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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 234/99

New Delhi, this the 10th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

Dr. Dinesh Kumar Paliwal,
Presently Consul (Education)
in the Consulate General of India,
Yew York, USA.

...Applicant

(By Advocate: Shri B.T.Kaul)

Vs.

1. Union of India through
The Foreign Secretary,
Ministry of External Affairs,
South Block, New Delhi.

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

2. Union of India through
The Secretary,
Ministry of Human Resources Development,
Department of Education,
Shastri Bhawan,
New Delhi.


...Respondents

(By Advocate: Shri A.K. Bhardwaj)

J U D G M E N T

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant who was working as Assistant Education Advisor in the Ministry of Human Resources Development (MHRD, for short) and was appointed in the month of October, 1996 as Consul in the Consulate General of India at New York has assailed the order/letter issued by the Ministry of External Affairs (MEA, for short) on 5.6.1998 rejecting the applicant's request for being granted the diplomatic status of First Secretary.


10.5.99

2. The admitted facts are that when the initial proposal for applicant's appointment was made by the MHRD in the month of April, 1996 the applicant was getting pay @ Rs. 3625/- in the pay scale of Rs. 3000-4500/-. However, the Foreign Service Board (FSB, for short) took a long time to process the applicant's case and it was eventually in the month of October, 1996 that the FSB approved the proposal relating to the applicant. In the meantime the applicant had earned some increments and was admittedly receiving pay @ Rs. 3750/-.

3. When the proposal went to the Appointments Committee of Cabinet (ACC, for short) for final approval the proposal was sent back seeking an explanation from the FSB as to why the tenure had been curtailed to only one year instead of the normal tenure of three years.

4. It was only some time in the month of May, 1997 that the FSB again considered the proposal and approved the posting of the applicant as Consul for three years. As already mentioned, by that time the pay of the applicant had increased to Rs. 3750/- per month.

5. Respondent no. 2 submitted the applicant's case to the ACC for approval and, according to the applicant, at that time there was no mention in the proposal of FSB about the diplomatic rank to be assigned to the applicant. The ACC finally approved the appointment of the applicant and by the order/ letter dated 22nd September, 1997 (A-111) the applicant was appointed as Consul (Education) in the Consulate General of India, New York. However, in that letter it was mentioned that the diplomatic status of the

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applicant would be equivalent to Second Secretary. ^{But} ~~However~~,
in the endorsement under the aforesaid letter/order the
following words were added:

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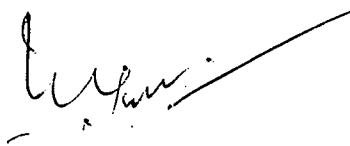
1).....

2).....

3) Ministry of External Affairs, South
Block, New Delhi. This is subject to
the case referred to the Ministry of
External Affairs for redesignating the
Officer as First Secretary vide this
department's O.M. of even number
dated 4.9.1997".

6. The applicant has annexed to the O.A. a copy of
the letter dated 4.9.1997 also as Annexure A-II. That
letter, in the form of Office Memorandum, was sent by the
MHRD to the MEA in which it was stated that the applicant was
drawing Rs. 3750/- per month as basic pay when the ACC
approved his appointment as Consul (Education). The MEA was
accordingly requested to look into the matter and ensure that
necessary corrections to the revised terms and conditions are
issued by the MEA.

7. The applicant admittedly joined the new post in
pursuance to the appointment letter dated 22.9.1997. But he
continued to make representations requesting that his

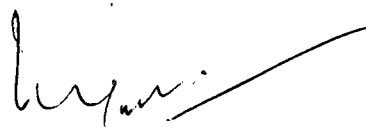


diplomatic status may be raised to First Secretary's level. The applicant's representation elicited the response from the MEA in the form of the impugned letter dated 5.6.1998.

8. The applicant's contention is that the crucial time as regards the diplomatic status to be granted to the applicant would be the date on which the ACC initially gave approval or at least that date on which the FSB gave the approval. As already stated, the FSB had given the approval in the month of October, 1996 though initially for only one year which proposal was not accepted by the ACC who sent the matter back and it was only in the month of May, 1997 that the FSB reconsidered the matter and approved the posting of the applicant for three years.

9. The respondents in reply take the plea that the relevant date would be only when the proposal was initially made by the MHRD for applicant's appointment which in this case was the month of April, 1996. The respondents have further taken cover behind para (vii) of the appointment letter (A-III) in which it is mentioned that the rank of the applicant would be Second Secretary and that the diplomatic equation of the applicant i.e. Second Secretary will not be upgraded in the course of his posting abroad due to any reason such as revision of pay-scale, earning of annual increment etc. etc.

10. The applicant has in his rejoinder reiterated the contentions made in the O.A. It is further contended that the plea of the respondents that the post of Consul(Education) in the Consulate General of India, New York

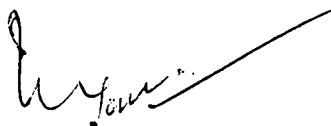


is of the level of Second Secretary was false as the applicant's predecessor was ranked equivalent to First Secretary.

11. We have heard the learned counsel for the parties for final disposal of the O.A. at the admission stage itself and have carefully perused the material placed by them on record.

12. Neither the applicant nor the respondents were able to support their respective contentions from any guidelines or instructions issued by the Govt. of India as regards the date which would be relevant for deciding the question of the diplomatic status to be granted to non-IFS officers. While the applicant's counsel has strenuously urged before us that action of respondent no. 1 in turning down the applicant's request for grant of diplomatic status equivalent to the First Secretary is arbitrary, the learned counsel for the respondents has argued that the decision taken by the FSB and the ACC being based upon the request of the MHRD made in the month of April, 1996 the diplomatic status granted to the applicant was perfectly justified as the applicant was drawing less than Rs. 3750/- as his basic pay in the month of April, 1996.

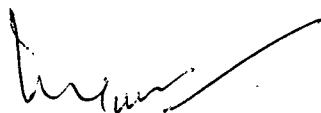
13. On giving our careful consideration to the rival contentions, we are of the view that the stand taken by the respondents is unsustainable. According to the MEA's order dated 16.2.1989, as at annexure A-1A, a non-IFS group 'A' officer drawing pay of Rs. 3750/- and above would be equated with an IFS officer of First Secretary's rank. It is true that when the proposal for the appointment of the applicant as Consul was initially made the applicant was



drawing only Rs. 3625/- per month as pay. But, as already mentioned, even before the letter of appointment was issued the MHRD had written to the MEA that since the applicant's pay had in the meantime increased to Rs. 3750/- he should be granted diplomatic status equivalent to a First Secretary. This fact was also specifically mentioned in the letter of appointment, as at annexure A-III. We have also on the file a letter from the Consulate General of India, New York addressed to the Under Secretary (FSB), MEA in which it is stated that the applicant was entitled to diplomatic rank equivalent to a First Secretary and that he was suffering recurring financial loss as there was a lot of difference in his foreign allowances and RG.

14. As regards para (vii) of the appointment letter, we are convinced that the endorsement made below the aforesaid letter clearly entitles the applicant to claim upgradation of his diplomatic status to First Secretary level and in the facts and circumstances of this case ^{the} aforesaid para in the appointment letter would not debar the applicant from claiming such a relief.

15. Learned counsel for the respondents further urges before us that the applicant has failed to cite any rule or instructions/guidelines to support the plea that the crucial date would be the date when the FSB grants the approval and not the date when the proposal is initially moved. We asked the learned counsel for the respondents as to whether he could cite any rule or guidelines to support his plea that the crucial date will be the date when the proposal was



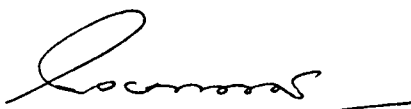
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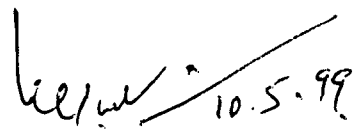
initiated. The learned counsel could not produce any such rule or guidelines. Nor could the respondents produce any authority/order that debars the FSB to re-consider such a claim well supported by the Ministry of HRD and also based on subsequent factual development admitted by both the parties. Applicant's case merits reconsideration because effect of the denial continues to adversely affect the applicant right from the inception of his foreign deputation. We are convinced that the view canvassed by the applicant is more reasonable.

16. We may also mention that respondent no. 2, namely, MHRD have in their counter fully supported the case of the applicant and have sought to justify their observations made in the letter dated 4.9.1997 sent by that Ministry to the MEA which contains the request that the applicant should be granted the diplomatic status of First Secretary. Such a plea cannot be ignored especially so when the appointment of the applicant has been made by the MHRD itself.

17. In view of what has been held and discussed above this OA is to be allowed. We accordingly allow the OA, quash the impugned order/letter dated 5.6.1998 issued by respondent no. 1 rejecting the applicant's request for diplomatic status equivalent to First Secretary and hereby direct the respondents to grant that status to the applicant from the very inception i.e. from the date the applicant was appointed. The applicant would also be entitled to the consequential benefits from the date of his initial appointment.

18. In the facts and circumstances of the case we make no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)
10.5.99