

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Regn. No. 307 of 1987

Date of decision 15.5.82.

V.J. Sood

Applicant

Dr. D.C. Vohra

Counsel for the applicant

vs.

Union of India

Respondents

Shri N.S. Mehta,

Sr. Standing

Counsel for the respondents

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant in this O.A. has prayed for the following reliefs:

- (i) The impugned order of removal from service dated 6.12.85 be set aside;
- (ii) the applicant be allowed to resume duties on transfer from Washington at New Delhi and his stay at Washington be treated as leave;
- (iii) he has also prayed for all financial benefits by way of his leave salary, duty pay plus allowances as admissible, cost of passages for self and family members etc.
- (iv) the applicant has also prayed for the cost of these proceedings.

Ram Pal Singh

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2. The applicant joined the service of the Government of India on 16.5.51 as L.D.C. in the Ministry of Commerce and Industry, but opted for the Indian Foreign Service Branch 'B' when it was constituted on 1.8.56 and joined the Ministry of External Affairs as a U.D.C. in 1957. According to him, he qualified in the Assistant Grade Exam in 1963 held by the UPSC and was promoted as Assistant w.e.f. 19.10.1963. The applicant was promoted to Grade II & III Combined of the Indian Foreign Service B, as Section Officer with effect from 19.9.81. During the long spell of his service, he was deployed by his posting from 1958 till 1983 respectively in the Indian Embassies of Jakarta, Lagos, Madrid, Kathmandu, and Washington. He was thus posted at Washington from February 1980 to 30th June 1983 when he received orders for his transfer from Washington to Delhi. The Applicant, according to him, filed several representations stating therein that his two children were enjoying education facilities at Washington; that his wife was indisposed due to nervous breakdown; that he was not getting the passage for coming to Delhi and prayed for long leave, which, according to the respondents, were turned down except 15 days ex-India leave. He was served with a memorandum dated 10/13.2.84 that the President proposes to hold an enquiry against the applicant, an officer of Integrated Grades II & III of the General Cadre of the Indian Foreign Service Branch 'B' under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. This memorandum was accompanied by encloses I, II and III (Annexures F1, F2 and F3). Two Articles of Charge were framed against the applicant:

- (i) that the applicant absented himself from duty in an unauthorised manner; and
- (ii) that the applicant disobeyed the orders of the Government of India transferring him from the Embassy of India, Washington, to the Ministry of External Affairs, New Delhi, and thus it was alleged that he exhibited lack of devotion to duty and conduct unbecoming of a Government servant, thereby violating Rule 3(i) (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964. It was further alleged that

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he also contravened Rule 13 of the Indian Foreign Service (Conduct & Discipline) Rules, 1961. The applicant on 15.3.1984 filed his reply through diplomatic bag of the Embassy of India, Washington, to Delhi and also complained therein that he has been filing representations against the orders of his transfer, but no orders had been passed thereon. He further claimed that he applied for 120 days of leave from the date of his relief from duty, i.e. 30.6.83. According to the applicant, he wanted to make arrangements for his children's education at Washington during this period. The applicant was asked to surrender his and his wife's diplomatic passports, otherwise action under the Passport Act of 1972 would be taken.

3. The applicant admits in the O.A. that he was supplied with the air passage for himself and the members of his family for back journey on 3.5.84 vide Memorandum dated April 23, 1984.

On April 27, 1984, the applicant again approached the Embassy of India at Washington that he be allowed more time before the actual travel for packing and despatch of baggage prior to his travel. Ultimately, the applicant surrendered the two diplomatic passports to the Consular Division at Washington. Inquiry Officer, Shri Swash-pawan Singh, proceeded to inquire into the charges against the applicant. The applicant participated in the inquiry. The inquiry was passed on held on 13.11.84 but orders were 6.12.85. The disciplinary authority, in the name of the President signed by Shri B.B. Soni, Director (Headquarters), communicated to the applicant that the penalty of his removal from service has been ordered. The applicant filed a representation/review before the President, but the same was rejected.

4. The main contention of the applicant is that the Inquiry Officer submitted his report on 30.11.84, but the disciplinary authority took 13 months to pass the judgment of the removal of the applicant from service i.e. on 6.12.85. The second contention of the applicant is that the Inquiry Officer had exonerated the applicant partly of both the charges, but the disciplinary authority contravened the provisions of Rule 15(2) of the Rules because when the disciplinary authority did not agree with the recommendations of the Inquiry Officer, he should have followed the procedure laid

down in this Rule. Thus, by this application, filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant challenges the order of his removal from service.

5. The respondents on notice appeared and filed their return.

They maintain that the applicant has disobeyed the orders of his transfer and /thus contravened the provisions of the Conduct Rules and made himself liable for a departmental enquiry. They also maintained that the leave asked for was sanctioned but the applicant purposely stayed back in Washington and deliberately failed to comply the orders. They further contend that the applicant's passage was booked to New Delhi for 27.5.83, but he did not avail this opportunity and raised several pleas for staying back in the States. The applicant, according to the respondents, delayed his departure on one pretext or the other. By memoranda dated 21.7.83 and 23.8.83, the applicant was informed that only 15 days ex-India leave was sanctioned. They also maintain that he received these memoranda and subsequently made a request for 120 days ex-India leave to which he was not entitled. According to the respondents, the applicant has been given due opportunities in December, 1983 and January, 1984 to avail a passage back to India. They also contend that the case was referred to the UPSC for advice on the final orders to be passed by the President and then the Embassy was accordingly informed. They also maintain that the findings of the disciplinary authority are in consonance with the findings of the Inquiry Officer and a careful reading of the inquiry report reveals that the applicant was found guilty on both the counts. They thus maintain that in the enquiry there was no contravention of Rule 15(2) of the Rules.

6. Learned counsel for the applicant, Dr. D.C. Vohra, and Sr. Counsel for the respondents, Shri N.S. Mehta, were heard extensively.

7. The transfer order was passed on 30.6.83 (Annexure 'A'). On 23.9.83 (vide Annexure 'B'), the applicant requested the Foreign Secretary of the Ministry of External Affairs that he may be posted to a Mission in a nearby country instead headquarters. This prayer of the applicant was turned down. When the applicant, after the

sanction of 15 days ex-India leave, did not proceed to Delhi, then by order dated 10.2.84 (Annexure 'F') it was directed that a departmental enquiry be held against the applicant. After the conclusion of the enquiry, the Inquiry Officer recorded his findings which he sent to the disciplinary authority. According to the inquiry report, the Inquiry Officer has given the following findings:

"(i) After going through the documents submitted by the Presenting Officer on behalf of the Disciplinary Authority and examining the defence statement submitted by the charged officer, Shri Sood, I find that Article I of the charge is partially established.

(ii) Article II of the charge is also as a consequence of the view taken above partially confirmed, that Shri Sood has disobeyed orders of the Government of India for not returning to Headquarters." (emphasis supplied)

The disciplinary authority after perusing the enquiry report of the Inquiry Officer was of the view that:

"After considering the articles of charge which have been proved against Shri V.J. Sood, and taking into account all facts relevant to the case, the President has, in consultation with the Union Public Service Commission, come to the conclusion that the penalty of removal of service should be imposed on him...."

The disciplinary authority, thus, has taken the findings of the Inquiry Officer as proved, according to him, while the findings of the Inquiry Officer are clear that Article I of the charge is partially established and so far as Article II of the charge is concerned, the charge is partially confirmed. Thus, the Articles of charges as framed against the applicant, according to the Inquiry Officer were partially proved and partially not proved while, according to the disciplinary authority, the Articles of charges are proved against the applicant. In such a situation, it appears that the disciplinary authority did not agree with the findings of the Inquiry Officer and was of the view that the Articles of Charges were proved against the applicant and he thus proceeded to impose the penalty of removal from service.

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Rule 15 of the Rules deals with the action on the inquiry report. Sub-rule (2) of Rule 15 is quoted below for convenience:

"(2) The disciplinary authority shall, if it ~~is~~ disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence record is sufficient for the purpose."

From this provision, it is apparent that when the disciplinary authority is not in agreement with the findings of the inquiring authority on any article of charge, then he is required to record his reasons for such disagreement and record his own findings on charge. (Emphasis supplied.) This denotes that the disciplinary authority after the receipt of the inquiry report did not write whether he agrees with the findings of the inquiry report or he does not agree with it. The impugned order passed by the disciplinary authority shows that the disciplinary authority was not in agreement with the findings of the inquiring authority on both the Articles of charges and proceeded to record his findings that the charges are proved against the delinquent, but failed to record its reasons for such disagreement and also failed to record its own findings on such Articles of charges. Thus, the impugned order passed by the disciplinary authority was in contravention of the provisions of Rule 15(2) of the Rules. We place our reliance in the case of *Shankar Lal Vishwakarma vs. U.O.I. & Ors. (ATR 1986 (2) CAT 577)* in which it has been held:

"It is true that under instructions contained in Rule 15(2) of the Rules, it is not necessary that the disciplinary authority cannot differ from or modify the findings of an Enquiry Officer, but when he has to do so he ought to fully examine the evidence on record and come to a conclusion that cannot be judicially questioned. In such cases, it would also be equitable that the disciplinary authority gives further opportunity of hearing to the delinquent official to explain his case. The test of prosecution evidence being established without any doubt has to be applied rigorously also in a departmental enquiry proceeding, and the disciplinary authority has to be satisfied about it."

The disciplinary authority has either to agree or to disagree with the report of the Inquiry Officer. If it disagrees, then the provisions

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contained in Rule 15 (2) of the Rules have to be followed. If he agrees, then he has to proceed further and impose penalty upon the delinquent. In this case, the disciplinary authority has recorded its own conclusion without agreeing or disagreeing with the report of the Inquiry Officer. It is also apparent that the disciplinary authority has not given any reasons for having arrived at the conclusion that both the Articles of charges are proved against the applicant. In the case of K.N. Ramaswamy vs. U.O.I. & Ors. (ATR 1987 (1) CAT 136) it was held by a Bench of this Tribunal that:

"Where there was no finding of the enquiry officer and the disciplinary authority came to his own conclusions on the basis of the documentary evidence available without agreeing or disagreeing with the enquiry officer's findings and where neither the enquiry officer nor the disciplinary authority elaborated on any reason why they came to the conclusions nor did they assess the evidence led before the enquiry officer then both the impugned order as well as the report of the enquiry officer suffers from fatal flaws as they are completely silent about the assessment of evidence and reasons to come to any conclusion of guilt or innocence of the delinquent."

The present case in hand is clearly like the case of K.N. Ramaswamy (supra). In this case also, the disciplinary authority has not given any reaons as to why it has come to the conclusion to which the Inquiry Officer had not come. Thus, the impugned order of punishment suffers from fatal flaws as it is completely silent on the subject whether the disciplinary authority agrees with the findings of the Inquiry Offier or differs from it and gives its own findings. Before we proceed further, we would like to refer to the judgment in the case of Narain Misra vs. State of Orissa (S.C.) (1969 S.L.R. p. 657) rendered by the Hon'ble Supreme Court. The Lordships of the Supreme Court made the following observations:

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"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the applicant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government

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cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

If the disciplinary authority differs from the conclusions arrived at by the Inquiry Officer, then it is incumbent upon the disciplinary authority that the attention of the delinquent should have been drawn to this fact and his explanation, if any, should have been called. The charges which, according to the inquiry officer, were not proved were found to be proved by the disciplinary authority. Therefore, we have no option but to set aside the impugned order as well as the order of review passed by the reviewing authority.

In view of the principles laid down by the case of Narain Misra (supra), we need not cite any other case of this Tribunal any more in view of the settled position of law. It is important to note that during the pendency of this O.A., the applicant has retired from service in the year 1990. It is also important to note that after the imposition of this penalty, the applicant is still staying in the United States and has not returned back to this country.

This fact exhibits his desire to remain away from the headquarters and stay in a foreign country. As the applicant has retired, there is no question of his reinstatement because otherwise also he would have retired at the age of 58 years of age. Therefore, we allow this O.A., quash the impugned orders passed by the disciplinary and reviewing authorities and direct the following:

(1) The disciplinary authority may take up and proceed with the departmental enquiry from the stage where he is required to exercise his powers under Rule 15(2) of the Rules;

(2) the disciplinary authority shall, after giving notice to the applicant of his intention to differ from the report of the inquiry officer and reasons therefor, afford an opportunity to the delinquent of making a representation and of being heard;

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(3) after considering his representation and hearing the applicant, the disciplinary authority may pass appropriate orders, according to law;

(4) the applicant is also not entitled to back wages because he was refused leave, except 15 days ex-India leave, and he continued to live abroad and never reported for duty to the headquarters, as ordered;

(5) major disciplinary proceedings, as indicated above, were initiated before the applicant would have normally retired from service, but for his removal from service and the proceedings will be deemed to be continuing.

This O.A. stands disposed of in the terms indicated hereinabove. The parties shall bear their own costs.

I.P. Gupta
(I.P. GUPTA) 15/5/92

MEMBER (A)

RAM PAL SINGH
(RAM PAL SINGH)

VICE-CHAIRMAN (J)