

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No.60 of 1994 decided on 7<sup>th</sup> Sept 8.1999

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Name of Applicant : Shri R.C.Sharma

By Advocate : Shri M.R.Bhardwaj

Versus

Name of respondent/s Govt. of NCT of Delhi & others


By Advocate : Shri Arun Bhardwaj

Corum:

Hon'ble Mr. Justice D.N.Baruah, VC (J)

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No

  
(N. Sahu)  
Member (Admnv)

Central Administrative Tribunal, Principal Bench :

Original Application No. 60 of 1994

New Delhi, this the 7<sup>th</sup> day of ~~August~~ <sup>September</sup>, 1999

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman  
Hon'ble Mr. N. Sahu, Member (Admnv)

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Shri R.C. Sharma, Trained Graduate  
Teacher (TGT), Govt. Composite Model  
Sr. Sec. School, Plot No. 6, Link  
Road, Jhandewalan, New Delhi.

-Applicant

(By Advocate - Shri M.R. Bhardwaj)

Versus

1. Govt. of National Capital Territory  
of Delhi through Lt. Governor of  
Delhi, Raj Niwas, Delhi.
2. Chief Secretary, Govt. of National  
Capital Territory of Delhi, Old  
Sectt. Delhi.
3. Secretary Education, Govt. of  
National Capital Territory of Delhi,  
Old Sectt., Delhi.
4. Director Education, Dte. of  
Education, Govt. of National  
Capital Territory of Delhi, Old  
Sectt., Delhi.

- Respondents

(By Advocate Shri Arun Bhardwaj)

O R D E R

By Mr. N. Sahu, Member (Admnv) -


The applicant impugns the order dated 17.6.1993 issued by the Commissioner-cum-Secretary (Education) Govt. of National Capital Territory of Delhi rejecting the appeal submitted by him against the penalty imposed by the disciplinary authority of withholding four increments with cumulative effect and also ordering that the alleged period of absence be treated as dies non.

2. The brief facts leading to this OA are as follows :- the applicant while working in the Higher

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Secondary School, Jhandewalan proceeded on deputation to the Government of Nigeria for a period of three years with effect from 24.8.1977. He did not report back for duty on 23.8.1980. He entered into a contract on 2.12.1980 with the Government of Nigeria for a period of not less than 15 months and not more than 18 months. He did not intimate this fact to the Govt. of India nor did he obtain the prior permission of the Indian Government or the Delhi Administration or the Directorate of Education. Even so, he subsequently renewed the contract up to 15.5.1985 and over stayed there for five years. An enquiry was initiated under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The enquiry officer held that there was lapse on the part of the respondents for not issuing any notice to the applicant or the Govt. of Nigeria at least six months before the expiry of the contract. The enquiry officer mentioned that as the applicant allegedly initiated his extension in May, 1980 i.e. three months in advance before the expiry of his term in Nigeria, the entire blame <sup>could</sup> ~~can~~ not be laid on him. The disciplinary authority did not agree with the findings of the enquiry officer. He has, however, recorded sufficient reasons for not agreeing with the enquiry officer. The applicant relied on a letter dated 16.2.1982 (Annexure-A-10) written by the Government College Ibadan Cyo State, Nigeria whereby he was informed that his deputation with the Govt. of Nigeria was a bilateral issue between the Govt. of India and Govt. of Nigeria and the applicant need not worry for the extension of his deputation. The



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disciplinary and appellate authorities took the view that no permission was obtained before entering into such an agreement. Even after expiry of the first term, he entered into another agreement on 2.2.1983 for extending his deputation for further period of two years without the permission of the Govt. of India. The appellate authority was of the view that if he had not received any intimation about the fate of his application for extension, he should have resigned after the expiry of the initial term as had been done by the other deputationists. The second ground taken was that the applicant visited India four times between 1978-79, July 80 to September, 1980; June 1982 to August 1982 and August 1984 to October, 1985. He could have contacted the Government authorities or at least the Principal and should have known the fate of his proposed extension. Therefore, the appellate authority confirmed the findings of the disciplinary authority. He observed that the respondents did not put the applicant on notice about his repatriation to his parent department as per the procedure. However, he confirmed the levy of penalty by the disciplinary authority on an overall view of the matter.

3. The applicant contended that the enquiry officer did not hold him guilty and the disciplinary authority did not apply his mind and levied the penalty. The second ground was that the respondents failed in their duty to get the applicant relieved by the Govt. of Nigeria on the expiry of his first term of deputation of three years. He stated that he had to continue because of the desire of the Govt. of

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Nigeria to continue him in service. Finally, the applicant compared his case with that of Shri Surinder Singh Sahani who had been sent on deputation like him and who also over stayed for a period of five years like him. His case is that even though alleged misconduct of both are similar yet Shri Sahani was let off with a warning whereas the applicant was imposed penalty of withholding of increment.

4. The learned counsel for the applicant, Shri M.R.Bhardwaj stated that this was an act of hostile discrimination and cited the decision of Allahabad High Court in the case of Dost Mohamad Vs. Union of India and others, SLR 1981 (3) 274. He stated that the executive action which results in denial of equal protection of law is violative of Article 14 of the Constitution. For that purpose he relied on the decision of A.L.Kalra Vs. P&E Corporation, AIR 1984 SC 1361. He next cited decision of Maneka Gandhi Vs. Union of India, AIR 1978 SC 597 for the proposition that Article 14 strikes at arbitrariness in executive and administrative action and ensures fairness and equality of treatment. He finally cited the decision of Shrilekha Vidhyarthi Vs. State of UP & ors, (1991) 1 SCC 212 wherein it was held that reasonable and non-arbitrary exercise of discretion is an inbuilt requirement of the law.

5. The respondents' counsel largely relying on the counter affidavit submitted that the applicant was sent on deputation for a period of three years. He had wilfully with an ulterior motive overstayed. The

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respondents denied the receipt of the application dated 7.5.1980 requesting extension of his deputation by two years. They also denied any reference from the Government of Nigeria or the Indian High Commission. They further denied any application or reminder for further extension of his deputation period. Even assuming that the applicant had sent an application for extension and if he had not been intimated about the decision of the Government, he should have resigned after the expiry of the first term of deputation. He had deliberately violated the terms and conditions of deputation. It is reiterated that the disciplinary authority while not agreeing with the enquiry officer is only required to record his reasons. From the disciplinary authority's order he had given sufficient reasons for not agreeing with the enquiry officer's report.

6. We have carefully considered the submissions made by rival counsel. We are, however, unable to agree with the submissions made by the applicant's counsel. The main ground of the applicant's counsel was that he was discriminated in the matter of punishment. He sought the comparison with the case of Shri Surinder Singh Sahani. We have obtained the original records and we perused the same. The counter additional affidavit showed that the disciplinary authority in the case of Surinder Singh Sahani was different from the disciplinary authority in the applicant's case. There were different departmental proceedings conducted by different enquiry officers. The disciplinary authorities in each case has taken a



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different view after proper application of mind. The most important point was that the respondents admitted in the case of Shri Sahani that they received a letter dated 16.5.1980 by diary no.3046/B dated 30.5.1980 for orders on extension but in the case of the applicant they denied receipt of any of the letters written by him. The charges were also different. In the case of Shri Sahani he sent a letter on 25.8.1980 on deputation in Nigeria, which was confirmed by the Indian High Commission in Nigeria while endorsing his papers to Air India for allowing him air concession when he visited to India to see his ailing father. That apart the foreign employer assured Shri Sahni of extension and also informed him that to seek instruction was the business of the Govt. of Nigeria. Except the last one, other factors are not present in the case of the applicant.

7. As regards the plea of discrimination the law is fairly well settled. Article 14 does not guarantee uniformity of decisions or uniformity in the exercise of judicial discretion. Every judicial decision must of necessity depend on the facts and circumstances of the particular case before the Court and what may superficially appear to be unequal application of the law may not necessarily amount to a denial of equal protection of law. These principles have been laid down by the Hon'ble Supreme Court in the case of Triveniben Vs. State of Gujarat, AIR 1989 SC 1335 and also in the case of Eskayef Vs. C.C.E., (1990) 4 SCC 680. It is incumbent on the person who alleges discrimination to prove that there was an

element of intentional and purposeful discrimination. With this principle of law laid down, we do not think the applicant has made a valid case of discrimination. There was no material to suggest intentional discrimination. On the contrary we find that the facts and the gravity of the charge in each case were different. In Sahani's case the respondents have admitted that they have received his letters of request for extension. He proved his sincerity and at least the respondents were satisfied. A different enquiry officer, a different disciplinary authority held on the facts that the charges were not proved. It cannot be stated that the Courts should hang any person who allegedly commits murder. All the murderers should have been hanged but in different cases on different evidence the accused are let off on benefit of doubt, or on other material variations in the evidence tendered. It is a question of appraisal and appreciation of evidence. We are firmly of the view that the doctrine of discrimination under Article 14 would not apply to the judicial proceedings particularly to two different verdicts.

8. We are satisfied that the applicant was guilty of a grave misconduct. He took the law into his own hands by entering into an agreement for extension after the expiry of the first term with the Government of Nigeria while still remaining in service with the Government of India. This was a clear case of deliberate violation of the rules. The applicant knew and had reason to believe that what he had been doing was a violation of the norms. He could not have



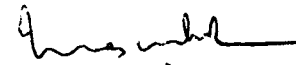
contracted into different service while still remaining an employee of Govt. of India. Without going into any other ground this itself constitutes a misconduct per se and the applicant is liable to be punished for that. He repeated the same act in 1983 without any intimation or prior approval of the Government of India for extension of his deputation. The alleged assurances of the Govt. of Nigeria could not be pleaded as an excuse. He should have resigned immediately on the completion of the initial period of three years. The terms and conditions clearly stipulated that he should return back after the completion of the first term of deputation. The applicant's misconduct got compounded when he did not even enquire from the Govt. when he was physically present in India four times during this period. It was an elementary duty of a Government servant to know as to what had happened to his prayer for extension if he had written any such letter to the Government. It was with a motive to enjoy the monetary benefits of foreign service and extension of that service that the applicant kept on working there. The question is why did he not continue for another five years if what he had done was enough compliance with the laws? The whole attitude of the applicant was one of lack of respect and loyalty to the Government which had sent him on deputation. His attitude was one of disregard to the majesty of the Indian employer. We are unable to hold that the applicant had made out any case for quashing the penalty order. We also find that the penalty imposed was reasonable. Proper procedure as per the CCS(CCA)Rules was followed. The applicant was

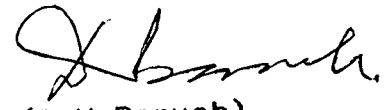
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heard. His objections were considered and we do not find any infirmity in the order of the appellate authority which is a well reasoned order.

9. In the result, the OA is dismissed. No costs.

  
(N. Sahu)  
Member (Admnv)

  
(D.N. Baruah)  
Vice Chairman

rkv.

