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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 994/87.

DATE OF DECISION: 02.12.199

Subhash Chander Kapil.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

Shri S.C. Gupta, Sr. Counsel
with Shri L.R. Goel and Shri
M.K. Gupta, Counsel.

For the Respondents.

Shri M.L. Verma, Counsel.

JUDGEMENT (ORAL)

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

The Petitioner, Shri Subhash Chander Kapil, was holder of the post of Surveyor in the Air Borne Mineral Surveys and Exploration (hereinafter referred to as 'AMSE') under the Ministry of Mines and Steel. A disciplinary inquiry was held against him in respect of two sets of charges one contained in Annexure A-20 dated 20.12.1983 and the other in Annexure A-22 dated 6.3.1984. A joint inquiry was held by an Inquiry Officer appointed for that purpose and the charges in Annexure A-20 were treated and as charges I and II/the charges in Annexure A-22 were numbered as charges III & IV. He held that the first two charges are not proved. He came to the conclusion that the charges III and IV are duly proved. The disciplinary authority accepted the said findings and passed

the impugned order Annexure A-26 dated 31.3.1986 imposing the penalty of removal from service. Appeal against the said decision was dismissed on 17.9.1987. It is before the appellate decision was rendered that the petitioner approached the Tribunal for relief.

2. For the sake of convenience, we shall extract the two charges held proved as follows:

"ARTICLE-III.

That the said Shri S.C.Kapila, JTA(S) was appointed as Jr. Specialist (Surveying) in National Project Constructors Corporation Ltd. Raja House, 30-31, Nehru Place, New Delhi. He was released for taking up new assignment vide Director's (W.Zone, AMSE Wing, GSI, Jaipur) LTr. No. A 20012/3/JPR/79-Estt. dt. 23.4.80 on furnishing an undertaking dt. 23.4.80 to abide by the terms and conditions laid down in the Ministry of Home Affairs OM No. 70/62/62-Estt(A) dt. 22.1.66.

As per request made in his application dated 28.3.80, his lien on his post of Surveyor(Sr) was to be alive for 2 years. Further on completion of 2 years, on 22.4.82 a letter was sent to him, calling upon him to submit his resignation as per terms and conditions of his undertaking vide No. 23/72/69-Admn/6308-6311 dt. 5.6.82 but he failed to submit it.

ARTICLE-IV.

That the said Kapila, while on deputation and within the lien period had resigned his post of Jr. Specialist(Surveying) on 20.9.81 without taking the Deptt. into confidence and deliberately suppressed this information of

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resigning from National Project Construction
Corpn. Ltd.

That the senior project Manager, Amra in his letter No. 870301/PF/SCK/JS/1344 dt. 20.9.81, addressed to the Chief Administrative Officer, New Delhi had stated that since no intimation is received about the acceptance of his resignation, hence Shri S.C. Kapila, is relieved, on 20.9.81. In spite of having been relieved of his deputation post on 20.9.81 he has not so far reported for duty and has been on wilful and unauthorised absence".

Both the charges have been held proved. They are findings of fact. There is no allegation of denial of reasonable opportunity or procedural irregularity.

3. The petitioner was on deputation to the NPCC for two years. The NPCC had sent him to work in Iraq. The petitioner after serving there for about a year sought leave to visit India as he had some urgent matters to attend to. Leave prayed for having been refused by the NPCC authorities in Iraq, the petitioner felt that he has no alternative but to sever his relations with the NPCC by tendering his resignation. According to the petitioner, he tendered his resignation on 16.5.1981 as per Annexure A-13. As prompt action was not taken on the same, he wrote once again on 10.6.1981 to the NPCC authorities requesting them to relieve him immediately. He tendered even a cheque for Rs.2000/-, which according to him, represented the value of emoluments of notice which

fell short of three months. The petitioner was relieved by the NPCC authorities in Iraq on 20.9.1981 as per Annexure A-15 and asked to report to the Head Office of the NPCC in India. It is the petitioner's case that on returning to India he reported to the Head Office of the NPCC at Delhi on 30.9.1981. Though he was pressing the NPCC authorities to accept his resignation, relieve and repatriate him to his parent department, no action was taken by the said authorities. In this situation he addressed a letter on 28.12.1981 as per Annexure A-17 to the Director Incharge, A.M.S.E. Wing, G.S.I., 6/1 South Public Square, Bangalore. It is stated therein that he had tendered his resignation on 16.5.81 whereupon he was relieved on 20.9.1981 with a direction to report for duty to the NPCC office at new Delhi. He has further stated that since he had tendered his resignation on 16.5.1981 before completion of two years of his assignment, he continues to have his lien in the parent department. It is also stated that he arrived in India on 24.9.1981 whereupon he reported to the NPCC at New Delhi on 30.9.1981 and requested for repatriation to the parent department. He also submitted his medical certificate from 3.10.1981 to 16.11.1981 to the NPCC for sanction of medical leave. It is further stated that the NPCC is neither accepting his resignation nor making any payment to him and is causing unnecessary harassment. After narrating all these facts,

a request is made to permit him to join duty in the parent department pending decision by the NPCC as he now finds himself fit to join duty as per the medical certificate enclosed.

4. The Inquiring Authority has held that the petitioner did not take the parent department into confidence by informing about his resignation and returning to India and has wilfully remained absent after the period of deputation. The petitioner's case is that he is not guilty of such lapse as he had informed his parent department about all these matters by addressing his letter Annexure A-17 under certificate of posting. It is obvious that if the letter Annexure A-17 was sent to the department by the petitioner, it would go a long way to disprove Charge IV. The inquiring authority rejected the petitioner's case holding that he has failed to establish that he had sent the letter Annexure A-17.

The petitioner's case is that he had sent it under and had produced the certificate of posting/in support of his case. As the

normal channel of sending such documents is by registered post, the inquiring authority has drawn the inference

that the document was not, in fact, sent. The Inquiry

Officer has drawn considerable support for this conclusion from the circumstance that the letter Annexure A-17 adverts to the enclosing of a medical certificate. The Inquiring

Officer has said that it is difficult to believe that the

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original medical certificate would have been sent under certificate of posting instead of sending it by registered post which is the normal channel of sending such documents. It is under these circumstances that the authenticity of Annexure A-17 has been held to be doubtful.

5. The contention of the learned counsel for the petitioner is that the finding is vitiated as it is based on misreading of Annexure A-17. It was submitted that there is no statement in Annexure A-17 as assumed by the inquiring authority that a medical certificate is enclosed to the letter. It was submitted that there is only a reference to his having sent a medical certificate along with his earlier letter to the NPCC. Thus it is urged, this is a clear case of misreading Annexure A-17. However on a careful scrutiny of Annexure A-17, we find that reference is made to the sending of medical certificate on more than one occasion. In the earlier portion reference is made to the forwarding of the medical certificate to the NPCC authorities and not to the parent department. But in the very next paragraph, there is reference to the enclosing of the medical certificate of fitness. There is also a statement at the end of the letter that there are five enclosures as above. Hence it is clear that there was no misreading of Annexure A-17. Hence the petitioner's contention has to be rejected.

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6. Shri Gupta, learned counsel for the petitioner, next contended that the finding stands vitiated in view of the admission made by the respondents in the reply filed in this case. The admission relied upon by the learned counsel is the one contained in paragraph (m) of the reply. The first sentence which is relevant and on which reliance is placed may be extracted as follows:

"That though in his letter dated 28.12.81, the applicant has intimated that, on his return to India on 24.9.81, he has intimated about the arrival with the National Projects Construction Corporation, on 30.9.81 he has never given any clue that he has obtained proper permission to be either on leave or for repatriation to the parent department".

It is necessary to examine the context in which this statement was made. Firstly, it is necessary to notice that the deponent has not expressly admitted receipt of letter dated 28.12.1981. It is too much to expect such an admission from the deponent in the face of the positive finding to the contrary recorded in the disciplinary proceedings. The context makes it clear that what the deponent is really commenting is on the contents of the letter dated 28.12.1981 relied upon by the petitioner. The deponent has not stated anything about the receipt of the letter. Hence it is not possible to draw an inference of implied admission about the receipt of the letter dated 28.12.1981. We have, therefore, no hesitation in

holding that paragraph (m) of the reply cannot be construed as an admission of the deponent about the receipt of the letter dated 28.12.81.

7. The finding recorded on Charge IV being a finding of fact the petitioner cannot ask us to reappreciate the evidence and substitute our own findings. The finding is based on evidence and cannot be characterised as perverse.

8. So far as Charge III is concerned, the finding is that on completion of two years of deputation, the petitioner having been called upon to submit his resignation as per the terms and conditions of his undertaking by letter dated 5.6.1982, he has failed to submit the same. being This again/a finding of fact based on appreciation of evidence is not liable for interference.

9. For the reasons stated above, this petition fails and is accordingly dismissed.

Sukhbir Singh
(I.K. RASGOTRA)
MEMBER (A)

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V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN