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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 974/86 198
T.A. No.

DATE OF DECISION 3-7-87

Shri N.S. Gujral ~~Petitioner~~ Applicant

Shri P.T.S. Murthy Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India & Ors. Respondent s

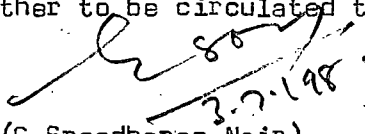
Shri P.P. Khurana Advocate for the Respondent(s)

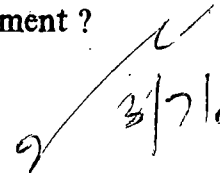
CORAM :

The Hon'ble Mr. Birbal Nath, Administrative Member

The Hon'ble Mr. G.Sreedharan Nair, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? y/h
2. To be referred to the Reporter or not ? y/h
3. Whether their Lordships wish to see the fair copy of the Judgement ? y/h
4. Whether to be circulated to all the Benches ? y/h


(G.Sreedharan Nair)
Member (J)
3-7-87


(Birbal Nath)
Member (A)
3-7-87

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Hon'ble Mr. G. Sreedharan Nair, Judicial Member.

Shri P.T.S. Murthy, counsel.

Shri P.P. Khurana, counsel.

JUDGMENT
(delivered by Hon'ble Mr. Birbal Nath).

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2. Facts leading to the case are that the applicant, while working in the Ministry of Water Resources, was deputed to Algeria for an initial period of two years with effect from 1st November, 1977. Subsequently, this deputation to Algeria was extended upto 31st October, 1980 by the Ministry of Irrigation vide their letter dated 21.2.1980 (Annexure 'H'). It may be noted that the applicant had prayed for such an extension in July, 1979. The Government of Algeria desired his services to be continued beyond 31st August, 1981. The applicant applied for further extension upto 31st October, 1981. In March, 1981, the Ministry of Irrigation called the explanation of the applicant as to why he had stayed in Algeria beyond 31st October, 1980. The applicant ^{has} averred that he had continued to serve in Algeria in good faith expecting that sanction for his continued deputation would come in due course of time. The Government of Algeria did not relieve the applicant despite his written request. Then, he approached the Indian Embassy in Algeria to secure his release from there. He was ultimately relieved on 2nd July, 1981 by the Government of Algeria and thereafter, he joined the duty in the Central Water Commission under the Ministry of Irrigation. For his continuing on deputation without due sanction, he was served with a charge on 25th September, 1981 which said that he had been specifically told that his over-stay beyond the sanctioned period of deputation would entail action against him. Since he had not returned to duty after expiry of sanctioned period of foreign assignment, he was treated as unauthorisedly absent from duty beyond 30th November, 1980 and proceedings were taken up for contravention of Rule 3 (1) (ii) and (iii) of the Central Civil

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Services (Conduct) Rules, 1964. The departmental proceedings in this case were completed on 14th September, 1983. The applicant had participated in the proceedings. Now, the applicant challenges that the proceedings are not being concluded and no order has been passed to his detriment and he has been ignored for his due promotion. He has also challenged the proceedings on the ground that 44 officers who had over-stayed their deputation in foreign countries beyond the initial period of deputation were also proceeded against on similar grounds but the proceedings against them have been dropped, whereas he is being penalised through an unconcluded disciplinary proceeding which, by virtue of such unwarranted and unjustified delay, should automatically lapse.

3. In their counter-affidavit filed by the Ministry of Water Resources, it was averred that the applicant had overstayed in Algeria beyond 30th October, 1980 in utter disregard of the directions of the Government of India. It was admitted that the disciplinary proceedings against the applicant were initiated as back as 25th September, 1981 and are still pending for consultation with the Ministry of Law, Union Public Service Commission and the Department of Personnel and Training etc. With regard to the charge of discrimination made by the applicant, it was conceded that certain other officers, who were also sent on foreign assignment and had overstayed beyond the sanctioned period were subjected to disciplinary proceedings but considering their cases and with the approval of the competent authorities, the cases ^{against them were} closed. It was made out that the case of the applicant was different. So far as his promotion is concerned, it was averred that the sealed cover procedure has been adopted in the case of the applicant

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when the D.P.C. had met on 29th May, 1985.

4. We have given careful thought to the arguments advanced at the bar and the pleadings of the parties. It is clear that the proceedings against the applicant were initiated in September, 1981 i.e. nearly six years back. After drawing up the same, the enquiry report was submitted by the Enquiry Officer on 14th September, 1983. Eversince, these proceedings have been kept pending for consultation with the Ministry of Law^{etc.} and mainly with the UPSC and the proceedings have been sent to the Commission a number of times. Though the UPSC was one of the respondents, there is no reply from them on the file. It is clear that the case of the applicant has been kept pending not for any fault on the part of the applicant but for reasons of consultation bet^{ween} the administrative Ministry and the UPSC. When the case of the applicant was submitted⁶ the UPSC first in June, 1984, the promotion of the applicant had not been taken up. The same was considered in a meeting of the D.P.C. held on 29th May, 1985 and the result of the D.P.C. lies in a sealed cover. Two years have elapsed and the sealed cover could not be opened because of the non-finalisation of the enquiry between the UPSC and the administrative Ministry, i.e. respondent No. 1. Consultation with the UPSC is mandatory under the Constitution of India. In the case of A.N.D'Silva v. Union of India¹, the Hon'ble Supreme Court has observed as follows on the consultative role of the UPSC:

"...By Art. 320(3) of the Constitution it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the

1. A.I.R. 1962 S.C. 1130

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Enquiry Officer. It is unnecessary for the purpose of of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer."

We appreciate the anxiety of respondent No. 1 to make full consultation with the Union Public Service Commission to fulfil the Constitutional requirement. Such consultation is not only a Constitutional requirement but also has proved to be very salutary in service matters. Nevertheless, the consultation should not extend over the years so as to be self stultifying through a process of protraction and result ^a in ²⁶prolonging agony to the civil servant whose conduct is under enquiry. A civil servant over whose head of disciplinary proceedings the Damocle's Sword/is hanging over a number of years, cannot make the desired contribution in the performance of his duties. By the nature of things themselves, it is imperative that such consultation should be completed with reasonable despatch.

5. Since the respondent Ministry has consulted the Union Public Service Commission a number of times and has failed to finalise its own decision, the matter cannot be allowed to be dragged on for an indefinite period. It is a sad comment that an enquiry initiated in 1981 has not been completed till 1987 and in the interregnum juniors continue to get promotions superseding the applicant. Such a state of protraction and delay impinges upon the rights of civil servants and needs to be discountenanced. In view of this, we direct respondent No. 1 to finalise the disciplinary proceedings pending against the applicant within one month from the date of receipt of ^{a copy of} this order, and in the light of their decision, take a decision with regard to the promotion of the applicant in view of

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the recommendations of the D.P.C. contained in the sealed cover.

In view of these directions, we need not go into the merits of this case and other issues raised before us.

The application is disposed of with the above directions.

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3.7.1987
(G. Sreedharan Nair)
Member (J)
3-7-1987

3/7/87
(Birbal Nath)
Member (A)
3-7-1987