

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1500/92

New Delhi: this the 14th day of MAY , 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE DR.A.VEDAVALLI MEMBER(J)

(33)

Dr. Rajendra P. S. Chhonkar,
s/o Shri Gopal Singh,
R/o F-580, Sarita Vihar,
New Delhi-044,
worked as Scientist/Engineer 'SF'
(Addl. Director), at
National Informatics Centre Headquarters,
Planning Commission,
Govt. of India,
A-Block,
CGO Complex,
Lodi Road,
New Delhi -003

..... Applicant.

(By Advocate: Shri K. Venkataramani with Sri VSR Krishna)

Versus

1. National Informatics Centre Hqrs,
Planning Commission,
Govt. of India,
A-Block,
CGO Complex,
Lodi Road,
New Delhi-003
through its Director General,
Dr. N. Seshagiri.
2. Director General Dr. N. Seshagiri,
National Informatics Centre Hqrs.,
Planning Commission,
Govt. of India,
A-Block,
CGO Complex,
Lodi Road,
New Delhi -003
3. Joint Director Mr. K. Subbiah,
National Informatics Centre Hqrs.,
Planning Commission,
Govt. of India,
A-Block,
CGO Complex,
Lodi Road,
New Delhi - 003.

4. Union of India,
Ministry of Planning,
Planning Commission, Yojna Bhawan,
Samsad Marg,
New Delhi-01

..... Respondents.

(3A)

(By Advocate: Shri N.S.Mehta)

ORDER

BY HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' orders dated 26.5.92 (Annexure-A1) terminating his services and prays for reinstatement with all consequential benefits including back wages. He also prays for a declaration that he is confirmed having successfully completed his period of probation and for release of his annual increment.

2. Applicant's case is that he is a highly qualified Scientist and amongst his many accomplishments are that he developed the first ever Digital Image Processing System which was installed by him at the National Remote Sensing Agency (NRSA) Hyderabad, and National Institute of Hydrology (NIH) Roorkee and is now being marketed. He states that in response to the advertisement dated 8.8.89 (Annexure-A-3) he applied for the post of Addl Director, National Informatics Centre, Planning Commission, New Delhi, and upon being interviewed by a Selection Committee headed by Dr. Seshagiri, Director General, NIC he was offered the post of Scientist/Engineer 'SF' (Addl. Director) at NIC, New Delhi vide letter dated 7.9.90 (Annexure-A4), and upon accepting the offer he joined duty on 30.10.90.

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3. Applicant contends that his work was all along satisfactory, and was never informed of any deficiency in the same, but respondent No.2 (Dr. Seshagiri) and some of his associates for reasons best known to themselves did not like his working and were trying to find fault with the same even on trivial issues. For instance, applicant states that by letter dated 12.2.92 (Annexure-A5) the Jt. Director SIT, CBI had requested Respondent No.2 for applicant's assistance in the investigation of the Rajiv Gandhi Assassination case, in view of applicant's expertise in Digital Image Processing, and applicant offered his services, but Respondent No.2 refused to spare him for the purpose despite applicant repeated personal requests to do so, so much so that applicant alleges that Respondent No.2 got annoyed with him and even threatened to terminate his probation on 17.2.92. Copies of certain office notings (Annexures-A6, A7, A8 and A9) with which applicant alleges, Respondent No.2 was displeased, have also been enclosed by him, and he contends that respondents therefore under colourable exercise of power arbitrarily, illegally and malafidely terminated his services vide impugned order dated 26.5.92 without any basis or justification and without holding an inquiry into the matter.

4. In the grounds taken in para 5 of the OA also it is asserted that the impugned order is a

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colourable exercise of power, and is illegal, arbitrary, malafide, motivated and against the principles of natural justice as it is punitive and amounts to dismissal without holding an inquiry, in contravention of Article 311 of the Constitution.

5. Respondents in their reply contest the OA and deny the allegations, contained therein. They state that in terms of para 1(b) of the appointment offer dated 7.9.90, after applicant reported for duty on 30.10.90, they issued notification dated 1.11.90 (Annexure-R 1) clearly specifying that applicant would be on probation for 1 year, in the first instance. They state that applicant was assigned charge of the Remote Sensing and GIS Division on his joining NIC. They state that Circular dated 3.10.91 (Annexure-R2) was issued to him enclosing a Probation Assessment Form with the request to complete the self appraisal portion and return the same within 1 week, but despite repeated reminders, applicant did not do so upon which a final reminder dated 27.2.92 (Annexure-R3) was issued to him drawing his attention to aforesaid para 1 (b) of the appointment offer and requesting him to submit the self appraisal request by 6.3.92 failing which his probation report would be written by the Controlling Officer without the self appraisal report and further action for assessing his suitability for retention in service would be processed. Respondents state that applicant submitted his self appraisal form

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on 6.3.92, which though belated, was itself an admission on his part that his probation still continued.

6. Respondents further aver that earlier in September, 1991 an Internal Committee was constituted to review the records of six officers in grade of Scientist/Engineer 'SF' who were on probation including applicant. The Committee met on 25.9.91 and on the basis of the review made recommended clearance of only 1 of the six officers who had submitted the self appraisal report, while for the other five, the self appraisal reports were not available. They state that subsequently the self appraisal reports of 2 other officers were received, but as the self appraisal reports of applicant and 1 other were not received till 6.3.92 the Internal Committee could not meet. Eventually upon receipt of the aforesaid two self appraisal reports, the Internal Committee met on 9.3.92 and made its recommendations. The two reports of the Internal Committee as well as the probationary self appraisal reports of all the 5 officers were placed before a duly constituted high level Committee headed by an external specialist. The high level committee upon evaluation of the reports, recommended clearance of 3 of the officers, extension of probation up to September, 1992 of one officer, and termination of service of 1 officer (i.e. applicant) which was implemented with the approval of the Competent Authority and applicants

services were accordingly terminated with immediate effect vide impugned order dated 26.5.92 in accordance with the terms and conditions of his appointment offer letter dated 7.9.90.

7. Applicant has filed rejoinder in which he denies that he was assigned charge of Remote Sensing & GIS Division. He states that he was not provided with secretarial staff (Annexure-A12), proper Scientific/technical manpower personnel and essential facilities. He states that he himself proposed on 8.2.91, the assignment of RI and GIS activities (Annexure-A13) which were agreed to by Respondent No.2 (Annexure-A14), but were never accorded approval (Annexure-A15). Applicant claimed that he also mentioned this in the self assessment part of his ACR in July, 1991 and kept reminding Respondent No.2 for his approval on the proposal and for other facilities, but Respondent No.2 took no action and RI & GIS activities were not included in the 1991-92 Annual Action Plan prepared on 24.4.91. Applicant asserts that no secretarial staff was provided to him inspite of repeated requests in his discussion with Respondent No.2 and his associates. It is only in January, 1992 and April, 1992 that he was provided a residential and an office phone respectively, and an attendant was attached to him only in May, 1992. Similarly a colour plotter was provided to him only in February, 1992, and a computer only in May, 1992. Applicant denied that the Circular dated 3.10.91 enclosing blank assessment

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report form (Annexure-R2) was ever issued by respondents, and denies any delay on his part in submitting the self appraisal report.

8. Applicant asserts that he had received a note dated 3.10.91 signed by Section Officer asking him to fill up a blank assessment report and to submit the same with the concerned section. He contends that the said note did not mention any particular period of time by which the assessment report form was to be submitted. Applicant contends that after receiving the assessment form on 3.10.91, he suffered a fatal road accident on 6.10.91 which necessitated his hospitalisation and re-joined his duty on 18.11.91. He states that he did not receive any reminder from respondents for submission of the assessment form. He, however, does not deny the letter dated 27.2.92 mentioning 6.3.92 as the date of submission of assessment form and states that he submitted the same on 6.3.92.

9. Applicant further states in rejoinder that even according to respondents, the self-appraisal report was required by letter 3.10.91 whereas the Internal Committee met before 25.9.91 to consider and review the performance of the officers including the applicant. He states that it is not understood as to how, why and for what the Internal Committee could be constituted or could meet without having the assessment report forms of the concerned officers including the applicant.

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10. Applicant alleges that the Addl. Director misbehaved with him and some of the officers in Respondents-Organisation even criticised the applicant's competency by writing false technical notings. Applicant denies even being cautioned of any shortcoming and states that not even a warning letter was ever issued to him pointing out him any deficiency in his work.

11. On 14.1.98 applicant submitted additional affidavit to which respondents submitted their reply.

12. Meanwhile Respondent No.2 has filed his personal affidavit on 16.7.98 to which applicant has filed his reply.

13. We have heard applicant's counsel Shri K. Venkataramani with Shri V.S.R.Krishna while Shri C.S.Vaidyanathan, Addl. S.G. and Shri N.S.Mehta for the respondents and have given our careful consideration.

14. It cannot be denied that on 25.9.91 when the Internal Committee set up for reviewing the performance during the probation period of S & T Officers in 'SF' grade met, applicant was a Probationer. We have perused the report of Internal Committee which met on 25.9.91, a copy of which was furnished and has been taken on record. The Members of that Internal Committee were S/ Shri Dr. N. Vijayaditya, Dr. B.K.Gairola, Dr. Y.K.Sharma and Dr. K.K.Bajaj, all

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Directors (Technical), none of whom have been impleaded in this OA. These are the remarks recorded by the Internal Committee in respect of applicant.

"3.6. Dr. R.P.S. Chhonkar was assigned the responsibility of setting up a Remote Sensing and GIS Division. The major responsibility assigned to him was to buy remote sensing data from NRSA and build the Geographical Information System (GIS) for each of the 450 districts. This is the major output from the division which all the technical officers of NIC at the District Headquarters and State Capitals urgently require. So far, neither any remote sensing data has been purchased from NRSA or elsewhere nor does the Remote Sensing GIS has been built even for a single district. Dr. Chhonkar himself has observed in a note submitted by him in Jan., 1991 that NIC has the required infrastructure for performing this task. A super mini computer which was installed in the Headquarters had enough spare capacity to handle the job. However, no perceptible action has been taken by him in performing this important task on which technical staff of NIC in the district and State capitals are dependant. To assist him, requisite technical personnel, some of them with prior experience in this area, were assigned. It is our unanimous view that with all the infrastructural support available, Dr. Chhonkar has not proved to be equal to the task assigned to him. Submission of the long term plan calling for an investment of over Rs. 40 lakhs was delayed by him to such an extent that it missed consideration for possible inclusion in the Annual Plan 1991-92, notwithstanding its technical appropriateness or otherwise to the NIC context. This would need wider consultation with various HODs and SIOs of NIC. Dr. Chhonkar is a narrow specialist and therefore he cannot be shifted to any other division. In our estimation, his performance over the past one year has clearly indicated that he is technically and managerially unsuitable for the job. However, in all fairness, we may await submission of his self-appraisal report in the prescribed format before giving any suggestion regarding his suitability for probation clearance/extension/discharge from service."

15. The Internal Committee met again on 9.3.92 by which time applicant's self appraisal report had

been received on 6.3.92. On this occasion the Internal Committee, in which again s/shri Dr. Vijayaditya, Dr. Gairola, Dr. Sharma and Dr. Bajaj participated, recorded the following in respect of the applicant.

"3.5. Dr. R.P.S.Chhonkar was assigned the responsibility to set up a Remote Sensing and GIS Division when he joined NIC. In January, 1991, he was explicitly assigned a major project of considerable significance to NIC: To work out an arrangement for the buying of continuous updates of Remote Sensing Data from NRSA Hyderabad and build at NIC a Geographic Information System (GIS) for each of the 450 Districts where NIC has set up NIONET Centres. It is precisely on such priority in the NIC context that this Division was named as Remote Sensing and GIS Division. In his note Dr. Chhonkar has stated that NIC has all the required infrastructure for performing this task. However, to this date, neither any remote sensing data has been bought from NRSA nor the Remote Sensing GIS has been built even for a single district. He submitted a comprehensive long term proposal on the setting up of a Remote Sensing and GIS Activities at a cost of more than Rs.40 lakhs. From his self-appraisal report it can be seen that he was planning to establish a remote sensing and Digital Image Processing Infrastructure of a kind not relevant to the NIC requirements instead of Remote Sensing and GIS facility which he was assigned to set up. Approval was not given by the competent authority for implementing the long term plan that he submitted because of the need for a wider consultation on priorities in the NIC context and necessary financial approvals at various levels. In view of this, he submitted a fresh proposal on 4th April, 1991 requisitioning for a computer and related accessories for the

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division for developing software package for Image extraction, processing, enhancements and Theme map generation required for remote sensing GIS. The Head of Department sanctioned the required equipment on the same day assigning very high priority and all the equipment were collected by Dr. Chhonkar on 8.4.91. However, even after 11 months most of these software packages have not been developed to the point of application in the NIC context. On the other hand without due approval, Dr. Chhonkar utilised the technical personnel available in his Division for developing low level software packages which are clearly not relevant to NIC's requirements. An example is the development of SATORBCAL Software Package for Satellite Orbital Calendering of various available sensors on board the Spatial Satelities like IRS. No such requirement has been projected by competent authorities in NIC. Out of the four technical personnel assigned to him, he returned one officer with specialisation and experience in GIS. Therefore, his statement in his self-appraisal report that he was short of manpower, is not correct. Further, many of his claims in the self appraisal report are incorrect or exaggerated. It is clear that he has either not understood his job or having understood did not show sincerity in implementation. After careful examination of all aspects of his contribution, the Committee is unanimously of the view that Dr. Chhonkar is unsuitable for the jobs assigned to him both technically and managerially in the context of NIC's specialised requirements. Dr. Chhonkar cannot be transferred to any other Division as he is a very narrow specialisation which does not fit into the requirements of any other division in NIC. Accordingly, it is unanimously recommended that his services may be terminated."

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16. This matter was placed before a High Power Review Committee for reviewing the performance of S & T officers in the grade of Scientist/Engineer 'SF' during the probation period which met on 29.4.92, the following Members of the Reviewing Committee were present:-

1. Prof. M. N. Faruqui, Vice Chancellor, Aligarh Muslim Univ.
2. Shri G. Venkaraman, Addl. Secretary, Dep'tt. of Company Affairs.
3. Prof. J. Behari, Professor, JNU.
4. Dr. N. Seshagiri, Director General, NIC.

The Committee examined the self-appraisal reports, the comments of the Reporting Officers and the reports of the Internal Committee which met on 25.9.91 and 9.3.92 and on evaluation of the work done by them based on the documents during the probation period, found applicant unsuitable for carrying out the jobs assigned to him with respect to both technology development and technology management in the context of the specialised requirements of NIC. It was observed that he has either not understood his job properly or having understood he has not shown sincerity in proper implementation. As he is narrow specialist of NIC, he cannot be transferred to any other division of NIC and accordingly it was recommended that he may be discharged from NIC services.

17. Meanwhile on the basis of the applicant's self appraisal report dated 6.3.92 Addl. Director General NIC Dr. Seshagiri has recorded his remarks dated 30.3.92 as a Reporting Officer that he is not worth retaining in the present grade, inter alia he observed that the applicant was not fit for

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job assigned to him and repeated efforts to correct him proved futile; without any approval of the competent authority, he changed the given assignment of setting up Remote Sensing and GIS division into Remote Sensing and Digital Image Processing Division as could be seen from the first page of the report noted in his self-appraisal report. DIP as a Division has no relevance to what NIC requires and while not much work has been accomplished either in Remote Sensing, GIS or even in DIP, applicant side tracked the efforts of his subordinates to DIP software which was useless for NIC, and his ability to implement Remote Sensing GIS in the NIC context is clearly not there. Furthermore serious deficiencies have been noted like his inability to cooperate with peers, superficiality of technical knowledge, lack of will to implement substantive assignments, lack of ability to see the requirements of the organisation etc. and the difficulty in improving the situation is his intrinsic drawback of being unable to correct himself nor get corrected by more experienced and knowledgeable people. He further observed that the applicant could not be posted in any other division as he was a narrow specialist of low order of merit in the context of NIC's requirements, and was clearly unfit for the job technically and managerially.

18. The Director General, NIC in the capacity of the next Superior Officer endorsed his own remarks as a Reporting Officer and recommended that the applicant be discharged from Govt. service for the reasons mentioned above and this recommendation was accepted by the Appointing Authority, namely Secretary, Planning Commission.

19. Shri Krishna has urged that the impugned order is illegal, arbitrary, malafide, motivated and amounts to colourable exercise of the power, because Respondent No.2 Dr. Seshagiri was biased towards him and wanted to ensure that the applicant did not remain in NIC. He has argued that even if the formation of opinion which led to the issue of impugned order, be taken as the subjective satisfaction of those who issue the same, existence of circumstances relevant to the inference as the *sine qua non* for action must be demonstrable, and in this case such circumstances are absent. In this connection, he has relied upon the Hon'ble Supreme Court's judgment in Barium Chemicals Ltd. & another Vs. Company Law Board- AIR 1967 SC 295. He has argued that it is the malafide act on the part of respondents in issuing the impugned order, but it would be imposing an intolerable burden upon the applicant to prove by positive evidence that respondent was acting malafidely, and in the absence of positive evidence, charge of malafide should not be disregarded merely because of absence of positive evidence in this regard. In this connection he referred to the Hon'ble Supreme Court's ruling in State of Punjab & Others Vs. Ramji Lal & others 1970(3)SCC 602. He has also contended that respondents are inconsistent in their pleadings and such a practice has been generally deplored in the capacity of judicial pronouncements.

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20. We are unable to agree with the argument of
Shri Krishna.

21. Admittedly, when the Internal Committee met on 25.9.91, applicant was a probationer. The Internal Committee consisted of Senior Officers each of whom were specialists, and they unanimously found that applicant was technically and managerially unsuitable for the job. To come to such a finding it was not absolutely essential for them to have had applicant's self appraisal report before them. Neither was respondent No.2 nor were any of the officers alleged by the applicant to have been associated with him, members of Internal Committee, and none of the members of the Internal Committee have been specifically impleaded by the applicant. Under the circumstance it is difficult to accept the argument that their finding dated 25.9.91 that applicant was technically and managerially unsuitable for the job, was motivated by bias or malafide. Despite such a finding, in all fairness they recommended awaiting of submission of applicant's self appraisal report and on 6.3.92 upon submission of applicant's self appraisal report, the Internal Committee met again on 9.3.92 and submitted its recommendation. After careful examination of applicant's self appraisal report, the Committee unanimously (emphasis supplied) reiterated its view that applicant was both technically and managerially unsuitable for the job in the context of the specialised requirements and as he could not be transferred to any other division of NIC, they unanimously recommended that his services be terminated. Applicant's assessment report for the period 30.10.90

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to 29.10.91 is also available which has also been noted above and the Director General recommended that the applicant should be discharged from Govt. service as he was not worth to be retained in the present scale. This recommendation was accepted by the Appointing Authority viz. Secretary, Planning Commission against whom no bias has been alleged. Accordingly, applicant's services were terminated by impugned order dated 26.5.92 in accordance with the terms and conditions of his appointment letter dated 7.9.90 which specifically provided that applicant's services could be terminated without any notice or without assigning any reason if his performance was found to be not satisfactory. The impugned order dated 26.5.92 is an order simplicitor which casts no stigma upon applicant.

22. Lt. Addl. SG Shri Vaidyanathan invited our attention to the Hon'ble Supreme Court's judgment in High Court of Judiciature at Patna Vs. Pandey Madan Mohan Pd. Sinha & Ors. 1997(10) SCC 409 which lays down that the termination of service of a probationer can be questioned only on ground that it was arbitrary or punitive. In case of termination for unsuitability, principles of natural justice are not attracted and there is no obligation to communicate the adverse remarks to the probationer before taking decision to terminate his services on the basis of the adverse material. Uncommunicated adverse material can be taken into consideration for assessment of suitability of the probationer and for forming decision to terminate his services and such consideration shows non-arbitrariness.

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of the decision.

23. In the present case, it is clear that respondents had sufficient materials before them to take the impugned decision to terminate the applicant's services in terms of the appointment letter dated 7.9.90 and under the circumstance it cannot be said that the impugned order was illegal, irregular, improper or otherwise infirm to warrant any judicial interference.

24. The OA is dismissed. No costs.

A.Vedavalli
(DR.A. VEDA VALLI)
MEMBER(J)

S.R.Adige
(S.R. ADIGE)
VICE CHAIRMAN(A).

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