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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO. 872/90

DATE OF DECISION: 3.12.94

Shri M.K. Kaul

Vs.

Union of India

CORAM: Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri S.R. Adige, Member (A)

Counsel for Applicant Shri/Ms. R. Venkataramani &
Shri S.M. Garg

Counsel for Respondent Shri/Ms. V.S.R. Krishna

1. Whether to be referred to the Reporter?
2. Whether Reporters of Local Newspapers
may be allowed to see the judgement?
3. Whether their Lordships wish to see
the fair copy of the Judgement?
4. Whether to be circulated to other Benches?

Adige
(S.R. ADIGE)
MEMBER (A)

Sharma
(J.P. SHARMA)
MEMBER (J)

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA NO. 872/90

New Delhi, this the 3rd December, 1994.

**HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI S.R.ADIGE, MEMBER (A)**

Shri M.K.Kaul,
U-5A, Green Park (Main)
New Delhi- 110016.

Applicant

(By advocate Shri R.Venkataramani & Sh.S.M.Garg)

Versus

Union of India through

1. The Secretary to the Govt. of India,
Ministry of Water Resources
Shram Shakti Bhawan,
New Delhi.

2. The Chairman,
Central Water Commission,
R.K.Puram,
New Delhi.

Respondents

(By advocate Shri V.S.R.Krishna)

JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

The applicant in the year 1976 was working as Executive Engineer in Hydel Project at Himachal Pradesh. He was offered the post of Senior Executive Engineer in Nigeria under bilateral agreement then existing between the Governments of India and Nigeria. By the Memo dated 16-17/12/1976 addressed to the Chairman, Central Water Commission, New Delhi the applicant was deputed to the

post of Senior Executive Engineer and was placed on deputation basis as Senior Executive Engineer with the Govt. of Nigeria. The terms and conditions of deputation also stated in that Memo and the period of deputation was for three years. The period of service will commence from the date the officer actually joins the service under the foreign employer and ends on the date of completion of the contract with the foreign employer. As per the aforesaid terms, the deputation was to expire by 13.4.1980. However, this period of three years of deputation was extended up to 13.4.1982 vide OM dated 11.2.1982 (Annexure-C) with the mention that the Govt. of Nigeria may be requested to relieve the applicant on the expiry of extended term as no further extension for deputation period will be granted. The Govt. of Nigeria was also to be informed that if they so desired the name of suitable substitute could be suggested for the selection of the assignment in question viz. the officer concerned. The Cabinet Office Kano State Nigeria by the letter dated 13.4.82 addressed to the Indian High Commission at Lagos through the Secretary to the State Govt. recommended that the applicant be allowed to complete his contract period with the Kano State Govt. till February, 1983. By the Memo dated 13.5.83 the Govt. of India informed the applicant with reference to the letter dated 26.5.83 that he should be got relieved immediately and report back to C.W.C. as it was decided not to agree to the further extension of the deputation period with the Govt. of Nigeria beyond 13.4.1982. The applicant was informed that since he has not reported back to C.W.C. and overstayed abroad unauthorisedly and

willfully without the prior approval of the competent authority, it was proposed to initiate disciplinary proceedings against him for removal of service under rule 19(2) of the CCS(CCA) Rules. He was also directed to show cause as to why action to remove him from service should not be taken against him, if he fails to report for duty in C.W.C. within 45 days from the date of issue of the Memo. The applicant came to India in the month of April, 83 and he addressed a letter to the Chairman, C.W.C. on 19th July, 1983 stating that he has left ... Nigeria on relief from the Nigerian Govt. and came to India availing of the leave earned by him during the deputation period. He also referred to the fact that an earlier termination of contract would have entailed a heavy financial loss to him and loss of credibility with the Nigerian Government and requested to take a sympathetic and just consideration of his helplessness in the matter.

2. Thereafter the applicant was issued a Memo dated 19th September, 1983 stating that the president proposes to hold enquiry under rule 14 of the CCS(CCA) Rules, 1965 alongwith Article of charge, imputation of misconduct, list of the documents to be relied upon. The applicant again left to join the post of Chief Executive Engineer in the Kano State in Nigeria. Though the aforesaid Memo of chargesheet was served upon the applicant but he did not care to file any reply for the same and the matter remained pending. Govt. of India by the Memo dated 24th November, 1986 sent the same Memo of

chargesheet dated 19th September, 1983 at three addresses given by the applicant asking the applicant to acknowledge the receipt of the memo and send his defence statement if any within 30 days from the receipt failing which case will be proceeded further ex parte without any further notice. The applicant by the letter dated December, 1986 addressed to the Under Secretary, Govt. of India stated that he has requested his present employer to relieve him of his duties at an early date to enable him to report back to parent department. He also stated that he has been sending letters ^{through} / someone At Delhi for posting, to avoid delay. The applicant finally joined the parent department on 27th November, 1987 though he was released from the foreign service w.e.f. 30th September, 1987. The disciplinary enquiry against the applicant proceeded in which the applicant participated and Shri M. Hedge Enquiry Officer gave his report holding the applicant not guilty (Annexure-'N'). On the basis of the report of the Enquiry Officer, Government of India sought the advice of the U.P.S.C. and the U.P.S.C. tendered its advice by the Memo dated 20st January, 1989. The competent authority by the order dated 12th May, 1989 imposed a penalty of compulsory retirement from service as specified in clause (7) of Rule 11 of CCS(CCA) Rules, 1965 and the applicant stood compulsory retired from Govt. service w.e.f. the afternoon of 12th May, 1989. The applicant preferred a revision against the aforesaid order under Rule 19 of the CCS(CCA) Rules, 1965 and the Revisional Authority dismissed the revision application of the applicant by the order dated 25th May, 1990.

3. Aggrieved by the same the applicant has filed this application on 7.5.1990 and prayed for the grant of the reliefs that the application be allowed and the order dated 12.5.89 be quashed with the consequential relief and the applicant be directed to be reinstated in service from the date he was relieved of his duties till the date of his superannuation with benefits of promotion by giving effect to sealed cover procedure followed for the applicant by the DPC and revise the seniority of the applicant above his juniors.

4. This application was admitted on 11.5.1990 and the respondents on notice contested this application and in the counter it is stated that on settled terms and conditions of the deputation by letter dated 16-17th November, 1976 the applicant was sent on deputation to Govt. of Nigeria initially for a period of three years w.e.f. 13.4.77 to 13.4.80. This period was further extended on request by the letter dated 28.3.80 till 13.4.82. By the letter dated 11.2.1982 addressed to the High Commission of India at Lagos(Nigeria) as well as to the applicant ^{it was conveyed} that the applicant be relieved on the expiry of the extended term and no further extension of deputation period will be allowed. The Govt. of Nigeria may be sent suitable substitute ^{if asked for} for the assignment in question vice, the applicant. The applicant did not join the parent department on the expiry of the extended period of deputation on 13.4.82. The applicant overstayed the deputation period and returned to India after 10½ years and joined the parent department on 27.11.1987. The applicant was also informed by the

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letter dated 13.5.83 that he is not reverted back to the parent department and did not join the duties in C.W.C. and thereby ^{over} stayed abroad unauthorisedly and willfully without the prior approval and sanction of the competent authority. He was, therefore, directed to show cause as to why action to remove him from service should not be taken against him, if he fails to report for duty within 45 days from the date of issue of this aforesaid Memo. Since the applicant did not turn up on repatriation to the parent department and was issued a Memo dated 17th September, 1983 initiating disciplinary enquiry against him enclosing article of charge, imputation of misconduct etc. This memo was served on the applicant at Delhi address when he came to India in April, 1983. Inspite of his letter dated 19th July, 1983 where he has referred to the fact that he has left Nigeria on relief he did not join the parent department. The applicant did not submit a defence statement to the aforesaid memo of charge sheet and again went to Nigeria without any prior approval and sanction of the competent authority. He, therefore, has committed misconduct. On the basis of the aforesaid memo of 1983 which was again served on the applicant by the letter dated 24 November, 1986 at his three addresses and he acknowledged the same by letter dated 19th December, 1986. Therefore, he joined the departmental enquiry and Shri K.B.S.Rajan was appointed his defence assistant, Shri P.C.Mathur, Presiding Officer and Shri M.Hegde Chief Executive Engineer as the Enquiry Officer. The Enquiry Officer in his report

(16)

exonerated the applicant but that was not agreed to by the disciplinary authority and on the advice of UPSC impugned punishment order, ^{was passed} of compulsory retiring the applicant from service. The applicant was given due opportunity to participate in the enquiry proceedings and the principle of natural justice which has been observed that the applicant willfully and intentionally in an unauthorised manner overstayed the deputation period by 5½ years and taking a lenient view, punishment of compulsory reitiring the applicant from service was imposed. The applicant has no case.

5. The applicant has also filed rejoinder but that is on the part 'C' file and the same has also been perused.

6. We have heard the learned counsel for the applicant as well as for the respondent. The department of Personnel and Administrative Reforms by the OM No. 1/37/79(FAS) dated 2.2.81 laid down the instructions for posting under international organisation and foreign governments. Para 5.1 of the same lays down as follows:-

5.1: The period of initial contract offered is generally one to three years. Extensions in the period of deputation upto five years may be allowed by the administrative Ministries with the approval of the concerned cadre authorities and the Ministry of External Affairs".

7. Again by OM No. 1/5/86-FAS dated 3.3.86, DOPT laid down the consolidated instructions relating to assignment of Indian experts for posts under

International Organizations and Foreign Governments. This OM also deals with prevention of unauthorised over-stayal on foreign assignments. Para 8.1 in this regard is relevant which is re-produced below:-

8.1:"While releasing an expert for taking up foreign assignment, he/she may be informed that if his/her deputation term is extended upto 5 years, it will be his/her responsibility to ensure that he/she returns to India immediately on expiry of this period. It will also be his/her personal responsibility to initiate correspondence with his/her parent Department for return at least six months prior to the expiry of deputation term. He/she should also ensure that any request from the foreign employer for extension of his/her period of deputation beyond five years should be forwarded by the concerned Indian mission at least six months before the expiry of the deputation period. The candidate may also be warned that if he/she fails to fulfil the above obligations on his or her part, his/her continued stay outside India after the expiry of sanctioned term, shall be regarded as a deliberate act for which he/she shall be personally held responsible and may entail institution of disciplinary action against him/her".

8. By the memo of chargesheet dated 19th September, 1983 the following articles of charge was framed against the applicant.

- Shri M.K.Kaul was working as Deputy Director in the CWC and proceeded on deputation on foreign assignment with the Govt. of Nigeria initially for a period of three years w.e.f. 13.4.77(AN) which was further extended for two years upto 13.4.82. He did not return to India to resume duty in the Central Water Commission on expiry of his sanctioned deputation period which had not been extended and thus unauthorisedly and wilfully continued to overstay abroad beyond 13.4.82.

- By the aforesaid act, Shri M.K.Kaul has displayed lack of devotion to duty and behaved in a manner unbecoming of a Govt. servant thereby contravening the provisions of Rules 3(1)(ii) and 3(1)(iii) of CCS(Conduct)Rules, 1964.

9. The Enquiry Officer Chief Engineer, CWC gave his finding with the following reasoning that the charge against the applicant of contravening the provisions of the CCS(Conduct) Rules, 1964 are not proved and he is not guilty of the above charge. The reasonings given by the Enquiry officer are as follows:-

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(i) The Government of Nigeria was interested in utilising the service of Shri M.K.Kaul beyond the sanctioned period of his deputation i.e. 13.4.1982.

(ii) Shri M.K.Kaul could have resumed his duties in the Central Water Commission only after he had been formally relieved by the Govt. of Nigeria to whom the services were lent by the Govt. of India.

(iii) From the documents it is seen that Shri M.K.Kaul did make sufficient efforts on his part by writing letters to the Govt. of Nigeria for his relief. The Govt. of Nigeria agreed to his relief only on 10.6.1987 and he was intimated that on release he would report to his Department on 27.11.1987.

(iv) He informed of his helplessness in joining his duties back with the Govt. of India to the Ministry of Irrigation, the Central Water Commission and the High Commission of India Lagos in July, 1983. But instead of taking up the matter with the Govt. of Nigeria for his relief, the Ministry of Irrigation served a charge sheet on him on the 19th September, 1983.

(v) On the 27th September, 1983 the Govt. of Nigeria requested the Indian High Commissioner in Nigeria for allowing continuation of Mr. Kaul with them for a few more years. It is seen from

the documents that the Indian High Commission itself could not get Shri M.K.Kaul relieved of his duties of the Nigerian Government. Since nothing contrary was received by Shri Kaul from the Ministry of Irrigation upto November, 1986 it was quite reasonable for him to believe that the Government of India/Indian High Commission in Nigeria had accepted the request made by the Govt. of Nigeria for his continuance with them.

(vi) Even though on receiving theletter of 24th November, 1986 from the Ministry of Water Resources, Shri Kaul immediately requested the Government of Nigeria for his release, they took about six months time to convey their acceptance for his release and finally asked him to report to his department on 27.11.1987.

(vii) There is, thus, no doubt that Shri M.K.Kaul did not unauthorisedly and wilfully continue to overstay abroad beyond 13.4.82 and as such did not display lack of devotion to duty and also did not behave in a manner unbecoming of a Government servant thereby contravening the provisions of Rule 3(1) (ii) and 3(1) (iii) of CCS (Conduct) Rules, 1964.

10. The contention of the learned counsel for the applicant is that there is an abuse of administrative power in issuing the memo of chargesheet to the

avowedly applicant in as much as the applicant ~~was~~ was making efforts for being relieved from the foreign assignment but he was not relieved till June, 1987 when he joined in November, 1987 in C.W.C. It is also contended by the learned counsel that the Memo of Charge sheet was issued in July, 1983 but the disciplinary authority kept a silence for a period of three years. It was only on 14.12.1986 when this Memo of Charge sheet was served upon the applicant which gave an impression to the applicant that the period of deputation is likely to be extended in consultation with the Govt. of India and the Foreign employer i.e. the Nigerian Govt. The respondents were well aware of the whereabouts of the applicant as he was serving in Kano State, the Nigerian Govt. on certain projects. In any case it is argued that the applicant had made positive efforts for being relieved since 1982 onwards but the foreign employer did not relieve and because of the Civil Services Rules of the foreign employer and not to loose the credibility, he continued to work without any ulterior motive. The disciplinary authority has sought the opinion of the UPSC on the basis of that opinion without applying its own mind acted upon the advice of the UPSC without giving any reason of disagreement with the finding of not guilty written by the Enquiry officer imposed the punishment of compulsory retirement which was also upheld illegally by the Revisional Authority by the impugned order. We are considering all these points one by one alongwith law relied upon by the counsel for the applicant.

11. The disciplinary authority after examining the records of the case including the report of Enquiry Officer and the advice of the Union Public Service Commission (UPSC) for the reasons given in the impugned order dated 12th May, 1989 disagreeing with the findings of the Enquiry Officer under the provisions of rule 15(2) of the CCS(CCA) Rules, 1965 hereinafter referred as rules. The rule 15(2) is quoted below:-

"The disciplinary authority shall, if, it disagrees with the findings of the Enquiry Officer or any article of charge, record its reasons for said disagreement and record its own findings on said charges if the evidence referred is sufficient for the purpose."

12. The disciplinary authority has also sought the advice of UPSC by letter dated 19.7.88 in view of Article 302(3) of the Constitution of India. The disciplinary authority after considering the opinion passed impugned order and the reasons of disagreement are as follows:-

- The Govt. of India's decision not to extend the deputation period beyond 13.4.82 was -- conveyed to the Ministry of Irrigation by the Memo dated 13.5.83, besides proposing disciplinary proceedings against the applicant for removal from service and the

23

applicant was also directed to show cause on the action to remove him from service should not be taken against him in case he fails to report back for duty within 45 days from the date of issue of the Memo."

The applicant in his reply dated 19.7.83 to the aforesaid letter, mentioned that he had since left Nigeria on relief from the Nigerian Govt. and was back in India availing leave earned by him during the deputation period.

The applicant did not furnish reply to show cause Memo nor he communicated, when he would be joining back his duty in C.W.C. even though he stated specifically therein that he had come to India on relief and was on leave.

The Govt. of India right from the very beginning was not prepared to consider any further extension beyond 13.4.1982 in the deputation period of the applicant.

The Govt. of Nigeria by its letter dated 13.4.82 and 2nd July, 1982 to the High Commission of India, Lagos wanted the Govt. of India to allow the applicant to complete his initial contract period with the Kano State upto February, 1983.

The disciplinary authority further observed that the assignment expected to be completed by the applicant by February, 1983 had only been completed

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and the applicant was back in India on relief from Nigerian Govt. as stated by him in his letter 19th July, 1983.

- Thus it was expected from the applicant to have reported for duty to C.W.C. after expiry of his leave and then request the Govt. of India to take up the matter with the foreign employer for termination of the contract especially when he was fully aware that the Govt. of India had all through made it clear to all concerned that no extension in the period of his deputation could be considered.

- The applicant went back to Nigeria to continue his assignment without any intimation whatsoever to the Govt. of India. He did not even intimate any contact address to the parent office in India.

- The disciplinary authority, therefore, did not accept the plea putforward by the applicant that his request to the foreign employer to relieve him in-absentia had not been agreed to.

The disciplinary authority, therefore, on the basis of record that the applicant deliberately flouted Govt.'s instructions maliciously and kept his administrative authority in India in dark for a longer period and deliberately continued to overstay on foreign deputation beyond the sanction period of five years which expired on 13.4.82 and as such the application has shown utter lack of devotion to his duty and behaved in a menner highly unbecoming of a Govt. servant.

28

13. The contention of the learned counsel for the applicant, therefore, is that the findings of the Enquiry Officer, as already reproduced in earlier part of this order, has not been reasonably rebutted by the aforesaid reasoning cannot be accepted. Looking to the finding of the Enquiry Officer, Enquiry Authority, has only formulated certain points and jumped to the conclusion that the Govt. of Nigeria agreed to his relief only on 10.6.87 and the applicant informed of his helplessness in joining his duties back with the Govt. of India in July, 1983. The Enquiry Officer further observed that instead of taking of the matter with the Govt. of Nigeria for his relief the Ministry of Irrigation served a chargesheet on him on 19th September, 1983. It is further observed that the Indian High Commission itself could not get the applicant relieved of the duty from Nigerian Govt. and as nothing contrary was received by the applicant from the Ministry of Irrigation upto November, 1986 it was quite reasonable for him to believe that Govt. of India/Indian High Commission in Nigeria had accepted the request made by the Govt. of Nigeria for his continuance with him. Now, this conclusion drawn by the Enquiry Officer has been disagreed to by the disciplinary authority on valid reasons quoted above. Though the Enquiry Officer was having all the documents with him ^{while} he failed to refer to the letter of the applicant dated 19.7.83 which is reproduced below:-

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I am just in receipt of letter No. 49/22/80-Estt. I dated 13th May, 1983. I am to report to you that I have since left Nigeria on relief from the Nigeria Govt. and am back in India availing of the leave earned by me during my deputation period.

I am surprised to read the contents of the letter. I was deputed to work for the Nigerian Government and during my stay I was governed by the Civil Service Rules applicable there. Any earlier termination of my contract would have entailed a heavy financial loss for me and loss of credibility with the Nigerian Government. In this connection letters from Nigerian Govt, to you are self explanatory. I do hope you will give a sympathetic and just consideration to my helplessness in the matter.

My address in India is C/o Shri J.N.Kaul, U-5A, Green Park (Main), New Delhi - 110 016. (emphasis underlined)

14. It can be unequivocally stated that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere in the findings of the competent authority where they are not arbitrary or utterly perverse. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice and there is appreciation of evidence by the competent authority to arrive at the finding that the misconduct is proved, the Tribunal has no power to substitute its discretion for that of the authority. It may further be added that the conclusion arrived at by the disciplinary authority or the competent authority he based on evidence even some of its found to be irrelevant in the matter that does not matter for concern for the Tribunal.

15. The rules of natural justice required that a party should have the opportunity of adducing all relevant evidence on which he relies, that the

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evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross examining the witnesses examined by that party, and no materials should be relied on against him without giving him an opportunity of explaining them. If these rules are satisfied the enquiry is not open to attack on violation of the principles of natural justice. The principles of natural justice cannot be extended against the statutory provisions which are to be observed in letter and spirit.

15. The learned conseil during the course of arguments has not referred to any violation or non-observance of the due procedure provided under rules for holding the enquiry. The only attack to the order of the disciplinary authority canvassed by the learned counsel for the applicant is that the copy of the advice of the U.P.S.C. has not been supplied to the applicant. He has also emphasised this contention referring to the fact that the disciplinary authority has only incorporated in the impugned order the advice of the UPSC in disagreeing with the findings of the enquiry authority. The learned counsel for the applicant has also emphasised that the disciplinary authority has not at all applied its mind and in fact no reasons whatsoever has been given in disagreeing with the findings of the Enquiry Authority. In this way the arguments of the learned counsel for the applicant are fully met by the decision of the Hon'ble Supreme Court in the case of Managing Director, ECIL Vs. B. Karunakar reported in JT 1993 (6) SC-1 where the

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Hon'ble Supreme Court of India has categorically laid down that if the enquiry authority has held the delinquent guilty of all or any of the charges, the delinquent is entitled to a copy of the report of the Enquiry Officer to make representation against it if he so desires and non furnishing of the report by the disciplinary authority would amount to violation of the rules and natural justice. However, this proposition of law has been applicable to all those enquiries in which the order of penalty has been passed after the decision of Union of India Vs. Mohd. Ramjan Khan reported in JT 1990 (4) SC Page 456. This case was decided by the Hon'ble Supreme Court of India on 20th November, 1990. In the present case the impugned order was passed in the year 1989. The learned counsel, therefore, rightly had/pressed the point of non supply of the findings of the competent authority. However, pressed for the non supply of the advice of the U.P.S.C., that is not a piece of evidence which has been taken into account by the competent authority while imposing the penalty on the applicant. The opinion of the U.P.S.C. was taken rightly by the disciplinary authority in view of the provisions in Article 320(3)(c) of the Constitution of India. Learned Counsel for the applicant has also referred to the regulations 5 of the U.P.S.C. (Exemption from Consultation) Regulations, 1958 and contended that disciplinary authority has acted contrary to the scheme of these provisions.

16. The learned counsel for the applicant has highlighted his contention referring to the authority A.N.D Silva vs. Union of India reported in AIR 1962 SC

page 1130. In that case the Hon'ble Supreme Court of India considering the provisions of Article 320(3) of the Constitution of India . . . held "that the UPSC shall be consulted in all disciplinary matters affecting a person serving under the Govt. of India in a civil capacity. The UPSC is not an appellate authority over the enquiry officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations for tendering their advice, the UPSC may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by public servant different from the conclusion of the Enquiry Officer".

17. On this authority the learned counsel argued that the UPSC considered the enquiry officer's report and tendered advice to the disciplinary authority who did not apply its recommendations in their final mind and incorporated the UPSC's advice as such in the impugned order of punishments. As already referred to above, the disciplinary authority has given definite substantial and speaking reasons of disagreement with the report of the Enquiry Officer. The consultation with UPSC is not only a constitutional requirement but

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it is salutary in service matters. If the U.P.S.C. has considered the matter for giving advice it has to go through whole of the proceedings on record in the departmental file sent to the U.P.S.C. for tendering the advice. In such case the UPSC has to consider the misdemeanour of the delinquent and has to express its own opinion and that has only been done in this case. The disciplinary authority has not incorporated advice of the UPSC though it has considered the same and while considering has drawn its own conclusion in imposing punishment on the applicant. Thus the authority relied upon by the learned counsel does not take away the validity of the impugned order as the same has not been passed on the mandate of the UPSC but after considering the advice tendered by U.P.S.C.

18. The learned counsel for the applicant has also referred to another decision of Orissa High Court in the case of Ishwar Chand vs. State reported in AIR 1966 Orissa page 178. In the case the appellant was reverted from higher post to lower post. Hon'ble High Court held that the provisions of Article 311(2) has not been observed. The learned counsel referred to para 35 of the report regarding the advice of the Public Service Commission(PSC). It is observed whether the Govt. passes an order of reversion exclusively on the basis of the opinion given to the effect by the P.S.C., without applying its independent mind in the merit of the case, that order can be validly challenged as vitiated by malafidies and not binding

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in law. In the case in hand, it cannot be said that the disciplinary authority passed the order of penalty exclusively on the basis of the opinion given by U.P.S.C.. We also find that the disciplinary authority has not acted contrary to the scheme laid down in Regulation 5 of the UPSC (Exemption from Consultation) Regulation, 1958. In the case of the present nature the applicant belongs to Group-A service and the President being the disciplinary authority, the consultation with UPSC was considered by the disciplinary authority and that cannot be found fault with. The applicant has also filed the copy of the advice given by the UPSC as Annexure-A to the application. The advice given by the UPSC clearly states that the record of the case examined carefully by the Commission. The Commission had discussed the facts material to the issue and the various correspondence between the applicant and C.W.C. as well as with the Nigerian Govt. The Commission after considering all these facts came to the conclusion that the documents on record substantiate the charge of unauthorised overstay beyond 13.4.82 against the applicant. The Commission has not given any note of disagreement with the finding of the Enquiry Officer nor it was the function of the U.P.S.C. in its advice called by the disciplinary authority. The disciplinary authority, therefore, after considering the advice of the UPSC applied its independent mind and passed the impugned order dated 12th May, 1989.

19. The next contention of the learned counsel is that the principles of natural justice has been violated by not giving copy of the advice / the advice of the UPSC is not based on sound reasonings. In the case of Chairman Board of Mining Examination and Another Vs. Ramji reported in 1977 (2) SLR page 905, the Hon'ble Supreme Court of India observed that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

20. In case of V.Karunakar (Supra) the constitution bench has laid down the law for supply of the copy of the enquiry officer's report. It is also held that ratio of Mohd. Ramjan Khan (Supra) will apply prospectively and till 20th November, 1990 the position of law on the subject was not settled by the Court and as such that decision made the law laid down

33

there prospective in operation i.e. applicable to the orders of punishment passed after 20th November, 1990. The law laid down was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arisen out of the same were pending in courts after that date. It is also held that if after hearing the parties court/Tribunal comes to the conclusion that the non-supply of the report would not have made any difference on ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. Further in the case of Ram Chander vs. Union of India and other 1986 (3) SCR page 103 it has been held that in view of the constitutional bench decision of the majority in Tulsi Ram Patel's case(supra), 1985(2) SCR page 131, the only stage at which now a civil servant can exercise the said valuable right was by enforcing his remedy by way of a departmental appeal or revision or by way of judicial review. Further in the case of A.K.Kraipak and others Vs. Union of India and others, 1970 (1) SCR page 457 it was held that rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. Thus, whenever a complaint is made before a Court that some principles of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for

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a just decision on the facts of that case.

21. In view of the position of law the disciplinary proceedings shall not be quashed unless prejudice is established even though the conclusion of disciplinary authority was not based on the advice tendered by the UPSC but was arrived at independently on consideration of the charges; the relevant material placed before the Enquiry Officer in support of the charges and the defence of the delinquent officer. In the case of State of Uttar Pradesh Vs. Manbudhan Lal AIR 1957 SC page 912 which has also been referred to by the learned counsel for the applicant that non compliance of the provision of Article 320(3)(c) cannot have the effect of nullifying the final order made by the Govt. the reason being that the Public Service Commission are only advisory bodies and their opinion is not binding on the Govt. It goes to show that if an order is passed without consulting the Public Service Commission is not invalid on that ground as held by the Hon'ble Supreme Court of India in the case of V.R.Bhatt vs. Union of India AIR 1962(SC) page 1344 and Ram Gopal Chaturvedi vs. State of Madhya Pradesh AIR 1970 SC 1581. However, in the case of Manbudhan (supra) the Hon'ble Supreme Court of India further observed that when rules are framed under proviso to Article 320(3) it become incumbent upon the Govt. to consult the Public Service Commission where such consultation is necessary in terms of 320(3)(c).

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22. Coming to the case in hand as discussed above the UPSC has given advisory opinion on which the disciplinary authority may have acted or may have differed with the same. The supply of the copy of the advice of the UPSC therefore in these circumstances was not necessary to the delinquent i.e. the applicant. In any case the delinquent has not at all been prejudiced by non tendering of the advice of the UPSC to the applicant. We have also perused the revision petition under rule 29 of the CCS(CCA) Rules, 1965 preferred by the applicant against the impugned order dated 15.5.89 and in this revision petition the applicant has not assailed non supply of the report of the advice of the UPSC or that he has been prejudiced on that account. A copy of the aforesaid revision has been filed as Annexure 'P' to the original application. We, therefore, hold that the supply of the advice of the UPSC was neither mandatory nor non-supply of the copy of the aforesaid advice has violated the principle of natural justice and also it has not prejudiced in any manner whatsoever the defence of the applicant or consideration of his case by the disciplinary authority or by the revisional authority.

23. The learned counsel for the applicant has elaborately pressed the point that the applicant did not wilfully avoid the joining in the parent department and he was not relieved by the foreign employer. Learned counsel has also taken us to the definition of the word 'Wilfull'. In short it is argued that the 'Will' was not a party in not joining the parent department. Firstly the Tribunal cannot

(36)

appreciate the evidence in judicial review and the law has been clearly settled by the Hon'ble Supreme Court in a ^{catena of} /decisions, the Tribunal is not an appellate authority. State of Andhra Pradesh vs. Chitra Venkatraman, 1975(2) SEC page 557; R.C.Sharma vs. Union of India, 1976 (3) SEC page 574; Kanshaya Devi vs. Bachittar Singh AIR 1960 SC page 1168. The Court or Tribunal can only interfere when there is a case of no evidence of the finding arrived at by the disciplinary authority ^{or the finding} is totally perverse and could not be arrived at on a reasonable analysis of the evidence on record. The same view has been taken by the Hon'ble Supreme Court in the case of Union of India vs. Parma Nanda AIR 1989 SC page 1185. However, in the present case a letter written by the applicant dated 19.7.89 which has been quoted in the earlier para of this judgement clearly goes to show that the applicant on relief from the Nigerian Govt. came back to India and availed of the leave due to him on account of the deputation period till he returned to India. Even then he did not join in the parent department and without any communication with the parent department i.e. C.W.C. he went abroad to take another assignment with the Nigerian Govt. The interpretation given to this letter and the appreciation of the disciplinary authority cannot be said to ^{be} /in any way perverse, or the conclusion arrived at could not be ^{blasphemous}.

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24. The learned counsel for the applicant has also referred to certain decided case by the Tribunal in the case of persons overstaying after deputation but all the S.C. cases are on different facts.

25. In the case of Shri N.S.Gujral Vs. Union of India OA No. 2368 of 1988 decided by Principal Bench on 3rd September, 1993. the applicant returned after 5½ years and he never came back to India on relief as in the case of the applicant who came back to India in April, 1983 on relief from Nigerian Govt. and again without any order from the parent department i.e. C.W.C. accepted the assignment with the Nigerian Govt. and joined there. The facts of this case are therefore, totally different. The other case decided by the Principal Bench titled as N.K.Agarwal vs. Lt. Governor of Delhi & Others decided on 6.7.87, the facts of this case are also totally different with that of the present case and cannot be of any help to the applicant.

26. Learned counsel for the applicant has also relied on another case of Dr. Chitranjan Dev vs. Union of India and others decided by the Calcutta Bench in TA 970/86 in which also the Tribunal gave the relief and quashed the order of punishment of removal from service. The facts of the case are also different. In that case the applicant went on deputation in December, 1975 and his deputation period was extended till 9th November, 1979 but the applicant could not

35

join the parent department and he joined only on 7th March, 1981. In that case the deputationist i.e. the petitioner had correspondence with the parent

department. In the present case however, the applicant after completing his assignment returned back to India in April, 1983 after being relieved by the Nigerian Govt. That was not the position in the case of Dr. Chitranraj Dev, While stationed in India the applicant undertook a second assignment without the concurrence of the parent department. So it cannot be readily accepted that it was helplessness on the part of the applicant not to join the parent department. Though the deputation period of the applicant had expired in April, 1982 and the Nigerian Govt. wanted to be him /retained upto Feb., 1983, thereafter the Govt. of India on 13.5.83 warned the applicant that he should immediately join otherwise disciplinary action will be taken against him. At that time the applicant was in India having come on leave on relief from Nigerian Govt. in April, 1983. The applicant still took two months to reply on 19.7.83 and in that reply also he has not given any indication to Govt. of India i.e. C.W.C. that he will be going back to Nigeria again to work with the foreign employer in Kano State. Thus the aforesaid authority also does not help the applicant. Infact every case of such a nature depends /its own upon conspectus of facts and circumstances. No two cases can be similar. The applicant initially joined the

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deputation post for a period of three years and his deputation period was further extended till 13.4.82 ^{total} i.e. for a period of five years. Even in April, 1983 period was about six years but he did not join the parent department. It was only 10½ years after in November, 1987 when the applicant had joined the parent department making an excuse that he was not relieved by the foreign employer. This fact on the ^{and} face of it does not have acceptance/ the disciplinary ^{were} proceedings ^{initiated} against the applicant. It is evident that the applicant of his own accord with impunity retained himself abroad with the foreign employer and his contention that he was relieved by the Nigerian Govt. only on 3.9.87 cannot be reasonably accepted. In view of this the law cited by the learned counsel for the applicant is not helpful to the applicant.

27. The learned counsel for the applicant also argued that issuing chargesheet against the applicant is abuse of the administrative process in as much as the applicant had to maintain the credibility of the Govt. of India. It is not so. The applicant is governed by the CCS(CCA) Rules, 1965 and CCS(Conduct) Rules, 1964. Any wilful disobedience of directions of the Govt. of India by the applicant and not serving the Govt. of India under which he is under obligation to

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serve and overstay without the sanction of the Govt.

the charge memo issued of India amounts to misconduct and/is not an abuse of porcessby the administrative authority. The charge has been framed against the applicant as per statutory rules and the disciplinary proceedings have been initiated under the statutory rules which governs the service conditions of the applicant.

28. The learned counsel for the applicant has also argued that the punishment imposed by the disciplinary authority is severe and he has referred to the case of State Bank of India vs. Samender Kishore Endow reported in 1994(2) SEC page 537. In that case the Hon'ble Supreme Court observed that the punishment imposed is severe and remanded the matter for consideration of the penalty imposed on the petitioner of the reported case. In the present case the punishment awarded to the applicant is just and proper and does not call for any interference.

29. In view of the above facts and circumstances of the case the present application is dismissed as devoid of merits. No Cost.

Arif Ali
(S.R.ADIGE)

MEMBER (A)

J.P.Sharma
(J.P.SHARMA)

MEMBER (J)

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