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In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.974/87 Date of decision: 1.12.1992.

Shri N.K. Pal ...Petitioner

Versus

Union of India through the Secretary, Ministry of Health and Family Welfare & Others ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner In person.

For the respondents Shri A.K. Behra, proxy Counsel for Shri P.H. Ramchandani, Senior Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner has challenged in this case the order imposing penalty in a disciplinary proceedings (Annexure A-6) dated 10.7.1986, reducing his pay from Rs.1600/- to Rs.1500/- per month for a period of two years with the stipulation that he will earn increments during the period of such reduction and that after the expiry of this period he will again be in the maximum of scale of pay at Rs.1600/-. It is clear from the impugned order that this punishment was imposed on the findings recorded against the petitioner on two charges viz. i) that he did not report to duty in the post of Assistant Director (Epidemiology) in the CLTRI, Chinglepat, to which

position he was transferred by order dated 26.10.1979 despite several instructions from the Government and ii) that he failed to report for medical examination to the Central Standing Medical Board in the Dr. Ram Manohar Lohia Hospital, New Delhi on 12.3.1990, thereby flouting spelt out instructions of the Government of India.

2. The petitioner was a General Duty Officer Grade-I in the Central Health Services when the post of Deputy Director (Technical) was advertised for being filled up by direct recruitment. The petitioner had offered himself as a candidate. He was selected as Specialist Grade-II and appointed as Deputy Director (Technical) on probation. During the period of probation he was transferred by order dated 26.10.1979 and posted as Assistant Director (Epidemiology) in the CLTRI Chingleput. The probation period of the petitioner was extended by one year on 27.10.1980. The petitioner did not report to duty inspite of specific directions for nearly a year. He was ultimately reverted on 4.2.1981 consequent upon termination of his appointment on the ground that he did not discharge his functions satisfactorily during the period of probation. The order of reversion dated 4.2.1981 came to be challenged by the petitioner in OA-75/87. That O.A. was dismissed on 24.10.1991. The Tribunal held that there is no

illegality or arbitrariness in the order of termination. It was held that the order of termination is innocu-ous indicating the pleasure of the President to revert him during the period of probation to his substantive post. What is important to note is the observation in paragraph-8 of the judgement that this was done obviously for the known reason that the petitioner had not complied with the order of transfer issued by the competent authority during his period of probation and remained without duty for about a year. In other words, this is a clear finding to the effect that the order of termination of the petitioner from service and consequent revers-ion to the substantive post was on the ground of his unsuitability to hold the post, having regard to his conduct in not obeying the order of transfer and remaining absent from duty over a year. The clear effect of the judgement is to take the view that the termination of the probationer and consequent reversion was primarily on the ground of unsuitability which inference was based on the conduct of the petitioner in not obeying the order of transfer and remaining without duty for about a year.

3. Shri A.K. Behra, learned counsel appearing for the respondents submitted that the discussion in the judgement would indicate that the findings of unsuitability was not based mainly on consideration of the conduct of the petitioner in disobeying the order of transfer and remaining absent from duty for over a year. He invited our attention to the statement in paragraph-7 of the said judgement which says that the memo of charges which obviously has a reference to the charge-sheet on the basis on which the impugned order of reversion has been made, has nothing to do with the order of reversion dated 4.2.1981. In our opinion, this statement cannot be understood as being in conflict with what has been stated by the Tribunal clearly in paragraph-8 of the judgement which we have extracted above. In the context of the discussion it must be understood as conveying that the memo of charges did not advert or make as the basis the order of reversion dated 4.2.1981. If that is how, this statement is understood there would be no conflict with what the Tribunal has stated in paragraph-7 and what has been stated in paragraph-8. We are satisfied on a careful reading of the judgement in OA-75/87 that the Tribunal held that the order of reversion, reverting the petitioner was based on the conduct of the petitioner in not obeying the order of transfer and remaining without duty for over a year. It

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is now well settled that when a blame worthy conduct of a Government servant comes to the notice of the competent authority in respect of the petitioner it is open to it either to proceed to discharge the probationer on the ground of unsuitability or proceed to take punitive action for misconduct. In the present case the competent authority took into account the conduct of the petitioner in not obeying the order of transfer and remaining without duty for a year for the purpose of discharging during the period of probation. The choice having been made by the competent authority at that stage in favour of taking action for terminating the services during the period of probation on the ground of unsuitability instead of proceeding to take punitive action, it stands precluded from taking punitive action on the same ground. Hence, we have no hesitation in holding that the competent authority could not have taken into account the conduct of the petitioner in disobeying the order of transfer and remaining without duty for about for about a year for taking punitive action for misconduct. As already noticed, there are two charges on the basis of which the impugned order of punishment has been passed. As we have found that the first charge could not have been made the basis for taking punitive action, we would have normally been

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inclined to remit the case for fresh decision to take appropriate action in respect of the second charge alone. But having regard to the facts and circumstances of the case and particularly the fact that the incident took place more than a decade before and that this petition itself has been pending in the Tribunal nearly 5 years, we do not consider it just and appropriate to allow continuance of the disciplinary proceedings in respect of this minor charge.

4. For the reasons stated above, this petition is allowed and the impugned order (Annexure A-6) dated 10.7.1986 is hereby quashed. The petitioner is entitled to consequential benefits, flowing from the quashing of the impugned order. No costs.

(I.K. RASGOTRA)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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