

CENTRAL ADMINISTRATIVE TRIBUNAL
(PRINCIPAL BENCH)
New Delhi

OA/TA No 221 OF 2004

Professor K.K. Mishra v/s NCERT

PART-I PERMANENT RECORD

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Name :	Name :
Designation :	Designation :

Stm No 17

OA 221/2004

28/11/2004

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present is Sh. R.K. Gupta, counsel for the
applicant.

Heard,

Arguments concluded order

Reserved.

(Bharat Bhushan)
Member (J)

(V.K. Majotra)
Vicechairman (A)

OA 221/04
4/2/04

Order pronounced today in
Open Court by Hon'ble Mr. V.K. Majotra VC(A)
Hon'ble Mr. Bharat Bhushan, M(J)

Judgement attached.

By order

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C/C-IV

Central Administrative Tribunal
Principal Bench

(2)

O.A. No. 221/2004

New Delhi this the 4th day of Feb. 2004

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Bharat Bhushan, Member (J)

Professor K.K. Mishra
R/o 169, Nehru Apartments, Kalkaji
New Delhi 19.

-Applicant

(By Advocate: Shri R.K. Gupta)

Versus

1. National Council of Educational Research and Training, through its Secretary, Shri Aurobindo Marg, New Delhi-110 016.
2. The Director, National Council of Educational Research and Training, Shri Aurobindo Marg, New Delhi-110 016.
3. The Joint Director, National Council of Educational Research and Training Shri Aurobindo Marg, New Delhi-110 016.
4. The Secretary, National Council of Educational Research and Training Shri Aurobindo Marg, New Delhi-110 016.

-Respondents

O R D E R

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Learned counsel heard. He stated that applicant while working as Reader in Sanskrit in NCERT, was selected for appointment to the post of Director of Rashtriya Sanskrit Sansthan (hereinafter called as 'Sansthan'), which is an autonomous institution under the Ministry of Human Resources Development. He remained in that position from 15.2.1994 to 15.2.1999. Before expiry of the term of the applicant as Director, his services were terminated in terms of proviso to Para (3) sub-clause

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(IV) of the Agreement dated 15.6.1994 between applicant and Government of India. Applicant carried the matter to the High Court through Writ Petition No.4926/1998. Vide order dated 6.11.1998, High Court enabled the respondents to take disciplinary action against the applicant according to law. Applicant was placed under suspension on 24.11.1998 which was stayed vide order dated 30.11.1998 by the High Court in Writ Petition No.6171/1998 dated 27.11.1998. However, on 10.2.1999, this stay was vacated by the Division Bench of the High Court. Applicant was repatriated to parent department (NCERT) by the Ministry of HRD vide order dated 12.2.1999. The High Court vide order dated 24.11.1998 quashed the order of suspension of applicant stating that there was no impediment of applicant joining the NCERT. He re-joined as Reader in Sanskrit in NCERT. He was promoted as Professor of Sanskrit in NCERT w.e.f. 27.7.1998.

2. Applicant has assailed Annexure-A, Colly dated 1.10.2003 whereby enquiry has been initiated against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called as 'CCS(CCA) Rules').

3. On behalf of applicant Learned counsel contended that the parent department could not have initiated disciplinary proceedings against the applicant for allegations relating to the period when he was with the borrowing authority, i.e., the Sansthan. He further stated that while the Director

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of NCERT is the competent authority to order disciplinary proceedings against the applicant, impugned order (Annexure-A) has been issued by an incompetent person, i.e., Joint Director.

4. To our specific query as to prescription of the competent authority under Rules/Regulations, learned counsel drew our attention to Rule-54 of the Memorandum of Association and Rules of NCERT. This Rule reads as follows:-

"54. The Director shall prescribe the duties of all officers and staff of the Council and shall exercise such supervision and disciplinary control as may be necessary subject to these Rules, and the Regulations".

5. As regards the functions and powers of the Joint Director, Rule-56(a) reads as follows:-

"56.(a) The Joint Director shall assist the Director in his duties as the principal executive and academic officer of the Council and shall be responsible for the proper administration of the council and the institutions of the Council under the direction and guidance of the Director".

6. No Rule has been shown to us on behalf of the applicant regarding the precription of competent authority for initiating disciplinary enquiry against a person holding the post of Reader. As such, it has not been established before us that the Joint Director is incompetent to initiate disciplinary proceedings against the applicant as Reader in NCERT.

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7. Learned counsel on behalf of applicant submitted that provisions of Rules 20 and 21 of CCS (CCA) Rules prohibit the lending authority to suspend and conduct disciplinary proceedings against an employee whose services had been lent to another organisation. He further stated that as per these rules, the borrowing authority is ^{competent} _{to} either place the Government servant under suspension and also to conduct the disciplinary proceedings.

8. There is nothing in these rules prohibiting the lending authority to initiate disciplinary proceedings against an employee whose services had been lent to another organisation, on repatriation of such a person. As a matter of fact, under Rule-20 of CCS (CCA) Rules a decision was taken on G.I, MHA File No.7/9/62-Estt.(A) in the case of a State Government servant whose services were borrowed by the Central Government and were replaced at the disposal of the State Government. It was directed that the Ministry/Department of the Central Government could complete preliminary enquiry as considered necessary and forward the relevant records to the State Government for instituting departmental proceedings and further necessary action. In the facts and circumstances of the present case, there is nothing illegal on the part of the parent organisation to institute a disciplinary enquiry on repatriation of the applicant. Next, it has been contended on behalf of the applicant that vide Annexure A-3 dated

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15.9.1998, applicant's services were terminated in terms of Para (3) sub-clause (iv) of the Agreement dated 15.6.1994. Vide order dated 25.9.1998 (Annexure A-4) made in CW-4926/1998 CM 9866/1998, the High Court stayed the operation of order dated 15.9.1998 restraining the respondents from interfering with the right of the petitioner to work as Director of the second respondent organisation, until further orders. On 6.11.1998 (Annexure A-5), the order dated 25.9.98 was modified restraining the respondents from interfering the right of the petitioner to act as Director of respondent No.2 subject to the power of the respondents to take any disciplinary proceedings against the petitioner in accordance with law. C.W. No.4926/1998 was decided on 20.4.1999 by the High Court (Annexure A-8) with the following observations/directions to the respondents:-

"with reference to the order of suspension issued by the first Respondent, once the jural relationship had come to an end by virtue of order issued by the first Respondent repatriating the Petitioner to his parent organisation, the jurisdiction of the employer to pass order of suspension would come to an end and the order of suspension automatically ceased to have any force in law. Therefore, the order of suspension dated 24.11.1998 has become a brutum fulmen and no longer enforceable in law. The same stands quashed. It is hereby declared that this will not in any way affect the career of the Petitioner in NCERT.

This would take me to the question of petitioner joining his parent organisation.

The Petitioner had been repatriated to his parent organisation and the order of suspension dated 24.11.1998 ceased to have any force in law. Therefore, there is absolutely no impediment of Petitioner joining the NCERT. The NCERT shall immediately take

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the petitioner back in service and pay him all dues payable to him in accordance with law. The arrear of pay and allowances to the petitioner shall be paid by the second respondent till the date of repatriation and from 13.2.1999 onwards shall be paid by NCERT.

Both the writ petitions stand disposed of in above terms".

9. On behalf of the applicant attention has also been drawn to Govt. of India orders (G.I. M.F. O.M. No. 8(3) (Co-ord)/56, dated 10.5.1956) under F.R. 53. These orders read as follows:-

"(1) Extension of temporary post of a Government servant under suspension:- The question whether it is necessary to extend the terms of the post held by an officer who is placed under suspension pending enquiry into his conduct, if he is in temporary service has been engaging the attention of the Government of India for some time past. This question will arise only if it is decided to pursue the enquiry against the suspended officer to its logical conclusion, instead of terminating his services under the CCS (TS) Rules. Where an individual is due to be discharged from service on account of the expiry of the sanction of the post held by him, or otherwise becomes liable to be retrenched when he is under suspension, the question whether he should be so discharged, or whether, to enable disciplinary proceedings being continued, special steps should be taken to provide a post for him should be examined on the merits of each case and his post extended for an appropriate period. In these circumstances, the vacancy caused by the extension should not, however, be filled.

The authority competent to dismiss or remove the officer concerned from service, may, in such circumstances, issue orders extending the post without reference to the higher administrative authorities ordinarily competent to sanction such extension or to the Finance Ministry if delay is anticipated in obtaining sanction, before the expiry of the terms of the post, under the normal procedure. Otherwise the sanction of the competent authority should be obtained as usual".



We have carefully gone through the above instructions. These relate to extention of temporary post of a Government servant under suspension. The applicant's case is not covered under these instructions.

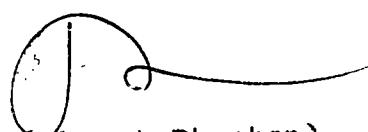
10. While the applicant had been taken back into service with NCERT, respondents have now, by the impugned order, initiated the disciplinary proceedings against the applicant's action/inaction while he was serving with the borrowing organisation. Learned counsel has relied on Gujarat High Court's decision made on 15.9.1978 in the matter of Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala and another 1979(3)SLJ 130 stating that institution of disciplinary proceedings after an inordinate delay of 1-1/2 year constitutes denial of reasonable opportunity to show cause.

11. The High Court had taken into consideration the nature and contents of the charge in that case against a Constable. The High Court observed that it would be asking for the impossible to expect the Constable concerned to explain satisfactorily the reason which occasioned the delay in reporting for duty. The facts, herein, are distinguishable. The applicant is not a Constable; he is intellectually far superior than a Constable. The actual delay ^{in the instant} for initiating the challenged



disciplinary proceedings cannot be considered as denial of reasonable opportunity to show cause and violation of principles of natural justice.

12. Taking stock of the reasons stated and discussion made above, this OA is dismissed in limine being devoid of merit.



(Bharat Bhushan)
Member (J)



(V.K. Majotra)
Vice-Chairman (A)

cc.