

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.11634/93

New Delhi: this the 28<sup>th</sup> day of May, 1996.

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

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

Shri O.P.Tomar,  
s/o Sh.Aman Singh,  
R/o Vill. & P.O.: Shapur Barauli ,  
Tehsil-Baghpat,  
Distt.Meerut (UP) .....Applicant.  
(By Advocate: Shri M.S.Deshaiya)

Versus

1. Union of India,  
represented through Secretary,  
Ministry of Agriculture,  
Krishi Bhavan,  
New Delhi.

2. Joint Secretary (ADMN)  
Ministry of Agriculture,  
Govt. of India,  
Krishi Bhavan,  
New Delhi.

3. Director (ADMN)  
Directorate of Extension,  
West Block No.8,  
R.K.Puram,  
New Delhi.

.....Respondents.

(By Advocate: Shri K.C.Sharma)

JUDGMENT

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

In this application, Shri O.P.Tomar has sought quashing of the impugned order dated 16.2.93, and implementation of the order of his reinstatement passed by the then Dy. Prime Minister & Agri. Minister dated 26.4.91 with costs and consequential benefits.

2. Shortly stated the applicant while functioning as Lecturer in Extension Education

A

Institute, Nilokheri in the pay scale of Rs. 1700-1300 (Group A) was charge sheeted vide order dated 20.5.81 on 3 charges:

- i) Asking the Storekeeper unauthorisedly to give him store-articles without proper requisition; manhandling the Storekeeper while on duty and also manhandling other officials of the Institute;
- ii) Making representations on service matter directly to Secretary Agriculture in violation of the prescribed procedure using disrespectful language and casting aspersions on his superiors.
- iii) sending representations to the Govt. in connection with his nomination for Ph.D course using extremely abusive language and filthy expressions against an officer of ST Community working in the Institute.

3. An Under Secretary in the Ministry was appointed to conduct the D.E. As the applicant did not attend the regular hearings held from 26th to 28th August, 1982 the Enquiry Officer conducted the proceedings ex parte. According to the Enquiry report, the charges were based mainly on documentary evidence, and stood proved against the applicant. The matter was referred to the UPSC who advised that the applicant was not a fit person to be retained in service, and that the penalty of compulsory retirement be imposed upon him. Accepting the advice, the competent authority (Minister, Agriculture for the President) approved the penalty of compulsory retirement and accordingly impugned order dated 7.1.84 issued.

4. Against that order dated 7.1.84, the applicant filed a revision petition under Rule 29 CCS (CCA) Rules. The same was treated as a review

petition under Rule 29A CCS (CCA) Rules, and was examined by the respondents in their File No. 17011/1/84 AVJ which was perused by us. We note that the said file was submitted to the competent authority (Minister Agri) who by his minute dated 9.7.84 ordered rejection of the review petition, and the applicant was informed accordingly vide order dated 13.8.84.

5. Nearly 6 years thereafter upon a fresh representation dated 19.3.90 from the applicant addressed to the Dy. P.M. & Agri. Minister, the latter recorded a minute dated 26.14.91 stating that he had gone through the case carefully, and it was an irony that the applicant who had made a complaint on 19.4.80 against Shri C.L. Gupta, Principal, Extension Education Institute alleging that the qualifications possessed by him and the Vice-Principal Shri Dak were not recognised and therefore their appointment to the posts of Principal and Vice Principal was against the rules, had been victimised. The minute went on to say that it was obvious that the then Principal and the Vice Principal bore a grudge against the applicant and instigated one Shri Lila Krishan, Storekeeper to give an allegation dated 1.5.80 to the Principal making certain allegations of manhandling by the applicant. It was stated that while the incident of manhandling is alleged to have taken place on 9.4.80, the complaint was filed with great delay on 1.5.80, no witnesses were named, and the alleged incident was itself inquired into by the Vice Principal who was

prejudiced, and the Principal had also tried to get the applicant's post abolished, which pointed to his prejudice too. As regards the second charge viz. of not routing the representation through proper channel, it was stated that as the applicant's complaint was directed against the Principal, he could not have routed his application through that channel and the applicant's allegations against the Principal not possessing the requisite qualifications had since been found correct vide Education Department's letter dated 6.6.90. The minute went on to add that as the applicant had himself been informed by the department in November, 1987 that his case would be reopened after Education Department's clarification was received and now that the Education Department had upheld the applicant's contention, this was a fit case for the applicant to be reinstated from the date he was compulsorily retired. The third charge was likewise dismissed, and the minute concluded as follows:

"By virtue of the powers conferred on me under Rule 29 A of the CCS (CCA) Rules, 1965, after reviewing the case as stated above, I hereby order that the penalty of compulsory retirement imposed on Shri Tomar be set aside from the date of its imposition. Shri Tomar should be treated as in continuous service for all purposes including pay and allowances, seniority, promotion, etc. The orders to this effect should be imposed immediately."

I also order that the matter be investigated separately as to how Shri C.L. Gupta was appointed as Principal without possessing valid and recognised qualifications and why the Vigilance Unit failed to initiate any action against Shri Gupta

A

etc. till now. The role of Vigilance Unit is not merely to catch the defaulters but also to protect the innocent."

6. On receipt of the above Minute, the matter appears to have been further examined in the Ministry and keeping in view GOI's instructions under Rule 29 A CCS (CCA) Rules and under Rule 5 UPSC (Exemption from Consultation) Regulations, 1968 a reference was made to the UPSC for advice on the orders of the then Dy. P.M. & Agri. Minister. The UPSC held that the point now made in the review petition by the applicant relating to the unrecognised qualifications of the Principal, ~~and~~ bore no nexus with the charges which stood proved against the applicant. The UPSC advised that since no new evidence or facts impinging on the merits of the case, had been brought out in the present review petition, there was no justification to warrant review of their earlier advice and the review petition was therefore fit to be rejected.

7. The then Agri. Minister on 30.12.92 agreed with the departmental view that the UPSC's advice may be accepted, and the applicant was accordingly intimated of the rejection of this review petition by impugned order dated 16.2.93, which the applicant now seeks the quashing of.

8. At the outset we note that the applicant's cause of action arose with the passing of the impugned order of compulsory retirement on 7.1.84. Even if we take the cause of action as arising from the rejection of his initial

review petition by order dated 9.7.84. We find that the OA is grossly time barred and hit by limitation under Section 21A.T. Act, as the OA was filed on 28.7.93, that is after nearly 9 years. It is well settled that repeated unsuccessful representations not provided for by law do not extend the period of limitation and hence in this case, the applicant cannot legally claim that his cause of action arose only on 13.2.93. The OA is fit to be rejected on this short ground alone.

9. Coming to the merits of the case, the applicant has filed written arguments which are taken on record, and on that basis his counsel Shri Dahiya has argued that the minutes of the then Dy. P.M. & Agri. Minister dated 26.4.91 constituted a final order passed under Rule 29A CCS (CCA) Rules, and no further consultation was necessary. He contends that by this minute, the earlier orders rejecting his review petition were set aside, and all that the respondents were required to do was to implement the contents of the minutes dated 26.4.91 and reinstate the applicant after quashing the order dated 16.2.93. He contends that UPSC's advice could not have been obtained after that order dated 26.4.91, and in any case UPSC's advice was not binding on the President. It is further contended that the impugned order dated 16.2.93 did not reflect UPSC's advice. It is also alleged that the President was misguided, and the order of reinstatement was concealed from him, and the impugned order dated 16.2.93 was

A

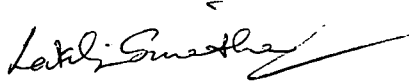
wrongly and illegally passed for which he had no jurisdiction, he having already exercised his powers of review on 26.4.91.

10. This is a complete misreading of the legal position. It is well settled that notes and minutes in Govt. files do not constitute final orders of Govt. Those notes and minutes have to be embodied in a Govt. Circular, memorandum, letter, instruction or such like instrument, authenticated and issued in the prescribed manner by the authority competent to do so, before it can be termed a final order or decision of Govt. No doubt, the then Dy. P.M. & Agri. Minister in his minute dated 26.4.91 had ordered setting aside of the order compulsorily retiring the applicant, but in the light of the GOI's instructions under Rule 29A CCS (CCA) Rules read with Rule 5 UPSC (Exemption from Consultation) Regulation, 1958, further consultation with UPSC was necessary. What is important to note is that after obtaining the advice of the UPSC the matter was re-submitted to the new Agriculture Minister (by then the earlier incumbent as Dy. P.M. & Agri. Minister had demitted Office) who decided to accept the UPSC's advice that there were no good grounds to warrant review of the orders of compulsory retirement passed earlier, which decision was embodied in the impugned order dated 16.2.93 duly authenticated by the competent authority and issued in the prescribed manner. The applicant's contention that the impugned

order dated 16.2.93 did not reject UPSC's advice or that the order dated 26.4.91 passed by the then Dy. P.M. & Agriculture Minister ordering the applicant's reinstatement was concealed from the new Agri Minister when he accepted the UPSC's advice to reject review of the earlier orders of compulsory retirement are wholly without basis. A perusal of the relevant file clearly indicates that the minute of the then Dy. P.M. & Agri Minister dated 26.4.91 as well as UPSC's advice were squarely placed before the new Agri Minister when he took the decision that there were no good grounds to review the earlier order of compulsory retirement and the impugned order dated 16.2.93 correctly reflects the UPSC's advice which is embodied in that order itself.

11. No other grounds were pressed. The applicant <sup>Counsel</sup> has cited the ruling in A.N.D. Silva Vs. UOI AIR 1962 SC 1130 in support of his arguments but in the facts and circumstances of this case as explained above that ruling does not assist the applicant.

12. In the result we see no infirmity in the action taken by the respondents which would warrant our interference. The OA fails and is dismissed. No costs.

  
( LAKSHMI SWAMINATHAN )  
MEMBER (J)

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

/ug/