

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-552/86

Date: 4-5-89

Shri Rajinder Pal Singh Applicant

Versus

Union of India through Respondents
the Deputy Director,
General (Vig.T).

For the Applicant Shri Umesh Misra, Advocate

For the Respondents Shri K.C. Mittal, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M.M. Mathur, Administrative Member.

1. Whether Reporters of local papers may be allowed to
see the judgement? Yes

2. To be referred to the Reporter or not? Yes

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who had worked as Scientific &
Technical Officer in the Ministry of Communications,
filed this application under section 19 of the Administra-
tive Tribunals Act, 1985, praying that the impugned order
dated 3rd July, 1984, whereby he was removed from service,
be set aside, that a declaration be issued to the effect
that he continues to be in service, and that he be given
all consequential benefits, including promotion and
seniority on his reinstatement in service.

2. The respondents, vide their Memorandum dated 24th
February, 1983, initiated disciplinary proceedings against
the applicant under Rule 14 of the C.C.S. (CCA) Rules, 1965.
The statement of Articles of charge framed against him
was as follows:-

"Shri Rajinder Pal Singh, while working as S&TO,
Grade-I in the TRC, Khurshidlal Bhavan, committed
the following irregularities:-

- i) He negotiated and accepted a post of
Software Engineer/Programmer in the
OMANTEL, Ruwi, Sultanate of Oman direct,
without the previous sanction of the

On

.... 2...
.....

Government, in contravention of Rule 15 of the CCS (Conduct) Rules, 1964, read with Government of India instructions contained in MHA O.M. No.29/3/66-Estt.(A) dated the 8th February, 1966.

- ii) He failed to resign his post in the TRC in accordance with the undertaking given by him to that effect and in disregard of the orders issued to him repeatedly to do so.
- iii) He continued to hold employment under OMANTEL, Ruwi, Sultanate of Oman, simultaneously with his employment under the Government of India in the TRC as S&TO Grade-I, in contravention of FR-11.
- iv) He remained absent from his duty in the TRC from 16.11.78 to 27.11.79.

Thus, by his above acts, the said Shri Singh committed grave misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3(1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964."

3. The applicant denied the charges whereupon an enquiry was held and the disciplinary authority passed the impugned order dated 3rd July, 1984 accepting the findings of the Inquiry Officer to the effect that all the charges against him have been proved and ordered that he should be removed from service with immediate effect. It was further ordered that the period of his absence from 16.11.1978 to 27.11.1979 shall be treated as a break in service.

4. The applicant preferred an appeal addressed to the President of India on 17th August, 1984 which was also rejected by the President vide order dated 13th March, 1986.

5. The stand of the respondents is that the applicant applied for a job to the Government of Oman directly and that though he was relieved from Government service to take

up the job with the Government of Oman, it was on the undertaking of the applicant that he would resign from his present post in the event of his selection by the foreign Government, that he continued to work with the foreign Government under one pretext or the other from 16.11.1978 to 27.11.1979 and, therefore, he had committed a grave misconduct warranting the penalty of dismissal from service.

6. The contention of the applicant is that his application for a job under the Government of Oman was forwarded through proper channel in the Government, that he was relieved from his post under the Government, that he was given the option of resigning from Government service from the date he was relieved, or to join back within the stipulated period of one month, that he opted to join back in Government service within the said stipulated period, that the impugned disciplinary proceedings were initiated against him nearly five years after he was allowed to join Government service and, therefore, the entire proceedings initiated against him culminating in the impugned order of dismissal is perverse and legally unsustainable.

7. We have carefully gone through the records and have heard the learned counsel for both the parties. The deputation of officers to various foreign assignments is governed by the instructions issued by the Department of Personnel on 23.5.1978. These instructions do not confer any right on a Government servant to apply directly to a foreign Government for an assignment. In the case of non-sponsored officers, the Office Memorandum issued by the Department of Personnel stipulates as follows:-

"If an officer is offered a long term foreign assignment of one year or more

8

without his name having been officially sponsored, he may be allowed to accept the same if he is prepared to resign/ retire from service immediately after joining the foreign Government assignment."

8. The applicant was well aware of the aforesaid instructions. He has also annexed a copy of the same to his application (vide Annexure D-2 at pp.15-19 of the paper-book).

9. This is Notta case where the respondents sponsored his name for a foreign assignment. The applicant had approached the foreign Government with an application for an assignment but he took care to do so through proper channel.

10. The correspondence exchanged between the applicant and the respondents after the Government of Oman selected him for an assignment and sent an offer to him on 31st July, 1978, is of crucial importance to decide whether the contention of the applicant that the impugned disciplinary proceedings were perverse or not.

11. The application dated 24.7.78 for the foreign assignment was submitted to the respondents along with the following letter:-

"Enclosed, please, find an application for the post of Software Engineer/Programmer which may kindly be forwarded to the General Manager, Omantel, Oman.

As the information about the vacancy was passed on to me by some body (known to me) from Oman, I am not in position to produce the relevant advertisement (newspaper cutting). The details of the salary and service conditions will be submitted to this office so soon as they are available to me.

The application may kindly be forwarded at the earliest."

The applicant had also separately given an undertaking as follows:-

"Reference my application dated 24.7.78 for Omantel I am ready to resign from my present post in accordance with No.13/1/76-DOP dated 23.5.78 of DOP & AR Min. of H.A. in case of my selection with Omantel."

12. On 26.7.1978, the Administrative Officer of the Section in which the applicant was working, forwarded the same to the Director in DGP&T for further necessary action.

9

The Assistant Director General of the P&T Board, vide his letter dated 29th September, 1978, informed the applicant as follows:-

"With reference to his application dated 24.7.78 on the subject mentioned above, Shri Rajinder Pal Singh, Scientific & Technical Officer Grade I, Telecom Research Centre is informed that he should resign from Government Service in India before accepting the offer of employment with Omantel, Oman."

13. By letter dated 30.9.1978, the applicant requested the DGP&T to allow him to retain lien on the post held by him. This request was rejected vide letter of the Asstt. Director General, P&T Board dated 16.10.1978 which reads as follows:-

"With reference to his representation dated 30.9.78 on the above subject, Shri Rajinder Pal Singh is informed that it will not be possible to retain his lien in the Department after his joining the foreign assignment. He is, however, permitted to resign immediately after taking his duties with Omantel, Government of Oman.

He is requested to intimate the date of his relief from the present post as well as the date he joins the foreign assignment."

The applicant was allowed to relinquish charge in his office in the afternoon of 16.11.1978.

14. The Additional Director General of the P & T Board cancelled his earlier letter dated 16.10.1978 by his letter dated 4th December, 1978 which reads as follows:-

"This Office Memo. of even No. dated 16.10.78 is hereby cancelled. Shri Rajinder Pal Singh, S&T.O Gr.I is directed to resign from his present post immediately or join back his duties in TRC. In case of his failure to do so, his proceeding abroad for joining with Oman Government will be considered as an act of indiscipline and will render him liable for suitable disciplinary action.

The receipt of this Memo. be acknowledged."

15. On 25th December, 1978, the applicant wrote to the DGP&T stating that as already intimated, he had

joined Omantel, and it was not possible for him to join back immediately without giving proper notice. He, therefore, requested that the orders may be modified accordingly to enable him to take a decision. He also asked for intimating to him about the circumstances under which he could not be granted a short-term lien.

16. On 16.4.1979, the DGP&T informed him that they could not grant short-term lien to the applicant. By the said letter, he was given two options, viz., (i) either to resign from Government service, or (ii) to join back his duties. The letter of the Assistant Director General, P&T Board dated 16th April, 1979 reads as follows:-

"With reference to his letter dated 25th December, 1978 on the subject mentioned above, the undersigned is directed to inform Shri Rajinder Pal Singh that his request for modification of orders already communicated to him vide this Office Memo. of even number dated 4.12.78 has not been acceded to. He is, therefore, directed to send his formal letter of resignation from the date of his joining the foreign assignment immediately or join back his duties in Telecom. Research Centre by 9.5.79, failing which disciplinary proceedings will be initiated against him without any further notice.

He may also note that his request for keeping a lien in P&T Department has been rejected being inadmissible under the rules."

17. On 5.5.1979, the applicant wrote to the DGP&T informing him that he was ready to join back his duties. He added that in accordance with the conditions of service at Oman, a three months' notice had to be given before he could be relieved from there. He stated that the same would be submitted after getting confirmation from the respondents.

18. Ultimately, the Assistant Director General of the P & T Board wrote to the applicant on 4th October, 1979

Q

asking him to join back within one month of the receipt of his letter or send his letter of resignation, failing which action would be taken to initiate disciplinary proceedings against him. The letter dated 4th October, 1979 reads as follows:-

"The undersigned is directed to refer to letter dated 5.5.79 from Shri Rajinder Pal Singh, S&TO Grade I and to inform him that it is not possible to accede to his request for grant of 3 months time for joining back in TRC.

2. He is again requested to join back within a month of receipt of this Memo, or send his letter of resignation from the date he was relieved from TRC failing which action would be taken to initiate disciplinary proceedings against him without any further notice and also he will be got repatriated from Oman through official channels."

19. On the receipt of the said letter by the applicant on 30.10.1979, he joined back on 28.11.1979.

20. The impugned Memorandum initiating disciplinary proceedings against the applicant, was issued after a lapse of nearly five years on 24th February, 1983. The respondents have not given any explanation for such inordinate delay in initiating disciplinary action.

21. In the departmental inquiry initiated against the applicant, his main defence is based on the aforesaid correspondence. We have carefully gone through the report of the Inquiry Officer dated 23.1.1984. The application of the applicant for the assignment was submitted through proper channel. There was no evidence before the Inquiry Officer that the applicant had "negotiated" with the foreign Government for the post of Software Engineer/Programmer, for which he had applied. It was open to the respondents not to relieve him from his post to enable him to go abroad and join the assignment offered to him by the foreign Government. On the

On

12

other hand, the respondents, by their conduct, gave their tacit approval to the applicant applying for the foreign assignment, to his joining the post at Oman, to his continuance at Oman all along and they also allowed him to join back. The findings of the Inquiry Officer that the charges framed against the applicant have been proved are, mainly based on the correspondence discussed above which does not, in our opinion, indicate any misconduct on the part of the applicant. The impugned order of removal from service was also based on the same material. Considering all these facts and circumstances of the case, we hold that the findings of the Enquiry Officer and the decision of the disciplinary authority are not legally sustainable as they are not based on any evidence regarding the alleged misconduct.

22. The applicant successfully managed to remain at Oman for nearly one year on a foreign assignment by adopting dilatory tactics. Evidently, there were lapses on both sides. In the facts and circumstances of the case, we are of the opinion that the applicant cannot be granted all the reliefs prayed for in the application. In the interest of justice, we order and direct as follows:-

- (i) The impugned order dated 3rd July, 1984 whereby the applicant was removed from service, and the impugned order dated 13th March, 1986 whereby the appeal filed by the applicant was rejected, are set aside.
- (ii) The applicant shall be reinstated in service to the post which he was holding at the time of the passing of the impugned order dated

3.7.1984. The period from 3rd July, 1984 to the date of reinstatement will not count for any purpose except as qualifying service for pensionary benefits. The period of absence from duty from 16th November, 1978 to 27.11.1979 during which he was absent from duty, will ~~also~~ not count as service for any purpose.

(iii) The respondents shall comply with the above directions within a period of three months from the date of communication of ^{any} copy of this order; and

(iv) there will be no order as to costs.

(M.M. Mathur) 7/5/89
Administrative Member

(P.K. Kartha) 4/5/89
Vice-Chairman (Judl.)