CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TxAx No. 1866/1990 Decided on: 26/3/97

Dr.Rishi Kumar Chawla ....Applicant(s)

(By Shri G.D. Gupta Advocate)

Versus

U.O.I. & Others ....Respondent(s)

(By Shri V.K. Rao Advocate)

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN, VICE?CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? Yes

2. Whether to be circulated to the other Benches of the Tribunal? No

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1866 of 1990

New Delhi this the 26th day of March, 1997

HON'BLE MR. A.V. HARIDASAN, VICE-CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Dr. Rishi Kumar Chawla,
S/o Shri Hari Lal Chawla,
R/o 128, Dhamawala Street,
Dehradun. ..Applicant

By Advocate Shri G.D. Gupta

Versus

1. Council for Scientific and Industrial Research,
Anusandhan Bhavan,
Rafi Marg,
New Delhi through its Director General.

2. The Director,
Indian Institute of Petroleum,
P.O. I.I.P. Mohkampur,
Dehradum-248 005.

3. Union of India
Ministry of Science and Technology,
Government of India,
New Delhi through its Secretary. ...Respondents

By Advocate Shri V.K. Rao

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant challenges the order of punishment dated 12.1.1988 passed by respondent No.2 and also the appellate order dated 6.3.1989 passed by respondent No.1 and seeks a direction that the period from 27.10.84 to 12.5.1985 be treated as study leave/earned leave/deputation with entitlement

to full benefits as per rules and for the payment of salary and other allowances for the period from 12.1.1988 to 9.3.1989 with interest on arrears accruing to the applicant.

2. A short recital of the facts of the case is appropriate.

Applicant while working as Senior Scientific Assistant with respondent No.2 applied for a training course in Macromolecular Analytical Chemistry sponsored by UNESCO at Charles University Prague. This was a Post Graduate Training Course. His earlier applications for the said course in 1980 and 1982 did not meet with success as he was not selected. In 1984 he again applied for this course through the proper channel. By Memorandum dated 6.4.1984, he was informed that his application could not be forwarded on the plea that the nominations invited from various Divisions were considered by an Internal Committee. Subsequently, however, on the basis of his advance copy of the application to the sponsors of the training course, he was directly informed by the sponsors of his selection. Thereafter, he sought permission to participate in the course. Although this was recommended by his immediate Head of the Division, the higher authority viz. the respondent No.2 did not approve. The applicant then sought sanction for grant of E.L. for the period 8.10.84 to 30.6.85 to enable him to attend the training course. Finding that there was no response to his leave application and that the sponsors are likely to commence the training course

from 1.10.1984 itself and further dealy was bound to cause prejudice to his case, he proceeded to Czechoslavakia to join the training course at Prague. Respondents did not sanction his leave and informed him by their Memnorandum dated 20.11.84 about the non-sanction of his leave and directing him to resume duties. The sponsors, namely, UNESCO did not cancel the candidature of the applicant despite their being told about the case of the applicant that it is was not recommended by the employee. The applicant continued and completed the course. On his return from his training course, he joined his post with respondent No.2 with effect from 13.5.1985 and shortly thereafter, the respondents initiated disciplinary proceedings against him for his alleged misconduct, which resulted in the impugned order of punishment of compulsory retirement imposed by the disciplinary authority, which under appeal, was modified to a penalty of reduction to a lower stage by three stages for a period of 3 years with cumulative effect. It was also ordered that the period from the date of compulsory retirement to the date of reinstatement should be treated as dies non. In a Review Petition the President, CSIR ordered the modification of the penalty order in appeal by the appellate authority to reduction to a lower stage by two stages for a period of 2 years. There was, however, no specific order on the order passed by the appellate authority treating this period from the date of compulsory retirement to the date of the

reinstatement as dies non.

3. The applicant contends that the allegation does not constitute a misconduct under the CCS (Conduct) Rules, 1964. The fact of his sending the application to the training course and also his seeking permission and his subsequent application for the grant of E.L. to enable him to attend the training course was on record and he had proceeded in good faith and the respondents should have granted him study leave or E.L. Even the refusal of the E.L. was not communicated to him in time. As he was selected directly on the basis of his suitability and comparative merit, it was improper, unjust and unreasonable for the respondent No.2 to ask the applicant not to join the training more particulary when the Head of Department had recommended for admission to the training course. By denying grant of study leave/earned leave, the respondent No.2 had acted arbitrarily and in an unreasonable manner. There was no reason for refusal to grant him E.L. and his training course was only intended to benefit the organisation of respondent No.2 and the respondents had inflicted a major penalty on him by the impugned orders. He also contends that treating the period from the date of compulsory retirement to the date of reinstatement as dies non amounted to infliction of another penalty as this period will not be counted even for his pensionary purpose as qualfying service. He also alleges that no reason has been assigned, and the applicant has been denied salary

for this period.

4. The respondents have denied the allegations of the applicant. They maintain that the applicant was informed that he could not be sponsored for this training by the memo dated 6.4.1984 itself and the reasons therefor. When he made request again, this was again regretted by the subsequent memorandum dated 16.5.1984. He had suppressed the information about his having sent an advanced copy to the sponsors. When the applicant informed the respondents about his selection and request for his relief for the training course, he was again informed by an O.M. dated 30.8.1984 that his request was not acceded to. His request for joining the course by availing the leave at his credit was also not acceded to and he was informed of the same by the order dated 22.10.1984. The applicant was also informed telegraphically about the nonsanction of the leave at the local address on the same date. The applicant then sent an application for leave on medical grounds. He applied for a second half casual leave on 22.10.1984 and then for medical leave from 23.10.1984 to 26.10.1984 and on 26.10.1984, he left for Czechoslovakia to attend the said course from 22.10.1984 to 12.5.1985 and after completing the course, rejoined duty on 13.5.85. Respondents further maintain that the conduct of the applicant was rephensible and was absolutely unbecoming of a responsible Government servant and, therefore, the respondents had taken the necessary disciplinary proceedings against him, which resulted in the order of punishment as modified by the orders

of the appellate/revisionary authority. The respondents also referred to the case of DR.M.A. Matin VS. Industrial Toxicology Research Centre & Others O.A. No. 155 of 1989 passed by the CAT, Lucknow Bench in which case also the permission for participation in a conference abroad was not granted. The application in that case was dismissed and the SLP was also dismissed by the Hon'ble Supreme Court. The respondents maintain that it was for the respondents to decide whether the applicant had to be sponsored for the aforesaid training course and the applicant had proceeded abroad without proper sanction of leave or without proper sanction and without permission of the competent authority to join the said training course. In the enquiry it is established that the applicant had unauthroisedly left his duties to attend the training course and did not return even after being told to do so and acted in the most irresponsible manner. In the circumstances, the respondents were well within their rights to conduct disciplinary proceedings and the proceedings were conducted without any bias or mala fide and was in accordance with the rules and procedure in this behalf. In view of this, the respondents contend that there is no merit in this application and it deserves to be rejected.

5. We have heard the learned counselfor the parties and have perused the record.

6. The learned counsel for the applicant submitted that although the applicant had attended

the training course, he had kept the respondents informed of his selection and had also prayed for permission to attend the training course by way of grant of leave even if he could not be sponsored officially. The respondents completely ignored his aspirations and denied him the opportunity without any ostensible purpose or reason. The applicant is a young scientist and the respondents, instead of encouraging such scientists, have attempted to block his chances by refusing his request and have acted in an arbitrary manner. The applicant was directly selected by the sponsors themselves on merit and even when informed of his selection, the respondents did not show proper consideration of the case of the applicant and were bent on refusing the permission to attend the course. He also pointed out that although the penalty of compulsory retirement was modified and the penalty was ultimately reduced to that of reduction to lower stage by 2 stages for a period of 2 years instead of 3 years, the other part of the appellate order reducing him to lower stage to have the effect of postponing future increments and treating the period of compulsory retirement to the date of reinstatement as dies non, were not modified. The learned counsel submitted that this is indeed another harsh penalty and applicant has to suffer a double jeopardy. The applicant relied on the decision in **Ramji Dass Vs. Union of India & Others, ATR 1986 (2) CAT 455,** wherein it was held that before declaring the period of absence as dies non, it was incumbent upon the

authorities to issue notice to the applicant. He also cites the case of **S.N. Ramaswamy & Others Vs. Union of India & Others and other connected cases in (1989) 10 ATC 80** in support of the same contention. He also relies on **M. Gopalkrishna Naidu Vs. The State of Madhya Pradesh, AIR 1968 SC 240** to stress the point that the applicant should have been given the opportunity to show cause against the action proposed against him.

7. The learned counsel for the respondents argued on the pleadings and submitted that the respondents have reconsidered the matter and accordingly modified their penalty in this case and the Tribunal cannot go into the question of quantum of penalty imposed by the competent authority.

8. We have considered the rival contention of the parties and have perused the record.

9. We find that the penalty order of compulsory retirement was made after a duly constituted Departmental Proceedings. The applicant has not shown how the proceedings had been vitiated in any manner. Just because the applicant was recommended for this course by the Deputy Director but was not sponsored by the respondents 1 and 2, it cannot be said that there has been any personal bias or mala fide action on the part of the higher authority. The decision to sponsor a Government servant for a training course is ultimately the prerogative of the department which takes into account not only the suitability of the applicant for the training course but also various other relevant factors. It may be

that the applicant was directly selected by the sponsors for this programme and was duly communicated of this selection, but that does not by itself give him right and freedom to act in the manner in which he had acted. Although he prayed for sponsoring him and treating the period of training as leave, even the grant of study leave or appropriate leave for this purpose, is a matter which has ultimately to be decided by the department. Study leave or any other leave cannot be claimed as a matter of right. It is no doubt true that the respondents had not agreed to his being sponsored even on leave for this training course. Just because he was not sponsored, it cannot be held that the respondents were prejudiced against him. There is no other material on record to prove this contention of the applicant. In any case, the fact remains that the applicant left his duty post without proper order of relief and had even in fact left the country for training abroad on his own and this was considered as a misconduct which was established in the departmental proceedings and, therefore, the penalty was imposed. It was no doubt true that in consideration of the fact that the applicant was a young Scientist, the matter was reconsidered both at the appellate stage as well as at the revision stage and the penalty was modified to that of reduction to a lower stage by 2 stages for a period of 2 years. Taking into account the order passed by the appellate authority, the ultimate effect of the penalty order was that the applicant was reduced to lower stage by two

stages for a period of 2 years with cumulative effect and the period of compulsory retirement to the date of reinstatement was treated as dies non. Insofar as the question of penalty of reduction by 2 stages for a period of 2 years with cumulative effect, we do not find any justifiable ground to interfere with this order. As regards order for treating the period from compulsory retirement to the date of reinstatement as dies non, we find that the applicant has not been exonerated in the disciplinary proceedings and in terms of FR 54(5), it was open to the respondents to treat the period of absence from duty for any specified purpopse in cases where Government servant is not fully exonerated. In the case of **S.N. Ramaswamy & Others** (Supra), the regularisation of absence during the strike period was ordered to be treated as dies non and this was held to be violative of principles of natural justice. The facts of this case and decision thereon have no application in the present case. Similarly the other case of **Ramji Dass (Supra)**, the absence of the plaintiff in that case was on account of illness and the medical certificate submitted by the plaintiff was neither rejected nor was he was ever informed of the fate of the leave case and the plaintiff remained under the impression that his leave was sanctioned and all of a sudden he was told that the period of 110 days would be treated as dies non. It was in these circumstances it was held in the aforesaid case that a notice was necessary. The other case of **M.**

Gopalkrishna Naidu (Supra) will, however, be relevant to the facts and circumstances of the present case. Their Lordhsips held as follows:

> "7. It is true as Mr.Sen pointed out that FR 54 does not in express terms lay down that the authority shall give to the employee concerned the opportunity to show cause before he passes the order. Even so, the question is whether the rule casts such a duty on the authority by implication. The oder as to whether a given case falls under Cl.2 or Cl.5 of the Fundamental Rule must depend on the examination by the authority of all the facts and circumstances of the case and his forming the opinion therefrom of two factual findings; whether the employee was fully exonerated and in case of suspension whether it was wholly justified. Besides, an order passed under this rule would obviously affect the government servant adversely if it is one made under Cls.3 and 5. Consideration under this rule depending as it does on facts and circumstances in their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice".
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> xxx xxxx xxxxx
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> "10. In our view FR 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority therefore had to afford a reasonable opportunity to the appellant to show cause why Cls.3 and 5 should not be applied and that having not been done the order must be held to be invalid."

Apart from the above observations, we find that FR

54(5) itself provides for the following proviso:

> "Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant".

10. In the light of the aforesaid decision in **M. Gopalkrishna Naidu**(Supra) and also in the light of the above proviso to FR 54(5), we are of the considered view that the order passed by the appellate authority treating the period from the date of compulsory retirement to the date of reinstatement as dies non, cannot be sustained and has to be set aside. While we set aside this part of the order of the appellate authority, we uphold the order of the revisional authority in regard to the penalty of reduction to lower stage by 2 stages for 2 years with cumulative effect and direct the competent authority to consider the question of treatment of the period from the date of compulsory retirement to the date of reinstatement de novo after giving a reasonable opportunity to the applicant to show cause and also in accordance with the Rule 54(5) quoted above.

11. The application is disposed of with the above direction and there shall be no order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

(A.V. HARIDASAN)
VICE CHAIRMAN(J)

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