.

20. The applicant has also annexed with the O.A. the photostat copy of a Note allegedly put up by the applicant to the Minister concerned seeking his permission to send letters on behalf of the Association. According to the applicant the Minister concerned had by putting his signatures under the said Note granted permission. This copy of the Office Note seems to have been annexed by the applicant as Annexure-M to the

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Memorial submitted to the President of India. We have carefully perused this document and have found nothing in it to prove that it was signed by the Minister concerned. This is so because this document has not come from proper custody and has been produced by the applicant perhaps for the first time when he submitted the Memorial to the President of India. According to the respondents, no such Office Note has been found in the records of the concerned Ministry. The disciplinary authority and the President of India have, therefore, rightly refused to place any reliance upon this document.

21. For the aforementioned reasons we are convinced that there is no legal flaw in the order of the disciplinary authority or the one passed by the President of India. It is true that one can on the same facts come to a different conclusion but that would not be reason enough to substitute the alternate view for the view expressed by the disciplinary authority.

22. We would, however, like to point out that the alleged contravention of the Conduct Rules in this case disclosed only a technical misconduct. It appears that the applicant has been suffering on this score for nearly a decade now. Although we may not give any direction to the respondents to proceed in a particular manner in the case of the applicant so far as the prospects of advancement in the applicant's career are concerned such as his empanelment in the list of officers fit for promotion to the post of Joint

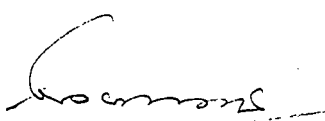
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Secretary, we would certainly expect the competent authority to take a balanced view in the matter, considering the fact that only a technical contravention of the Conduct Rules has been proved against the applicant and there are also several other officers belonging to the Service who seem to have committed similar acts without being caught or punished.

23. In the result this O.A. is partly allowed and is disposed of with a direction to the respondents to take a fresh decision in the matter of granting promotion to the applicant keeping in view our observations in para 21 above which decision shall, however, be effective prospectively. This shall be done when the next batch of officers are considered for empanelment for promotion/appointment to the post of Joint Secretary.

24. There shall be no order as to costs.

  
(S.P. BISWAS)  
Member (A)

  
(T.N. BHAT)  
Member (J)

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