

CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI BENCH  
NEW DELHI

Application No. O.A.17/85

Transfer Application No. \_\_\_\_\_

Date of decision 13.2.86

Roshan Lal Bagga

Petitioner(s)

Through Shri M.L. Pahwa  
Advocate

Versus

Surveyor General of India

Respondent(s)

Through Shri M.L. Verma, Advocate

CORAM:

Shri S.P. Mukerji, Member

Shri H.P. Bagchi, Judicial Member

1. Whether Reporters of Local Papers  
may be allowed to see the judgment?

Yes.

2. To be referred to the Reporter or not?

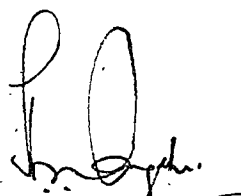
Yes.

3. Whether to be circulated to all  
Benches?

Yes.

4. Whether fair copy to be typed for  
perusal?

No

  
(H.P. BAGCHI)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI BENCH-I

REGISTRATION NO.17/85

CORAM

Shri S.P. Mukerji, Member

Shri H.P. Bagchi, Judicial Member

Shri Roshan Lal Bagga ..... Petitioner(s)

Versus

Surveyor General of India ..... Respondent(s)

For petitioner(s) Shri M.L. Pahwa .. Advocate

For respondent(s) Shri M.L. Verma .. Advocate

The petitioner has come under Section 19 of the Administrative Tribunals Act against order No.C1-520/4-A-189(C) of 17th October 1984 passed by the Director, Survey of India, removing the petitioner from government service under Rule 11 of the Central Civil Services (Classification, Control & Appeal) Rules 1965. The petitioner has prayed that apart from reinstating him, the punishments of (a) Censure imposed on him in September 1974, (b) withholding of one increment for one year without postponing his future increments imposed on him in 1975, (c) cancellation of leave from 2.9.1975 to 30.10.1975 and (d) adverse remarks communicated to him for the years 1974, 1975 and 1976 may be revoked. It will be relevant and pertinent to recount in brief the background of this case.

2. The petitioner who is an ex-serviceman got employment as Lower Division Clerk in the Class II service of the Survey of India in 1965 and in accordance with the security bond executed by him, accepted the conditions of service of Class III Service Officers of the Survey of India subject to

.....2.

the provisions of the Civil Services (Classification, Control & Appeal) Rules and had also agreed to the condition that "when employed away from the permanent headquarters of his unit will be required to reside when ordered by higher authorities .....". From 1974 onwards his alleged poor performance and misdemeanour as a Government servant started to come to the adverse notice of his superiors. He was found to be habitually late in attending to his official duties on 18 occasions in September 1973, 9 in October 1973, 17 in November 1973, 18 in April 1974, on all days except 4 in May 1974, on 8 out of 11 days of duty in July 1974 and all days except 4 in August 1974. He was also found to be exhibiting a poor sense of discipline and ignoring orders of the competent authority and in spite of repeated warnings did not show any improvement. These tendencies persisted chronically till 1976 and resulted in a number of adverse entries, censure and withholding of increment during the period from 1974 to 1976. In June 1976 he was transferred from the Delhi to the Dehradun office of the Survey of India and the charge was taken from him in Delhi. The applicant from June 1976 till the date of his removal from service in October 1984 did not report to Dehradun office. He also did not apply for leave. Thus he was neither on duty nor on leave for more than 8 years from 1976 to 1984. His representation of 17.1.1977 against the order of transfer was rejected in February 1977. The applicant moved a writ petition before the Hon'ble High Court of Delhi against the order of transfer in Civil Writ petition No.540 of 1979 which was dismissed on the 7th of May 1979. A memorandum dated 27.10.1982 was served on him under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules enclosing a statement of article of charge, a statement of the imputations of misconduct

or misbehaviour in support of the charge and lists of supporting documents and witnesses. There was only one article of charge and it will be useful to quote that charge as follows:

"Shri Roshan Lal Bagga, while functioning as the Lower Division Clerk in the Office of No.65 (TCM) Party, Directorate of Survey(Air), Survey of India, New Delhi during the period from June 76 todate has disobeyed the orders by wilfully absenting himself from duty w.e.f. the date of his relief (4.6.76 A.N.) instead of reporting for duty, on transfer, to the Director, Map Publication Office, Survey of India, Dehra Dun.

He has been wilfully absent from duty w.e.f. 4.6.76(A.N.) todate by not reporting for duty, on transfer, to the Director Map Publication, Survey of India, Dehra Dun."

The charge was inquired into by the Superintending Surveyor as Inquiry Officer who submitted the report on the 12th April 1984 and the disciplinary authority passed the impugned order on the 17th October 1984 removing the applicant from Government service.

3. It may be pertinent to mention that during the pendency of the inquiry the applicant moved another writ petition No. 249/84 before the Hon'ble High Court of Delhi against the inquiry but that petition was also summarily dismissed as having no merit on the 24th of January 1984.

4. Preliminary objections were taken by the respondents firstly on the basis of 'resjudicata' flowing from the writ petitions and secondly on limitation as the causes of action arose between September 1974 and October 1984. So far as the two writ petitions are concerned one was moved in 1979 (CWP 540 of 79) against the order of transfer and the other in 1984 (CW 249 of 84) against the inquiry. Therefore the Tribunal need

not consider the relief prayed for by the applicant in so far as quashing the transfer order is concerned but in so far as the order of removal from service is concerned since this was not the cause of action for the writ petition moved in 1984, we feel that we are not restrained by resjudicata so far as this relief is concerned. As regards limitation, so far as the orders of censure passed on 29th September 1974, order of cancellation of leave passed on 26.9.1975 and the adverse remarks for the years 1974, 1975 and 1976 communicated on 10.2.1975, 29.1.1976 and 16.2.1977 <sup>respectively</sup> are concerned these are clearly barred by limitation laid down in Section 21 of the Administrative Tribunals Act. However, since the impugned order of removal from service was passed on 17th October 1984 i.e. within a period of three years preceding the 1st of November 1985 when the Central Administrative Tribunal assumed its jurisdiction, the application can be entertained under sub-section 2 of Section 21 of the Administrative Tribunals Act.

5. The impugned order is being challenged on the ground that the applicant was not allowed to engage a legal practitioner to defend his case before the inquiry officer and the witnesses listed with the Memorandum were not called by the inquiry officer. We have heard the arguments of the learned counsel for both parties at length and gone through the documents very closely on all the relevant points.

6. In regard to a legal practitioner not being allowed to the applicant, Sub-rule 8(9) of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules reads as follows:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the

inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

Since during the inquiry the Presenting Officer was not a legal practitioner the applicant did not have any right as such to engage a legal practitioner himself. Since there was only one article of charge regarding the applicant not joining the new post on transfer, and no complicated legal issue was involved the applicant cannot be presumed to have suffered in any way by not being allowed to engage a legal practitioner in his defence. There was in the circumstances nothing wrong in the disciplinary authority exercising his discretion in not allowing a legal practitioner to the applicant. After the disciplinary authority rejected the request the applicant submitted an application before the inquiry officer asking for a month's time to go through the legal implications of the case. Thus the applicant himself by implication had accepted the exercise of discretion by the disciplinary authority. However, the applicant having been requested to attend the inquiry did not appear before the Inquiry Officer on 2.11.1983, 9.1.1984 and 18.1.1984. The documents and the witnesses that he had asked for have not been shown to be vitally connected with the case of his transfer and the imputation of the charge of wilful absence from duty. His plea that he should have been suspended before the commencement of the inquiry betrayed nothing but a consistent effort

by him to frustrate and befuddle the process of inquiry. Considering that his writ against the process of inquiry was dismissed by the Hon'ble Delhi High Court one cannot fault the disciplinary proceedings on procedural and technical grounds. //

7. During the course of the arguments the petitioner filed copies of the various representations which he had made against the order of transfer and argued that proceedings against him were actuated by animus and prejudice harboured by respondent no.2 and the witnesses who were listed by the disciplinary authority along with the Memorandum were not produced. We have very carefully gone into these points and heard arguments at length propounded by the learned counsel for the petitioner. We find no substance in these points. As has been pointed out earlier it is the petitioner who continually absented himself from appearing before the Inquiry Officer and raised irrelevant points to confuse the three clear and simple points which were at issue before the Inquiry Officer. The three points as quoted from the inquiry report are as follows:

"i) Whether Shri R.L. Bagga, LDC was issued with Movement Order to report on transfer to D.M.P. Dehra Dun or not.

ii) Whether Shri R.L. Bagga complied with the order or not.

iii) Whether Shri R.L. Bagga has been on duty or not since 4.6.76 the date of his transfer to Dehra Dun."

It has never been the case of the petitioner than he was not transferred from Delhi to Dehra Dun as the writ petition before the High Court and the number of representations against the order of transfer filed by him show. It has also never been the case of Shri Bagga that he joined his post at

Dehra Dun or was prevented from joining. The facts are so transparently clear that even if no witnesses were called by the Inquiry Officer it cannot be stated that they are not established. The petitioner admitted before the Inquiry Officer about the fact of his being served with the impugned transfer order for proceeding to Dehra Dun. Similarly the petitioner nowhere disputed the fact that he did not comply with the transfer order in question. In fact this is reinforced from the fact on record that the petitioner filed Civil Petition No.540 of 1979 against his transfer to Dehra Dun - implying thereby that there was no compliance of the transfer order in question. It follows therefore that naturally the petitioner was not on duty either at Delhi from where he was already relieved or at Dehra Dun where he was transferred. These facts are thus established beyond doubt by documents before the Inquiry Officer and the conduct of the petitioner. The question of calling the witnesses would have arisen if the petitioner had attended the proceedings and challenged the facts. We feel that there is nothing to show that the petitioner was deprived of any opportunity to defend himself or that the principles of natural justice were not followed in this case. Viewed in the light of these facts the obvious conclusion is that the order passed by the Inquiry Officer shall be held to have been validly passed ex-parte and the same is legally in order. Since the petitioner has not alleged any prejudice or malafide against either the Inquiry Officer or the disciplinary authority, the disciplinary action taken against him cannot be vitiated on this ground as well.

8. Thus, in view of the above discussion and for the foregoing reasons we are satisfied that the petitioner's conduct before and after his transfer, his non-compliance



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with the transfer order and his being wilfully absent from duty from 1976 onwards without taking leave of absence and his utter non-cooperation in the disciplinary proceedings leave no ground in law and equity to interfere with the impugned order of removal from service and that the same does not suffer from any infirmity.

9. In the result, the application has no merit and the same is accordingly dismissed. In the circumstances there will be no order as to costs.

*I agree.*  
*H.P. Bagchi*  
(H.P. BAGCHI)  
MEMBER  
13. 2. 86.

*S.P. Mukerji*  
(S.P. MUKERJI)  
MEMBER

*Review appl. filed*