

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2669/2001

New Delhi, this the 3rd day of July, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

Amarjit Kaur
W/o Shri Jaswant Singh
Aged 49 years (DOB 10/10/51)
R/o Burgerzielweg 12
3006 Berne
Switzerland
(Messenger in the
Indian Embassy Bern)

...Applicant

(By Advocate Dr. D.C.Vohra)

V E R S U S

1. Union of India through
the Foreign Secretary
Govt. of India
Ministry of External Affairs
South Block, New Delhi - 110 011.

2. Embassy of India
Berne
Switzerland
through The Head of Chancery
C/o Ministry of External Affairs
South Block
New Delhi - 110 011.

...Respondents

(By Advocate Sh. A.K.Bhardwaj)

O R D E R (ORAL)

By Hon'ble Sh. Govindan S.Tampi,

Reliefs sought for by the applicant in this OA
are as below :-

(i) an order by this Hon'ble Tribunal quashing/setting aside/revoking the impugned order dated 11-4-2001 which erroneously and illegally treats the period 27-11-99 to 7-1-2001 as Extra Ordinary leave because the applicant was absent from duty because of her illegal termination since 28-11-99 till 7-1-2001 and her subsequent reinstatement in service when she approached this Hon'ble Tribunal by the respondents No.1 & 2 themselves.

(ii) an order/direction by this Hon'ble Tribunal to the respondents No. 1 & 2 to treat the period of applicant's absence from duty (not attributable to her action/conduct) from 27-11-99 to

7-1-2001 as period spent on duty for all purposes e.g. pay and allowances, leave accumulation and other service benefits within the parameters of the FR 54 and the judicial pronouncements by the Hon'ble Supreme Court and followed consistently by this Hon'ble Tribunal in a catena of cases and even by the respondents No.1 & 2 themselves.

(iii) the cost of these proceedings be awarded in favour of the applicant and against the respondents who have afflicted this avoidable litigation, mental agony and the expenses on the applicant.

(iv) any other or further relief as may be deemed fit and proper in the facts and circumstances of the case of the applicant may also be granted in favour of the applicant and against the respondents.

2. Heard S/Shri Dr. D.C.Vohra and A.K.Bhardwaj, Id. counsel for the applicant and the respondents respectively.

3. The applicant was appointed as Office Attendant/Messenger in the Indian Embassy at Berne, Switzerland as a local recruit on 31-10-88 and has been serving the respondents satisfactorily. Seven years later on 4-12-95, another person (Sh. Sunder Lal) was also recruited as Messenger by the respondents. On 27-10-99, the respondents served on the applicant a termination notice, in direct violation of the principle of 'last come first go', while retaining Sh. Sunder Lal. In reply to the applicant's representations dated 10-1-2000, 17-4-2000 and 24-5-2000, the respondents informed on 13-7-2000 that her termination was on account of the abolition of the post against which she was working and there was no malafide in the said termination. She was also advised that she was free to apply for any vacancy arise in future. On her approaching this Tribunal in

- 3 -

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OA 1323/2000 and appreciating the validity of the points raised by her, the respondents re-examined the issue and directed her reinstatement on 27-12-2000/8-1-2001. However, it was ordered by the respondents that the period in between 27-11-99 and 8-1-2001 was to be treated as Extra Ordinary Leave without pay, though the said absence was not at all attributable to the applicant. On 8-2-2001 OA No. 1323/2000 was disposed of with the following directions :-

✓
"With regard to the relief claimed by the applicant regarding benefits including back wages w.e.f. 1-11-99 to the date of reinstatement, I direct the respondents to examine this aspect and appropriate orders may be passed in accordance with law within a period of two month from the date of receipt of a copy of this order"

However, by the letter dated 11-4-2001, issued by the respondents, the applicant's claim for continued service has been turned down as below :-

✓
"With reference her representation dated 4-1-2001, seeking clarification with regard to regularisation of the period from 27-11-99 to 7-1-2001, Smt. Amarjit Kaur, Messenger, is hereby informed that her request was referred to the Ministry of External Affairs, New Delhi and the competent authority has intimated that the period from 27-11-99 to 7-1-2001 will be treated as Extra Ordinary Leave without pay. However, she will be allowed to carry forward the balance of leave on credit as on 26-11-99. It is also clarified that she will not earn any leave for the duration of her Extra Ordinary Leave"

Hence this OA.

4. Grounds raised in the OA are as below :-

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(i) in terms of FR 54 (2) a person who is reinstated should be entitled for all the benefits of pay and allowances.

(ii) the applicant was absent from duty between 27-11-99 and 7-1-2001, not on her volition but was forced to do so by the wrongful termination of her services by the respondents.

(iii) treating the period of absence as EOL without pay ^{had} caused her irreparable damage.

(iv) termination of her service was admittedly illegal and, therefore, she had to be treated for the intervening period, as being on duty with all the benefits.

(v) the respondents' action in denying the benefit of backwages and other benefits for the period was improper, incorrect and against all canons of justice.

5. In the reply filed on behalf of the respondents, it is pointed out that the services of the applicant, a locally recruited messenger in the Indian Embassy at Berne were terminated in November 1999, consequent upon the abolition of one post of messenger by the Ministry of Commerce, Govt. of India, against which she was working and which was being provided for under Commerce Ministry's Budget. On the applicant's filing OA 1323/2000, alleging that her termination was incorrect as Sh. Sunder Lal, her junior as Messenger was permitted to continue, the

matter was examined by the Ministry of External Affairs, when it was indicated that all the posts in the missions abroad (Defence, Commerce, Chancery etc.) were all administratively controlled by the Head of the Mission and that the principle of 'first come last go' should have been adopted. Accordingly, the applicant was offered reinstatement, subject to refund of gratuity, leave salary etc. and she rejoined on 8-1-2001. While disposing of the OA, the Tribunal had directed the respondents to consider the case of payment of back wages to the applicant. However, on examination, it was decided that the same, which amounted to Rs. 8,45,000/- could not be granted to her on the principle of 'no work no pay'. At the same time, it was indicated that there would be no break in her service and that the service rendered by her prior to her termination would ^{count} for all purposes. Her last pay drawn has also been protected. As the termination of her service in November 1999 was not malafide and not stigmatic and she had been given one month's notice. Nothing further remained to be done. Respondents point out that she was working against a post which was budgeted by the Commerce Ministry, and, therefore, when the post was abolished, they correctly thought that her services had to be dispensed with. This was subsequently shown to warrant a revision on the basis of the principle 'first come last go' and, therefore, the applicant was reinstated with other benefits. Nothing further remained ^{ed} to be done. Infact ^{when} ^{as} a temporary employee, holding a post on a contractual basis, is discharged from service without placing any stigma, the same was not punitive and the same was not a case of a

dismissal or removal, reinstatement from which would invite action under Rule FR 54 (2). The applicant who has not worked, cannot claim any salary, more so as, another person (Sh. Sunder Lal) had actually worked during the period and drawn salary. There was no basis for payment of Rs. 8,45,000/- to the applicant in the above circumstances.

The respondents also referred to decisions in the cases of Srinivas Ganesh Vs. UOI (AIR 1956 Bombay 455), R.C.Tripathi Vs. UP Public Service Tribunal & Ors. (JT 1994 (2) SC 84) and Jagdish Lal Sehgal Vs. UOI in OA 443/95.

6. During the oral submissions, both the learned counsel reiterated the points raised by them in the pleadings. ~~Dr.~~ D.C.Vohra, ld. counsel, indicated that as the termination of the applicant's service was illegal and accepted so by the respondents themselves by way of reinstatement, it is evident that the applicant was kept away from duty by the respondents and, therefore, she deserved to be paid wages for the period. He referred to the decision in the case of UOI Vs. K.V.Jankiraman (JT 1991 (3) SC 527). Besides the respondents cannot take the plea of financial burden to defeat the just claim of the applicant, as pointed out by the Tribunal in the case of P.N.Tandon & Anr. Vs. UOI & Ors. (I (1998) ATLT (CAT) 295). In reply, Sh. Bhardwaj, ld. counsel, asserted that the principle of 'no work no pay' has to be accepted in circumstances like the present one. The respondents had been generous enough to reinstate the applicant, adopting the principle of 'first come

last go' and she has no further claim, which can be upheld. In the circumstances of the case, According to Sh. Bhardwaj, the OA deserved to be dismissed.

7. I have carefully considered the matter. In this OA, the applicant is seeking the benefit of backwages and continuity of service between the dates of termination of her service and reinstatement. Facts are not disputed. The applicant whose services were engaged by respondent No.2 (Indian Embassy at Berne), as Messenger on 31-10-88/1-11-88, was disengaged from service on 27-10-99. Following representations and filing of OA 1323/2000, respondents have reinstated her w.e.f. 7-1-2001. However, no wages for the period between her date of dis-engagement i.e. 27-10-99 and 7-1-2001 was paid to her on the basis of the principle 'no work no pay'. Respondents admit that though the applicant's services were dispensed with, as she was working against a post, sanctioned by the Commerce Ministry, which was abolished, they reinstated her on the advise of the Legal Deptt. that her services could not have been terminated, while those who were engaged subsequently were retained. Evidently, therefore, the respondents have themselves admitted by implication that the termination of the applicant's service was incorrect. It follows therefrom that during the period between the termination and the reinstatement, the applicant was prevented from performing her duties by the respondents. The applicant, therefore, could not be considered as having not performed her duties.

- 8 -

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The above findings gains support from the decision of the Hon'ble Supreme Court in K.V.Jankiraman's case (supra) is totally applicable in this connection. Relevant portion of the decision reads as below :-

"24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

8. Evidently, therefore, the applicant is correctly entitled for the payment of wages, as if she was performing duties, which she would have been, but for the respondents incorrectly terminating her services.

9. Another points raised by the respondents is that grant of backwages to the applicant would cast financial burden to the tune of Rs.8,45,000/- on themselves, more so because during the said period, another individual had been working and had drawn salary. This argument has no legs to stand on.

- 9 -

Financial burden or otherwise is irrelevant, when an individual's right is infringed and the respondents cannot take any shelter behind such a plea. Tribunal's following observations in the case of P.N.Tandon (supra) are relevant in this regard :-

"7. The question of the financial burden should not deter at least the Union of India from given the benefit of arrears of pay and promotion legitimately due to the applicants. In M/s Mackinnon Mackenzie & Co. Ltd. Vs. Audrey D'Costa & Another, ATLT 1987 (I), 467 the Supreme Court held that the statutory obligation to pay equal remuneration to both male and female Stenographers cannot depend upon the financial ability of the management to pay equal remuneration as provided by the statute. This ruling applied with greater force when the employer happens to be the Union of India."

10. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned order dated 11-4-2001 is quashed and set aside and the respondents are directed to treat the applicant as having continued to work during the period between her improper termination and ultimate reinstatement i.e. between 27-10-99 and 7-1-2001 with all consequential benefits including backwages. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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