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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3337/2002

New Delhi, this the 3rd day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member(A)

Dr. Lakshman Das,
S/o Shri Gurmukh Singh,
Aged about 55 years,
R/o D-II/C-10,
Moti Bagh-I, New Delhi

.. Applicant

(By Advocate: Shri S.S. Tiwari)

versus

1. Union of India, through
Secretary,
M/o Health & Family Welfare,
Nirman Bhawan, New Delhi

2. Secretary,
Department of Personnel & Training,
M/o Personnel, Public Grievances & Pensions,
North Block, New Delhi

... Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER

Justice V.S. Aggarwal

Applicant (Dr. Lakshman Das) joined the Government service as Specialist Grade II in Neurosurgery in the Non-Teaching Specialist Sub cadre of the Central Health Service on 4.2.1982. He applied for foreign assignment in 1989. He was given the sanction of the President to proceed on deputation to Saudi Arabia for a period of one year. The period of deputation had been extended from year to year basis. While on deputation, he contends that he became eligible for time bound placement to Specialist Grade II Non Functional Selection Grade (NFSG) after completion of 8 years of service. He was considered for placement to the abovesaid grade by the



Departmental Promotion Committee. He was duly recommended and approved for placement, but was given promotion after his return from foreign assignment. He was promoted as Specialist Grade I from 1.3.1994 though he became eligible from 1.2.1991. The applicant had filed OA No.405/2000 in this Tribunal and in pursuance of the directions given, his representation had been rejected vide the following order of 11.6.2002:-

"The undersigned is directed to refer to the Hon'ble CAT, Delhi's order dated 28.01.2002 in O.A. No.405/2000, filed by Dr.Lakshman Das, Specialist Gr.I Neurosurgeon, Safdarjung Hospital wherein the CAT has directed the Ministry as follows-

"The O.A. is disposed of with a direction to respondents to consider applicant's claim for grant of NFSG on notional basis w.e.f. 1.12.91, with consequential benefits in the background of aforementioned Circular dated 22.11.90, and other rules and instructions on the subject, by means of a detailed, speaking and reasoned order under intimation to the applicant within 4 months from the date of receipt of a copy of the order."

2. The case of Dr.Lakshman Das has been considered carefully in the Ministry in the background of DoPT's O.M. No.22038/1/86-Estt(D) dt. 22.11.90 and other existing rules and instructions relating to promotion of CHS officers on foreign assignment and it has been noted that the applicability of the above mentioned Office Memorandum's provision for treating the present case as a special case is not justified as the foreign assignment of Dr. Das was on his own volition and hence cannot be kept at par with the Government sponsored cases which are in public interest.

3. Moreover, since no officer junior to Dr.Lakshman Das in his speciality has been promoted to Specialist Gr.II(NFSG) (now

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Specialist Gr.I) before the date of promotion of Dr. Das (i.e. 1.03.94), the provision of New Below Rule(NBR) cannot be applied in the present case.

4. Also, the case of Dr. Lakshman Das is not a solitary case of its nature so as to enable the Govt. to treat it as a special case. There are many other cases which also have to be reviewed accordingly leading to representations from affected officers. Further, the Hon'ble CAT Delhi has recently dismissed an O.A. filed by Dr. A.K. Rai in an exactly similar case.

5. It may also be noted that the instruction that the date of promotion in respect of officers on foreign assignment will be effective from the date they resume charge of the post in their parent cadre on completion of foreign assignment was clearly incorporated in the order of promotion of Dr. Lakshman Das dated 11.07.1991 and the same was communicated to Dr. Das. Even after this Dr. Das chose to continue his assignment abroad by seeking repeated extensions. He was granted extension five times respectively on 21.08.90, 28.08.91, 26.12.91, 8.02.93 and 25.02.94 for a total period of about 3 years and 8 months.

6. The case of Dr. Das has been examined thoroughly on the grounds of the facts mentioned above and the competent authority finds itself unable to antedate the Specialist Gr.I promotion of Dr. Lakshman Das to 1.12.1991.

Sd/-
(D.R. SHARMA)
DEPUTY SECRETARY TO THE GOVT. OF INDIA"

By virtue of the present application, he seeks quashing of the order dated 11.6.2002 whereby he had been denied antedating of his promotion as claimed by him.

2. The application has been contested. As per the respondents, in the year 1987, the Government of India had announced a package according to which an intermediate scale of Rs.3700-5000 was granted to Special

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Grade II officers after 5 years of regular service and another scale of Rs.4500-5700 on completion of 9 years of regular service. The name of the applicant was considered for promotion and he was granted the scale of Rs.3700-5000 vide the order dated 7.3.1988. Subsequently, the limits of granting Senior Scale and NFSG were reduced to 4 years and 8 years respectively. The applicant became eligible for promotion in NFSG from 4.2.1990 when he completed 8 years of regular service. At the relevant time, he was on foreign assignment. His name was included in the subsequent order, but it was made clear that in respect of the applicant, the date of promotion will be effective from the date he assumes the charge of his office. According to the respondents, the order is valid.

3. Before proceeding further and dealing with the relevant pleas raised at the Bar, we can refer to some of the other relevant facts which are not in controversy. The applicant was sent on foreign assignment with the sanction of the Government. He was conveyed the sanction of his transfer on deputation to Saudi Arabia for a period of one year. During the period of foreign service, the applicant was to receive from the Razayat Company Limited, a monthly salary. The joining time pay was also to be paid by the same company. However, during the period of leave, the matter was to be regulated under the rules of the foreign employer. The

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relevant portion of the same reads:-

"(v) The leave of Dr.Lakshman Das during the period of foreign service shall be regulated under the rules of the foreign employer. The leave salary in respect of leave granted by the foreign employer will also be paid by him and the leave will not be debited against the Government servant's leave account. The period of foreign service will not count towards leave under the Govt.of India.

(vi) The Govt.of India will not be liable to pay leave emoluments in respect of any special disability leave granted to Dr.Lakshman Das on account of any disability incurred in and through foreign service under Razayat Company Limited in Saudi Arabia even if such disability manifests itself after the termination of service under Razayat Company Limited in Saudi Arabia."

However, he retained his lien and had contributed for the Provident Fund and Central Government Employees Insurance Scheme. The same reads:-

"(xiv) During the period of foreign service Dr.Lakshman Das will continue to subscribe to the Provident Fund and Central Govt. Employees Insurance Scheme to which he is subscribing at the time of proceeding on foreign service, in accordance with the Rules and repay the outstanding loans, advances, if any, in the foreign currency in which the salary is paid to him."

After one year had expired, the extension had been obtained and the Government had allowed the same. During that period, he had completed 8 years of regular service and his matter came up for consideration for NFSG in the

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scale of Rs.4500-5700. As the applicant was on foreign assignment on deputation, the order passed was:-

"The President is pleased to place the following Specialist Grade II (Senior Scale) Officers of the Non-Teaching Specialist Sub-Cadre of the Central Health Service in the Specialist Grade II (N.F.S.G.) in the pay scale of Rs.4500-5700 in their respective specialities w.e.f. the date mentioned against their names:-

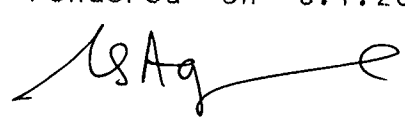
xxxx	xxxx	xxxx	xxxx	xxxx
Dr.Lakshman Das, Neuro-Surgeon			On foreign assignment in Saudi Arabia w.e.f. 10.6.1989.	

2. In the event of an officer, who is placed in the above mentioned Selection Grade, being on study leave/other kind of leave etc., deputation on foreign assignment, the placement orders will take effect from the date he/she resumes the charge of the post on completion of his/her leave/deputation on foreign assignment."

The said order further incorporates that officers who are on training/fellowship in public interest are to be treated as on duty.

4. It is in this back-drop that the present controversy had arisen. The claim of the applicant had been rejected.

5. Reliance on behalf of the respondents was being placed on the decision of this Tribunal entitled Dr.A.K.Rai v. Union of India and another in OA No.993/2001 rendered on 8.1.2002. According to the

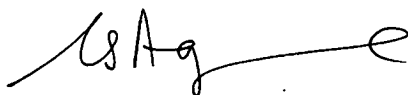


respondents, the matter in question has already been decided and, therefore, the claim of the applicant on parity of reasoning must fail. We have carefully perused the decision rendered in the case of Dr.A.K.Rai (supra). It appears that Dr.A.K.Rai also proceeded on foreign assignment and he was given proforma promotion from the date when his junior had been so promoted. This Tribunal had considered the controversy at length and it appears that in the first instance Dr.Rai himself had claimed relief for being placed in the Specialist Grade with effect from the date his junior was so promoted. This Tribunal recorded:-

"We have in paragraph 4 above seen that at one stage the applicant had himself sought the relief of being placed in Specialist Gr-I with effect from the date his next junior in the same Speciality (ENT) was promoted. On the same relief being granted and consequently upon him being placed in Specialist Gr-I w.e.f. 29.6.1992, the applicant stood reconciled. Impliedly and clearly enough, on the aforesaid relief having been granted, the applicant had accepted the fact of existence of a sub-sub-cadre of ENT Specialists within the overall sub-cadre of Non-Teaching Specialists."

These were the factors which weighed heavily with this Tribunal when the claim, as already referred to above, was dismissed. Herein, there is no person junior to the applicant who had been granted the said scale. Therefore, this controversy is not relevant.

6. The claim of the applicant was further



rejected on the pretext that he had proceeded on foreign assignment on his own volition and his case is not at par with the Government sponsoring cases which are in public interest. Immediately the question that comes up for consideration is as to whether, the applicant when he went on foreign assignment was in public interest or not? The Department of Personnel had issued Office Memorandum dated 29.1.1988. It recognises that since deputation of Indian officials abroad contributes to mutual goodwill and understanding between India and the foreign country concerned, it would be largely in public interest if as a rule, the lien of a Government servant or semi Government servant selected for foreign assignment on the basis of sponsorship of the Government of India is retained. It is on the strength of these instructions that it is asserted that the case of the applicant was not a sponsorship by the Government of India.

7. To appreciate the said controversy, we take liberty in referring to the fact that these instructions of 29.1.1988 have been superseded vide instructions of 29.6.1991 which have been placed on the record. They clearly prescribe that deputation on foreign assignments would be classified into four categories. The claim of the applicant would fall within category (b) which reads:-

"(b) Bilateral assignments to the developing countries of Asia, Africa and Latin America."

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Herein, there is no distinction between sponsoring names by the Government or when the applicant applied for foreign assignment. This becomes further clear from paragraph 4 of the said instructions which reads:-

"4. BILATERAL ASSIGNMENTS TO THE DEVELOPING COUNTRIES:

These cover assignments under the ITEC, (Indian Technical & Economic Cooperation) and other similar programmes and contract appointments in the Governments and para-statal organisations in the developing countries of Asia, Pacific, Africa and Latin America and remunerated by the concerned developing countries (as distinguished from the oil-rich and developed nations) according to their salary scales.

4.1 As far as possible, all organised recruitment of experts at graduate professional level and above for bilateral assignments should be on a Government to Government basis. In addition, individual officials may also secure such assignments by making applications in response to open advertisements by the Governments and para-statal organisations of the developing countries following the prescribed procedure; sometimes direct offers may also be received from these organisations by experts in recognition of their past work in the relevant areas.

4.2 Selection for assignments under the ITEC programme would be made as per the scheme being operated by the Ministry of External affairs and the Department of Personnel & Training. For these and other bilateral assignments on a Government-to-Government basis, the panel of experts maintained in the Department of Personnel & Training will be utilised for making selections. In addition, if necessary, suitable experts could be located in consultation with the relevant nodal Ministries and the State Governments."

Paragraph 4 deals with eventualities when some time direct offers are also received in recognition of work as



such.

8. Paragraph 8 of the said instructions further elucidates the matter that primary criteria for permitting a Government employee to undertake an assignment would be the convenience of the Government in sparing him from the point of view of the management of the service cadre to which he belongs and exigency of public service. Paragraph 14.5 assumes importance and reads:-

"14.5 Since deputation of Indian officials abroad contributes to mutual goodwill and understanding between India and the foreign country concerned, it would be largely the public interest, if, as a rule, the lien of Government employee and public sector employee selected for a foreign assignment is retained."

It is abundantly clear that deputation of Indian officials abroad contributes to mutual goodwill and understanding between India and the foreign country concerned and it recognises that it would be largely in public interest. Fundamental Rule 111 also becomes relevant. The same reads:-

"F.R.111. A transfer to foreign service is not admissible unless-

- (a) the duties to be performed after the transfer are such as should, for public reasons, be rendered by a Government servant; and



(b) the Government servant transferred holds, at the time of transfer, a post paid from General Revenues, or holds a lien on a permanent post, or would hold a lien on such a post had his lien not been suspended."

A conjoint reading of the same would show that a transfer to foreign service is not admissible unless the duties to be performed are for public reasons to be rendered by a Government servant. The expression "public reasons" has not been defined but in the context, it would mean public interest. This is so because the safeguard used in FR 111 is that it should be for public reasons. Expression "public reason" would obviously be "public interest". The expression "public interest" appears to be vague. No Government servant has a fundamental right to apply for posts in foreign countries. Against this background, the Government is left to decide when it is in "public interest" to allow a Government servant to apply for a post in another department. It is in this context of the absence of any fundamental right and the fact that the Government servant holds office during the pleasure of the President that the Supreme Court held in **Union of India v. Col. J.N. Sinha and Another**, 1971) 1 SCR 791 that it was one of the conditions of Government service that Government could retire an employee after he completes 50 years of age if it thinks that it is in "public interest" to do so.

9. The "public interest" vis-a-vis a Government servant would normally be the interest of the Government.

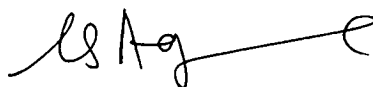
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Even the Supreme Court in the case of **Umapati Choudhary v. State of Bihar and Another**, (1999) 4 SCC 659 recorded that the necessity for sending on deputation arises in public interest to meet the exigencies of public service. These factors prompt us to conclude that may be a Government servant went on foreign assignment at his own avocation, but it was in public interest keeping in view the interest of the Government as the interest of the Government is directly involved and keeping in view the international relations with other countries. Therefore, to state that the applicant went on his avocation and was not entitled to the benefit claimed would be a travesty of justice and would not be according to law.

10. On behalf of the respondents, it was urged that the applicant has not challenged the order of 11.7.1991, the relevant portion of which we have reproduced above and, therefore, he is not entitled to the relief claimed. We have no hesitation in rejecting the said contention the reason being that if the order of 11.6.2002 is quashed, this would necessarily imply the relief to be granted because this was the order passed keeping in view and considering the order of 11.7.1991.

11. Resultantly, we allow the application and quash the impugned order and direct:-

- (a) that the applicant would be entitled to placement in the higher scale on completion of the required number of years of service; and



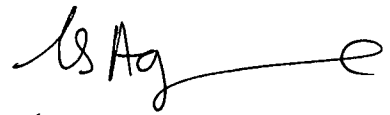
(b) that if he was not serving in India and was on foreign assignment, the notional benefit would be given to him but not the arrears.

No costs.



(R.K. Upadhyaya)
Member (A)

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(V.S. Aggarwal)
Chairman