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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.2000/89

New Delhi this the 10th day of June, 1994.

HON'BLE SHRI S.R. ADIGE, MEMBER (A)
HON'BLE SMT LAKSHMI SWAMINATHAN, MEMBER (J)

Shri R.S. Managar, resident of
New Delhi, at present
C/o P.O. Box No.556
Kataia (New Zealand)

...Applicant

By Advocate : Shri Inderjit Sharma

VERSUS

1. Union of India, through
the Ministry of Surface Transport (Roads Wing)
Parivahan Bhavan ,
No.1 Sansad Marg,
New Delhi.
2. Secretary to the Govt of India,
Ministry of Surface Transport (Roads Wing),
Parivahan Bhavan,
No.1 Sansad Marg,
NEW DELHI.

.....Respondents

By Advocate : Shri M.M. Sudan

JUDGEMENT

(Hon'ble Shri S.R. Adige, Member (A))

In this application Shri R.S. Managar, P.O. Box No.556, Kataia, New Zealand has impugned the order dated 12.04.1988 (Annexure A-8), dismissing him from service.

2. The applicant joined the Ministry of Transport (Roads Wing) as Assistant Engineer in October, 1965 and was promoted in due course as Executive Engineer in 1973. While serving in the Ministry of Shipping and Transport, he got his name registered with the Foreign Assignment Section of the Ministry of Home Affairs for foreign assignment in 1970 and was deputed as Quantity Surveyor with M/s Reddy Construction Co. Ltd., Suva (Fiji), vide respondents' letter dated

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2.8.1975. The applicant's deputation which initially was for a period 3 years in the first instance was from 17.08.75 to 17.08.1978. Subsequently, he was granted extension of his deputation for the period of 2 years from 18.8.78 to 17.08.80. Shri Managar completed 5 years of deputation with the Government of Fiji on that date. The applicant's period of deputation was further extended for one more year upto 17.08.81, on the recommendations of Indian High Commission in Fiji. As the extension was beyond 5 years, necessary permission ~~permission~~ⁱⁿ of the Central Establishment Board of the Deptt of Personnel and Administrative Reforms was obtained. On 29.07.81, the first Secretary Indian High Commission, Suva (Fiji) wrote to the Ministry of External Affairs recommending that the applicant's deputation be extended ~~for~~ a further period of one year but the Applicant's parent department viz Ministry of Shipping and Transport declined to extend the term of deputation beyond 17.8.81; thereupon, the Indian High Commission in Fiji wrote to the Ministry of External Affairs on 12.01.82 for a years' extension to the applicant, upon which the applicant's parent deptt viz Shipping and Transport sent a Telegram dt 26.5.82 to the applicant directing him to report back by 13.06.82. It was made clear to the applicant that his over-stay beyond 30.06.82 would be treated as unauthorised absence from duty and he would render himself liable for disciplinary action. The High Commission of Fiji was informed accordingly, who in turn informed M/s Reddy Construction Co. Ltd, with a copy to the applicant, that the Government of India did not agree to further extension of the applicant's tenure and asked them that he should be relieved and

advised to join the Ministry in New Delhi, failing which he would be liable to disciplinary action. In spite of that the applicant did not report for duty and according to the respondents, thereby contravening Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

3. In the meanwhile, another Cable was sent to the applicant on 19.08.82 giving him more time upto 10.11.82 to join the Ministry after getting relieved, but in spite of that cable, ^{the} Ministry did not receive any communication from the applicant intimating that ^{to get} he was ~~trying~~ himself relieved, and consequently, to treat him on leave of the kind that is due to him.

4. Accordingly, disciplinary proceedings were instituted against the applicant and the chargesheet dated 21.09.84 was issued to the applicant for contravening Rule 11(3) and Rule (4) of the CCS (CCA) Rules, 1965 by unauthorisedly absenting himself from duty beyond 30.06.82, and rendering himself liable for disciplinary action.

4. Subsequently, the chargesheet was amended on 9.2.87 in as much as Rule 3 of the Central Civil Services (Conduct) Rules, 1964 and not Rule, 11 (3) ^{and} 11 (4) of the Central Services Services (Classification, Control and Appeal) Rules, 1965 was too alleged to have been contravened.

5. An Inquiry Officer was appointed to conduct the departmental proceedings. A notice was issued to the applicant to appear before Enquiry Officer on 24.3.87. The applicant expressed his inability to appear in person and also did not nominate any

government servant to appear on his behalf. He further ^{prayed that} put forward his case in a letter dt. 27.10.86 and ^{the} facts contained therein be given due consideration. As such, the Enquiry Officer considered the contents of the applicant's letter dt 27.03.86 as his written statement and his defence in respect of the charges against him. The E.O. noted that the applicant's deputation was initially for 3 years commencing from 17.8.75, and it was made clear in the letter of deputation that he should not stay in Fiji beyond the stipulated period without Government of India's permission. He further noted that the Ministry of Shipping and Transport had extended ^{the} applicant's deputation from time to time, ~~that~~ that extension being up-till 30.6.82, and it was clearly told to the applicant, ~~that~~ in case he failed to report for duty in the Ministry, that his overstay beyond 30.6.82 would be treated as unauthorised absence from duty and he would render himself liable for disciplinary action. The Enquiry Officer further noted that on the applicant's request for extension of deputation upto 31.12.82 Central Establishment Board (CEB for short) had not found any justification to agree to this request. The E.O. considered the plea taken by the applicant in his letter dated 27.3.86 that some matters of M/s Reddy Costruction Company were pending before the Court in Fiji, for which he was the prime witness, and he could not just abandon his responsibility to that Company and come away. But the E.O. held that these contentions of the applicant were not acceptable and ^{himself} the responsibility for getting ^{himself} relieved from his employer, and reporting back for duty to his parent department by ^{the} stipulated date, was entirely that of the applicant. In the light of that ^{the} E.O. held that the charges against

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the applicant stood ~~proved~~ and his failure to report for duty to his parent department by the stipulated date i.e. 1.7.82 at the end of his authorised period of deputation, had to be treated as unauthorised absence from duty, which made him liable for disciplinary action.

6. The respondents accepted the findings of the E.O. and referred the matter to the U.P.S.C. for advice and orders to be passed by the President. The U.P.S.C. in the light of the E.Os findings and taking into account all other relevant aspects, gave the advice that the applicant was not a fit person to be retained in service, ^{and} recommended that the penalty of dismissal from service be imposed upon him. The respondents accepted the advice of the U.P.S.C. and dismissed the applicant from service w.e.f. 12.04.88 ^(Annexure A-8) against which this O.A. has been filed.

7. We have heard Shri Inderjit Sharma for the applicant and Shri M.M. Sudan for the respondents. The first ground taken by Shri Inderjit Sharma is ^{and the} that the Indian High Commission in Fiji / First Secretary, Indian High Commission in Fiji, had ^a better assessment ^{or not} whether continuance of the applicant in Fiji was necessary / ^{the} and Officers in the applicant's parent Department in New Delhi (Ministry of Shipping & Transport) had, arbitrarily and malafidely declined the recommendations made by the High Commissioner and the First Secretary. This ground has no merit, for the reason that ultimately, it is the decision of the applicant's parent department viz. ^{Shipping & Transport} Ministry of / which ~~had~~ to prevail over the recommendations made by the High Commissioner and the First Secretary, and the applicant had fully exhausted the limit of 5 years deputation period, permissible in rules.

8. The second ground taken is that applicant had a certain legal and moral duty towards M/s Reddy Construction Co. Ltd which he had explained in detail to the E.O. in his letter but the same has been disregarded. This ground has already been discussed in the foregoing paragraphs and the E.O. has rightly held that it has no force.

9. The third ground relates to the second, viz. that the applicant's employer did not relieve him, and when a request was made by the applicant that he be granted 5 year's leave all from service, the same was arbitrarily ignored. It is the prerogative of the employer to grant or refuse leave. When the employer made it clear to the applicant that he should return by a fixed date, merely because the applicant made a request, if at all, to be granted 5 year's leave, which the respondents in paragraph 5(c) of their reply in any case deny having received, does not absolve him of the responsibility of returning to duty by the due date.

10. The next ground taken is that in his letter dt 15.02.85 addressed to the Deputy Secretary, Ministry of Shipping and Transport, the applicant had reminded them that a reply be given to him on his request for grant of 5 years leave, and had added that he was not in a position to come back by November, 1985, and his case be considered to have sought retirement on completion of 20 years service. The respondents have pointed out that this letter of dated 15.2.85 was in reply to the Ministry's Memorandum dated 21.09.84 initiating the disciplinary proceedings against him and the request for grant of 5 years leave of the kind due, could not be considered at that stage. The respondents' contention ^{is} correct as by that date departmental proceedings had been initiated and this ground taken by the applicant has to be rejected.

11. The next three grounds relate to the correspondence between the Indian High Commission of Fiji and Shri Ninan Koshi, Chief Engineer (Roads Wing), Ministry of Shipping & Transport who was later appointed as E.O. in the departmental proceedings. It has been argued that the High Commission had written strongly in favour of the applicant's continuing in not Fiji, and this recommendation should not have been rejected by the respondents. These grounds have already been discussed earlier and rejected as it has been found to be without any force.

12. The next ground taken is that the applicant ^{not} was not given sufficient time by the E.O. to come to India and defend himself and hence full opportunity was afforded to him. The respondents have pointed out that the E.O. vide his letter dated 19.02.87 fixed the date for hearing for 24.03.87. The applicant was asked to appear in person or take ^{the} assistance of any other government servant and was also given an opportunity to examine himself in support of the charges and adduce evidence in his defence. The applicant neither appeared in person nor took any assistance from any Government servant to present his case on 24.3.87.

13. The E.O. on October, 6, 1987 issued an order/notice to the applicant under Rule 14(11) of CCS(CCA) rules and ^{he} was asked to submit a list of witnesses to be examined, and give notice within 20 days of the order, for production of any documents which were in possession of the government, ^{though the E.O.} and adjourned the case for final hearing, to be held on 16th November, 1987. However, in spite of all these opportunities given to the applicant to defend himself, he ~~did~~ not avail of the same.

Under the circumstances, this ground also has no merit.

14. The next ground taken is that chargesheet issued to the applicant is defective inasmuch as in the chargesheet it was stated that the applicant's overstay beyond 30.6.82 should be treated as unauthorised absence, whereas in the Telegram sent to the applicant in October, 82, it was stated therein that any overstay beyond 10th October, 82 would be treated as unauthorised absence from duty.


15. We are not persuaded to hold that the entire departmental proceedings are vitiated merely because in the chargesheet, the applicant's overstay beyond 30.6.82 was stated to have invited disciplinary action, whereas, ^{is} the telegram sent to the applicant in October 1982, he was given time upto 10.11.82 to return to headquarters. It is quite reasonable to construe this to mean that while in the departmental proceedings, it was stated, ^{that} ~~if~~ any overstay by the applicant beyond 30.6.82 would invite disciplinary action, ~~further latitude~~ was given & the respondents were willing to take a lenient view, even if the applicant had returned ^{Am} ~~back~~ to head-quarter by 10.11.82. The respondents were prepared to take a lenient view but the applicant did not respond even to this concession made by the respondents.

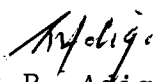
16. The next ground taken is that a copy of Inquiry Report was not supplied to the applicant. However, it is now well settled that non-supply of inquiry report in respect of departmental enquiry which concluded with ^{imposition of} ~~imposition of~~ penalty on 12.4.88 does not vitiate the action taken against the applicant and this ground has no force.

17. Shri Inderjit Sharma has also taken ^{the} plea that the respondents have admitted that an amended chargesheet vide Memo dated 9.2.87 was issued. However, the Memo was not served upon the applicant, and hence the departmental proceedings are vitiated. We have seen the amendments issued vide Memo dated 9.2.87 which only refer to the correct rule contravened viz. Rule 3 of the CCS (CCA) Conduct Rules, 1964 and not Rules 11(3) + 11(4) of the CCS (CCA) Rules, 1965. It is well settled that mere quoting of wrong rule in a departmental proceedings does not vitiate the same, as long as the substance and contents of the relevant rules are correct. Hence, even if the earlier chargesheet dated 21.09.94 referred to contravention of Rule 11 (3) + Rule 11(4) of CCS (CCA) Rules, 1965 which was subsequently corrected by Memo dated 9.2.87 to read contravention of Rule 3 of the CCS (Conduct) Rules, that does not vitiate ^{the} departmental proceedings.

18. In this connection, we understand that the applicant continues to reside and work abroad as of today.

19. In the facts and conspectus of the case, as discussed above, we see no reason to interfere with the impugned order and this application is accordingly dismissed. No costs.


(Smt Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Member (A)