

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.56/1992

Thursday this the 6th day of January, 1994.

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

THE HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

George Philip,
Scientific Officer(SC),
Plasma Physics Division,
Bhabha Atomic Research Centre,
Trombay, Bombay.

Applicant

By Advocate Mr.George Varghese Kannanthanam

vs.

1. Government of India, represented by
the Secretary to the Government of India,
Department of Atomic Energy,
Anushakti Bhavan, C.S.M.Marg,
Bombay-400 039.

2. The Director,
Department of Atomic Energy,
Bhabha Atomic Research Centre,
Trombay, Bombay-400 085.

.. Respondents

By Advocate Mr.T.P.M.Ibrahim Khan

ORDER

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

Applicant who was a Scientific Officer under respondents, challenges Annexure A1 order imposing the penalty of removal from service on him, for violating the undertaking that he would return to his post, after two years of study at Canada under a Commonwealth Scholarship. He overstayed the period and on that account Annexure A18 chargesheet was issued to him. By Annexure A19, he replied to the charges, then reported back on 10.12.86, and joined the post. Notwithstanding that, the inquiry went on, and applicant was removed from service.

2. There can be no doubt that applicant did not report for duty as he should have, at the end of the period of leave. According to him, considering the predicament in which he was placed, the punishment imposed is harsh.

.2.

3. As long as the finding of facts entered by the Disciplinary authority is supported by evidence, and as long as no procedural irregularity is committed, so long they are not liable to be set aside. Yet, the doctrine of proportionality which has seeped slowly but steadily into realms of administrative law, make it imperative that the punishment awarded should be proportionate to the gravity of the wrong committed. That is the view consistently taken by the Apex Court in Bhagat Ram vs. State of Himachal Pradesh (AIR 1983 SC 454), Ranjit Thakur vs. Union of India and others (AIR 1987 SC 2386), Shankar Dass vs. Union of India and others (AIR 1985 SC 772), and Union of India vs. Parama Nanda (AIR 1989 SC 1185).

4. We are not unaware, that the facts of some of those cases are slightly different, but the principles laid down, is one of uniform application. The principle is that there should be proportionality between punishment and gravity of the wrong committed. There is no doubt that applicant is guilty of abandoning the post of duty. But there can be little doubt that he was caught in a mental conflict. On one side there was the prospect of career improvement by availing a Commonwealth Fellowship which does not come in the way of everyone. On the other side, there was an obligation to return to his post of duty on the expiry of leave. Applicant might not have weighed the consequences in golden scales.

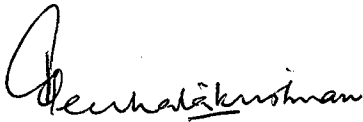
5. It appears to us that having regard to the facts of the case, the punishment imposed is harsh. Annexure A6 shows that even the department considered that if the applicant obtained a doctoral degree, it would be of use to the Department. However, we do not want to substitute our opinion regarding the quantum of punishment. As respondents themselves have pointed out, applicant has an alternative remedy under Rule 29A of the Central Civil Services (Classification, Control & Appeal) Rules.

.3.

He must be relegated to that remedy. If applicant moves the competent authority under the aforesaid rules within one month from today, that application will be treated as validly instituted, and the competent authority will consider the quantum of punishment in the light of the principles enunciated by the Apex Court. The punishment imposed by Annexure A1 is quashed, while the findings of facts are affirmed.

6. Application is disposed of as above. No costs.

Dated the 6th January, 1994.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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