

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

C. A. 612/92

DR. S.K. Tandon

Petitioner

Shri Umesh Chandra, Advocate
with Shri T.N. Gupta, Advocate
versus

for petitioner

I.T.R.C. Lucknow & others

Respondents

Shri A.K. Chaturvedi, Advocate

for Respondents.

HON. MR. JUSTICE R.K. VARMA, V.C.

HON. MR. V.K. SETH, ADMN. MEMBER

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed under section 19 of the Administrative Tribunals Act, 1985, the petitioner has sought a direction to the respondents to make payment of the expenses incurred by the petitioner with regard to his deputation proposal for participating in International Conference, and for quashing the order of non approval of deputation, as informed on 26.9.92 and 13.9.91, and further directions restraining the enquiry officer respondent No. 4 from proceeding with the enquiry into the charges against the petitioner who has not committed any misconduct so as to invoke disciplinary proceedings against him.

2. The facts giving rise to this petition, briefly stated, are as follows. In May, 1971, the petitioner possessing qualification of M.Sc., Ph.D, joined as Scientist 'C' in the Industrial Toxological Research Centre (ITRC), Lucknow respondent No. 1, which is a unit of Council of Scientific and Industrial Research (C.S.I.R.), New Delhi, respondent No. 2, a Society registered under the Societies Registration Act, having its

Memorandum of Association known as Memorandum of Association of Council of Scientific and Industrial Research. The petitioner had good research career and got promotions as Scientist E-I with effect from February 1, 1981 and subsequently became Scientist E-II with effect from February, 1987. It is averred by the petitioner and not denied by the respondents that on account of distinguished work in the field of Chemical Toxicology the petitioner is being invited by different Scientific organisations of the world to attend the International Conferences and Seminars.

3. The Memorandum of Association of the Society C.S.I.R., states the objective of the Society in para 2 of its Memorandum of Association and in para 2 B thereof objective of Council is stated to be Scientific and Industrial applied Research of national importance and its major activities aim at research and development projects of national priority in the field of Science and Technology and the basic scientific research and Industrial /applied research and development progress and from the view points of future advancement of technology in consonance with national priorities etc. etc. One of the major activities of the Council, as stated in clause 2 of para 2 of the Memorandum is to enter into the arrangement with foreign Scientific agencies and institutions for exchange of scientists, study tours, training in specialised areas of Science and Technology, taking joint projects, providing technical assistance in the establishment of scientific institutions and for other matters consistent with the aims and objects

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of the society. Para 77 of the memorandum of Association of the Society empowers its governing body in order to carry out the objects of the society, to institute the scholarship and fellowships, sponsor and finance deputations within the country and abroad, grants in aid, establish research schemes and projects and special research centres in its own establishments or in research institutions, Universities, technical and technological colleges with industrial establishments. para 78 of Memo of Association provides that the terms and conditions governing the activities shall be laid down by the Governing body and it shall be within its power to amend or repeal any of these terms and conditions.

4. From the provisions made in Memorandum of Association of Society considerable emphasis is laid on promotion of research and development in the field of Science and Technology, sponsoring and financing the deputation within the country and abroad. Accordingly, the guidelines for visits abroad of C.S.I.R. Scientists as revised, have been published in February, 1987. Para 1.4 of the said revised guidelines provide for deputation abroad for participating in International conference. The provisions for participation in International conferences is reproduced hereunder:

"1.4 PARTICIPATION IN INTERNATIONAL CONFERENCES:

1.4.1 Proposals for participation in International Conferences and meetings of International, Scientific Organisations will normally be considered where half of the expenditure is met by the organisers of the conferences and/or National sponsors and CSIR has only to meet the rest of the

expenses. Evidence should be provided to indicate that the conference is indeed sponsored by the recognised academic, professional bodies of research societies.

1.4.2 INSA is the national adhering body to ICSU. The Government provides funds to INSA TO enable it to sponsor Indian delegations to ICSU and its various scientific unions e.g. IUPAC, IUPAP, URSI, IUGG, COSPAR. In case any CSIR Scientist proposes to attend any of the ICSU meetings or ICSU sponsored conferences he should first apply to INSA should his name be included in the national delegation, he should apply to C.S.I.R. alongwith a letter of support from INSA."

1.4.3 For non-ICSU conferences also, INSA and other agencies like DST, COSTED (ICSU) and some state Government provide partial support for participation in conferences. To help cover these under the guidelines, CSIR scientists should apply to these organisations also for partial support, and in case they are successful, they should then approach CSIR for the balance of T.A./D.A. required for participation.

1.4.4 CSIR directors will be authorised to give an undertaking to DST/INSA that in case 50% expenses are met by them, the CSIR will meet the balance.

1.4.5 However, in case the participation of a scientist is in the national interest, or the laboratory concerned has achieved a measure of the competence which has to be made known to the other participants, or in case the laboratory is embarking on specialised areas, assigned to it for building up competence, the proposal may be for building up competence, the proposal may be considered on merit, on the basis of justification submitted. For senior scientists, submission or acceptance of a paper for a conference would normally not be enough justification for sponsoring participation, request would merit consideration if he has been invited to perform important functions, e.g. as member of an international organising committee of the congress/conference, as Chairman of any session, or for delivering a key note address or lead LECTURE. The CSIR could in such cases consider total funding once in 3 years.

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5. In the year 1991, the petitioner was invited to attend the 8th International Conference on "Heavy Metals" in the environment at Edinburgh,

U.K. from September 16th to 20th, 1991 and to the international symposium on "cadmium in the human environment, Toxicology and carcinogenicity" at Gargnano, Italy from September 25th to 27th, 1991.

6. As required, under para 1.4.1 of C.S.I.R. guidelines for visits abroad of C.S.I.R. Scientists, 1987, the petitioner submitted the deputation proposal on 3.9.91 for participation in both the International conferences with the evidence that the conferences are indeed sponsored by the recognised academic professional bodies and research society. In the deputation proposal dated 3.9.91 the petitioner indicated that for participation in both conferences, the total expenses which were expected to be incurred, amounted to Rs 70,551.00 out of which the petitioner could manage Rs 46,676.00 from the organisers of the conferences and the national sponsors i.e. the State of U.P. The balance of expenses amounting to Rs 23,875.00 were required to be paid by the respondents and it was thus, clear that 66% of the total expenditure was managed by the petitioner from organisers of the conferences and National sponsors and the balance of 34% only was to be paid by the respondents.

7. As per para 1.4.1 of the guidelines, for visits abroad of C.S.I.R. scientists 1987, it has been provided that the proposals for participation in international conferences and meetings of International Scientific organisations will normally be considered, where half of the

expenditure is met by the organisers of the conferences and/or national sponsors and CSIR has only to meet the rest of the expenses. Accordingly, the approval proposal for participation of the petitioner which had been recommended by the Director, I.T.R.C. was normally expected to be approved by the CSIR and the petitioner would have been paid the balance of 34% of total expenditure, but the petitioner received a copy of the CSIR telegram in which it had been informed that the proposal for petitioner's deputation to U.K. and Italy had not been approved.

8. The petitioner then personally visited CSIR and had discussed with Mr. K.N. Jauhari, Head, International Scientific Collaboration and also Mr. S.N. Rai, Under Secretary, who informed him that due to foreign exchange crisis, his deputation could not be approved. The petitioner appears to have submitted the letter (document No. 5 annexed to the counter) to the Director, I.T.R.C. informing that the petitioner had received travel grant amount to Rs 20,955.00 and only a sum of Rs 4,956/- was required to be paid to him for meeting foreign travel expenditure. The petitioner also informed in the said letter addressed to the Director that for presenting papers in the conferences to be held at Italy he did not need financial support and that only for one conference to be held at U.K., he needed £ 227 for payment of registration fee and accommodation charges, which money the petitioner undertook to manage from his own source. Having thus, solved the difficulty of financing the foreign exchange which was to be the avowed cause

for not according approval to the deputation to the confefences, the petitioner made prayer in the said letter to the Director (Document No. 5 filed with Coutner reply of the respondents) that necessary permission may be given to him for presenting his papers in the above two conferences and he may be treated as on duty or granted leave from September 16th to 27th 1991.

9. In anticipation of the necessary approval/permission and the payment of the balance expenditure, the petitioner proceeded to atend the conference, after giving another letter dated September 13,1991 to the Director, ITRC (document No. 7 filed with the Counter reply of the respondents) informing that he was giving up his claim for foreign exchange involved in the trip and requested that the deputation may be sanctioned without anyforeign exchange component which he proposed to meet himself.

10. After his return from conferences the petitioner made various representation for payment of thebalance expenses payable to him, but he did not receive any payment and on the contrary the respondents proceeded to level charges against the petitioner for his attending the conferences without approval/permission of the CSIR.

11.Apparently, the Director, I.T.R.C. does not seem tohave placed before the CSIR fact that the difficulty of providing foreign exchange to the petitioner by the CSIR had been overcome by the petitioner undertaking to meet the same and the

letters document 5 and document 7 to that effect do not appear to have been submitted to the C.S.I.R. for according sanction to the deputation of the petitioner to the conferences, where he was going to participate.

12. In the counter reply of the respondents it has not been alleged by the respondents that the petitioner's proposal for deputation was in any manner defective so as to be rejected on the ground of such defect. The only consideration for not according approval which the petitioner himself gathered from the authorities of the CSIR was the difficulty of foreign exchange, for which the petitioner had found the solution and had intimated the Director accordingly for the purposes of obtaining sanction for the petitioner's deputation to the conferences where he was going to participate.

13. The entire contention in the counter is, however, limited to the objection raised against the petitioner for having proceeded without approval of his deputation. Therefore, the crux of the matter is that the petitioner's prayer for sanction/ approval of the proposal for his deputation to the conference after he had offered a solution to the problem of grant of foreign exchange to him by the CSIR, ought to have been placed before the C.S.I.R. for their consideration and it was not right for the Director I.T.R.C. to take the stand that the C.S.I.R. had irrevocably refused sanction to the proposal for petitioner's deputation.

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14. In view of the fact that the difficulty of providing foreign exchange was presumably the ground for not granting approval to the proposed deputation of the petitioner by the C.S.I.R. in the first instance, the non-submission of the case of the petitioner by the Director I.T.R.C. before the C.S.I.R. for re-considering approval of the petitioner's deputation to the conference in the new circumstance of foreign exchange difficulty having been overcome by the petitioner himself, appears to us to be the material omission, because of which it would not be justified to blame the petitioner having committed any act of indiscipline in proceeding for the conference without prior approval/permission.

15. It would be legitimate to assume that functioning of a body committed to development of Scientific Research and Technology like C.S.I.R. and its units must necessarily be oriented to promotion of research and development and activities conducive to the same, and as such any administrative decision in the matter of granting approval to the deputation of Scientist to attend the international conferences, cannot be taken dehors the consideration of usefulness of deputation to such conferences, particularly when the difficulty of foreign exchange component no more survived because of petitioner's undertaking to solve the same. It was in these circumstances incumbent on the Director, I.T.R.C. to have submitted to the C.S.I.R. the case of the petitioner for approval of his deputation in the changed circumstance upon the difficulty of foreign

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exchange having been overcome at the instance of the petitioner.

16. The petitioner was again invited in the year 1992 by the Organisers of the 5th International Conference on 'Nickle Bio Chemistry Technology and Ecological Issues' and to participate in the said conference to be held from 1992. The petitioner submitted deputation proposal on September 7 to 11, (Annexure-2 to the petition) to the respondents on 11.8.92 and the petitioner indicated in the said proposal that the organisers of the conference had agreed to pay the total of \$ 1200 towards air fare, registration fee, accommodation, meals, initially which was enhanced to \$ 1500 (equivalent to Rs 37,500) which amounted to 58% of the total expenditure of Rs 64,350/ and as such remaining balance amount of Rs 26,850/- i.e. 42% of the total expenditure was required to be met by the C.S.I.R.

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17. As no communication regarding approval or otherwise of the petitioner's deputation proposal was received by the petitioner and since the requirement of guidelines 1.4.1 relating to deputation in International conference was fulfilled the petitioner, in anticipation of approval proceeded on 7.9.92 to Canada to attend the conference to be held from 7.9.92.

18. After attending the conference the petitioner returned from Canada and came to know on 26.9.92 that the respondents sent a telegram at his residence rejecting sanction to the proposal of the petitioner for deputation to Canada conference

during 7th to 11th September, 1992, vide Annexure-3 to the petitioner. The telegram was sent on 26.9.92 when the petitioner was in Canada.

19. The petitioner has submitted that as per para 1.4.1 of the revised guidelines on the subject of deputation abroad for participating in International Conference, it has been provided that the proposals for participation will normally be considered where half of the expenditure is met by the Organisers of the Conferences and /or National Sponsors and C.S.I.R. has only to meet the rest of the expenditure. Since in the case of petitioner, the requirement of the said guideline contained in para 1.4.1 thereof was fulfilled, he was entitled to be normally considered for deputation and since no decision of approval or otherwise in respect of the proposal for petitioner's deputation was communicated to the petitioner, even though he waited for communication till the last day beyond which it would have been too late to proceed for attending the conferences, the petitioner was not unjustified in deciding to proceed for attending the conferences on normal and reasonable expectation of approval of his deputation proposal. It has been averred by the petitioner that the petitioner proceeded as it was the practice that the amount is being paid even after return from the conference and this averment has not been specifically denied in the Counter Reply.

20. the respondents appear to have taken the decision of non-approval belatedly and no reason for not according approval has been disclosed in the

telelgrhic communication. The non-disclosure of the reasons, in the circumstance, takes in^{an} element of arbitrariness and is not in consonance with fairness which is normally expected in an organisation primarily committed to the advancement of Research and Development.

21. We have heard the learned counsel for the parties and having ~~considered~~^{considered} the facts and circumstances as appearing on record, in respect of proposals for deputation of the petitioner to attend the conferences in Edinburgh and Italy in the year 1991, as well as in respect of the International Conference in Canada in the year 1992, we are of the opinion tht the petitioner is ~~not~~ to blame for having attended the conference₂ in 1991 as well as in 1992. So far as participation of the petitioner in the year 1991 is concerned, non-approval on account of foreign exchange problem was liable to be considered for review by the C.S.I.R. upon the petitioner's representation informing the solution to the problem and the Director, respondent No. 1 was not right in reiterating the non-approval without submitting the case of the petitioner to the C.S.I.R for review in the light of the new circumstance of the petitioner having offered to overcome the difficulty of foreign exchange.

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22. However, since the petitioner had in his letters dated September, 12, 1991 and September 13, 1991 addressed to the Director (Document No. 5 dated September 12, 1991 and document No. 7 dated September, 13, 1991 filed with the counter reply of

the respondents) stated that he proposed to meet the foreign exchange component himself and the petitioner has also met the same it is open for the respondents to consider ^{whether} the payment of a sum of Rs 4956 for meeting foreign travel expenditure can be sanctioned to him or not. In any event the petitioner cannot be penalised for having participated in conference by offering solution to the problem of foreign exchange which was the real fetter in the way of his proceeding for participation and which also appears to be the real reason for non-approval ^{of the} the petitioner's deputation to the conference in the first instance.

23. As regards the petitioner's participation in the conference in the year 1992, pending expected approval of the proposal for deputation to the conferences, the petitioner cannot be held guilty for having proceeded and not waited even after last date rendering the proposal infructuous. The post-event non-approval in this respect of deputation for petitioner's participation in the conference in Canada in the year 1992, without assigning any valid reason, cannot be allowed to militate against the legitimate claim of the petitioner in respect of balance financing required to be done by the C.S.I.R.

24. Accordingly, allowing this petition partly, we direct the respondent C.S.I.R to re-consider the case of the petitioner for according ex post facto approval to his deputation for the conferences attended by him in 1991 in the light of the circumstance that the petitioner had solved the problem of foreign exchange by offering to meet the

foreign exchange element himself and thereafter to consider whether or not a sum of Rs 4956/- for meeting foreign exchange travel expenditure is payable to him.

25. As regards the petitioner's claim in respect of participation in conference in Canada in 1992 we hereby set aside the ex-post facto non-approval communicated to the petitioner in respect of his deputation proposal on the ground of arbitrariness and direct the respondents to reconsider and decide the question of payment to the petitioner of the balance amount of 42% of the total expenditure which was required to be met by the C.S.I.R. as per guidelines. The compliance of this order shall be made by the respondents within two months of the date of communication of this order to them.

26. Before we part with this case, we must express ourselves on the disciplinary action initiated against the petitioner for having proceeded abroad to participate in the conferences both in 1991 and 1992 in the absence of approval of C.S.I.R. before his departure. As is clear from the objects of the C.S.I.R, it is an organisation vitally concerned with the promotional activities in the field of research and development. Consistent with the said objects of the C.S.I.R, it is only reasonable to expect the scientific spirit and zeal on the part of scientists working in the C.S.I.R. and its units for participation in Science conferences on deputation. It would be legitimate to think that the organisation of the C.S.I.R. and its units would have a liberal approach in pursuing promotional activities in the field of Scientific Research and Development since both the organisations and its scientists are engaged in the

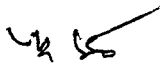
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common object of research promotional activities. As such in the background of the invitation to the petitioner to attend the conference and the offer of adequate sponsorship in respect of the petitioner's deputation proposal for attending the conference the petitioner's decision to proceed to attend the conference after waiting for the approval of C.S.I.R. till the last moment and in anticipation of the said approval, in the circumstances, narrated hereinabove, may have a bearing on the question of consideration of financial grant by the C.S.I.R. to the petitioner. but the C.S.I.R. switching over to an attitude of punishing the petitioner and taking disciplinary action against the scientist for proceeding in anticipation of the approval in the circumstances, is something which does not appear warranted in the circumstances, as it would result in dampening scientific spirit and loss of initiative, which is not conducive to the research-oriented functioning of the organisation and in a way self-destructive of its objects. It is not the case of the respondents that the instant case is one where the petitioner was adjudged and informed beforehand as a person not fit to attend the conference on scientific considerations so as to impute to him an act of having indulged in wasteful expenditure and non-promotional activity in the field of scientific research.

27. In the light of the discussion aforesaid, initiation of the disciplinary proceedings against the petitioner in the face of non-speaking order of non-approval by the C.S.I.R., cannot be held to be

valid or justified in the circumstances, and the same in our opinion is liable to be dropped.

28. This petition is accordingly disposed of with no order as to costs.


ADMN. MEMBER

LUCKNOW: Dated: 5-5-'94

Shakeel/


VICE CHAIRMAN