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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.701 of 2002

New Delhi, this the 7th day of April, 2002

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Mr. Triloki Nath Chaturvedi
S/o Shri Shyam Lal Chaturvedi
aged about 44 years
R/o Sheetla Paise, Mathura,
Uttar Pradesh.

APPLICANT

(By Advocate: Shri Ajay Jha, proxy counsel for Shri
P.H. Parekh, Counsel)

Versus

1. Union of India
Through Secretary to the Government,
Ministry of External Affairs,
South Block,
Central Secretariat,
New Delhi-110 011.
2. Embassy of India
through the Ambassador,
P.O. Box 4090,
Abu Dhabi
United Arab Emirates.
3. Consulate General of India,
P.O. Box 737,
Dubai, UAE. -RESPONDENTS

(By Advocate: Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has impugned order No. Duba/Admn/5876/5/81 dated 18.2.2002 passed by the respondents whereby the services of the applicant had been terminated which is at Annexure A-7).

2. The case of the applicant is that he is a locally recruited clerk having been recruited by the Consulate General of India, Dubai, UAE. The terms and conditions applicable to the locally recruited clerk/typist are contained at Annexure A-2.

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3. These terms and conditions provide that these locally recruited employees are recruited on contractual basis under the powers delegated to Head of Missions/Posts. Local employees have separate entity and they are different from India-based personnel in so far as service conditions are concerned. They are on contract service liable to termination on one month's pay. CCS (CCA) Rules, Pension Rules are not applicable to locally recruited staff. Paragraph-H of their terms and conditions makes the provisions for termination. It enlists various grounds such as (a) inadequate performance (b) wilful misconduct, disobedience or neglect of duties (c) breach of security (d) discourtesy, misbehaviour with colleagues or superiors (f) frequent lack of punctuality without due justification to the satisfaction of the HOC. In case the Mission wants to terminate the services of locally recruited staff then the Mission is required to serve a show cause notice on the employee before termination except in the case of breach of security and in cases where services of locally employees are terminated, full facts indicating the reasons for termination of their services are to be reported to the Ministry immediately.

4. In this case the impugned order of termination of the service of the applicant, Annexure A-7 though does not specify any reason about his termination of service but it is a simpliciter as if his services are no longer required and he is to be paid one month's pay in lieu of one month's notice.

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5. However, in the counter-affidavit the respondents pleaded that the services of the applicant were terminated for breach of security. As the applicant who was working as a local recruit clerk in the Consular Section of Consulate General of India, Dubai, was instrumental in getting extension of validity of passport of one Mr. Naheed Miyan Khan who was given new passport on 13th October, 1998 and 15th October 1998 respectively. Said Shri Naheed Miyan Khan was a drug peddler and was a close associate of Dawood Ibrahim Kaskar. A CBI enquiry was also conducted who found that the applicant was primarily instrumental in getting the validity extended on old passport and change of passport, in an irregular manner and then after the enquiry, the CBI had advised the termination of the service of the applicant.

6. The applicant while challenging the impugned order submitted that he was working at the lowest rung and his duty was only to obey the orders of his superiors and it was as per the direction given by the Vice Consul (Passport) (hereinafter VC(P)) he put up papers before him and as per his directions the validity of the passport was extended and the passport was changed.

7. The counsel for the applicant further submitted that in the cases of such like notorious drug peddlers a verification is required from black listing section to which the applicant had no approach and the application of the said drug peddler was cleared by black listing section first and then on the orders of the VC (P) the validity of the alleged passport was extended and a new passport was issued.



8. The counsel for the applicant further submitted that since the case was cleared by black listing section so breach of security was not involved and the applicant being a local recruited Indian was otherwise also not considered with the breach of security. That task was only to be performed by the regular employees. He had not cleared the application from black listing section.

9. The counsel for the applicant has also submitted that in paragraph 4 (e) and (f) he had levelled certain allegations how the VC (P) had marked the application to him and it is on the direction of the VC (P) the applicant had given priority to the processing of the passport application of Shri N.M. Khan but the department had not replied these allegations in their counter-affidavit. However, when this matter was taken up for arguments and when this point was raised, the respondents were directed to file a specific affidavit denying or admitting the allegations as contained in para 4 (e) and (f) though thereafter the respondents filed an additional affidavit but the same did not satisfy to the court. Therefore, the court had asked the respondents to produce the relevant record. So as per the directions given by the court, relevant record was produced.

10. The learned counsel for the applicant then emphasised that on the top of the application form it has been clearly written to clear the case of Mr. Naheed Mian Khan on the same day and he got the priority and bore the endorsement of clearance from black listing

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section so in a way the applicant had no role to play but to obey the orders of VC(P) for issue of passport. Thus the applicant submitted that the breach of security was not at peril so his case has to be taken out of the ground of breach of security and he was entitled to a show cause notice and to give an explanation for the so called misconduct. Since no opportunity was given so no explanation was sought and the applicant has been condemned unheard.

11. In reply to this Shri Bhardwaj submitted that it is a fact that passport of one Shri N.M. Khan a drug pedlar and an associate of Dawood Ibrahim Kaskar was cleared by the Mission in which the applicant and VC(P) were involved. The enquiry conducted by the CBI clearly shows that VC(P) had made a statement before the CBI authorities that it was at the behest of the applicant that he cleared the application of Sh. Naheed Miyan Khan and probably ignored certain formalities.

12. As far the endorsement on the old passport and clearing of the application for issue of new passport is concerned, the respondents counsel submitted that it is the applicant who had taken the application to the VC(P) and made a statement before him that Shri N.M. Khan is known to him and had requested for priority to be given to Mr.N.M. Khan and on the basis of the statement of the applicant, VC(P) had accorded priority to said Shri N.M. Khan.

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13. As regards the plea of the applicant that no breach of security was involved and even if it was involved then the applicant had no role to play in the breach of security because it was only black listing section who had to clear the application.

14. In my view this contention of the applicant has no merits because on going through the record produced by the department it is amply clear that the application was processed in a hurried manner at the behest of the applicant himself so much so the applicant himself as per Annexure A-3 and A-4 admits that though it was a reference case but clearance from the dealing hand, namely, Smt. Kiran Kathuria was not obtained. Thus the regular procedure was also by-passed by the applicant. Though it is a case of the applicant that it was only VC (P) who was responsible but it appears from the records produced by the department that the VC (P) and the applicant both were involved in this case and the major role was played by the applicant himself, since he pleaded before the VC (P) that Mr. N.M. Khan is known to him and there is no need for observance of procedural requirements. As such this case cannot be taken out of category of breach of security.

15. The learned counsel for the applicant has also submitted written arguments. All those arguments speak only about an opportunity to be afforded to the applicant and as no opportunity was afforded to the applicant, so principles of natural justice has not been observed. All these arguments show as if the case was not on the basis of breach of security but on the basis



of the grounds for termination of contract as enshrined in paragraph-H of terms and conditions of local recruit Indians. Since the applicant was instrumental for clearing the passport and the same had already been confiscated by the Indian Mission in Dutch as he was operating for drug peddler and was an associate of Dawood Ibrahim Kaskar so I find that the requirement of affording an opportunity and following the principles of natural justice was not required in this case since Paragraph-H empowers the mission to terminate the services of such type employees without affording any opportunity to the applicant.

16. In view of the above, no interference is called for. Accordingly, the OA is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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