

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2180 of 1998

New Delhi, this the 21st day of May, 2001

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

- 1.. Ms. Anal K Jari
D/o Shri Narinder S Jari
Aged: 55 years
r/o Hauptstrasse 21
3076 Worb
Switzerland.
- 2.. Mudanankuzhiyil Mathew
s/o Shri Mudanankuzhiyil Joseph
Aged: 60 years
r/o Altikefenstrasse 83
3048 Worblaufen
Switzerland.
- 3.. Baby George Vattapalam
s/o Late Shri V C George
Aged: 46 years
r/o Fronwald Str. 94/87
8046 Zurich
Switzerland.
- 4.. Thudianplackal J Joseph
s/o Shri Joseph Chacko
Aged: 50 years
r/o 29 Fabrikstrasse Ch-3012,
Berne
Switzerland.
- 5.. Vinod Kumar Aggarwal
s/o Shri Amar Nath Aggarwal
Aged: 42 years
r/o Jupiterstrasse
3015 Berne, Switzerland.
- 6.. Mannanal K Kurian
S/o Shri M K Joseph Mannanal
Aged : 50 years
r/o Gottenstrasse 21
3018 Berne
Switzerland.

(By Advocate: Shri D.C. Vohra)

.....Applicants

Versus

- 1.. Union of India
through the Foreign Secretary
South Block/Ministry of Ext. Affairs
New Delhi-110011.
- 2.. Ambassador of India
Berne (Switzerland)
C/o Ministry of External Affairs
South Block, New Delhi

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

-RESPONDENTS

K

O R D E R

9

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

This is a joint application filed by the the applicants who have been locally recruited by Indian Mission at Switzerland and they also claim that they are Indian nationals and enjoys protection of the Indian constitution and the laws passed by the Parliament thereof.

2. They have filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

(i) An order/direction to the respondents Nos. 1 and 2 to review/refix the pay and allowances of the applicants in terms of its Model Contract/rules and regulations and extend to the applicants/Indian Nationals holding permits-B/C for permanent residence in Switzerland the Social Security Schemes/provisions in accordance with Article 33.3 of the Vienna Convention which has the force of law in India and its missions/posts abroad in terms of the Diplomatic Relations (Vienna Convention) Act 1972 (No.43 of 1972) from the dates since when each of the applicants became entitled thereto.

(ii) An order/direction to the respondent No.2

A

to calculate arrears of social security benefits admissible and other allowances (such as overtime allowance) with interest of 12% per annum till the date of actual payment of their entitlements in terms of prayer at (1) above.

3. The basic grievance of the applicants is that they are entitled to Social Security Benefits (hereinafter as SSB) and respondent No.2, i.e., the Ambassador of India who has given them appointment is under a legal obligation to follow the principles of social security provisions of the receiving State so the respondents should be directed to pay them the arrears of SSB and other allowances as admissible to them with interest at the rate of 12% per annum.

4. The applicants allege that being the employees of the Government of India and being Indian nationals with permanent residence in Switzerland they are covered by the exemption clause of Article 33 of the Vienna Convention and are entitled to the Social Security Schemes (hereinafter referred to as SSS) of Switzerland with all the benefits of health, insurance, Pension fund, medical benefits etc.

5. It is also stated that respondent No.2 has given an undertaking to the Swiss Government that it is following the social security provisions but, in fact, they are flouting the same by asking the applicants to give an undertaking that they are responsible for the cost of health etc. and this practice is bad in law and

Au

does not operate as an estoppel against the applicants as fundamental rights cannot be debarred.

6. It is also pleaded that the right to livelihood/health is a part of personal liberty and any labour practice which affects right to health is a violation of fundamental rights granted under Article 21 of the Constitution so it is pleaded that the respondents cannot withhold the benefits to which the applicants are entitled.

7. The respondents are contesting the OA. The respondents admit that the applicants are locally recruited staff of the Indian Embassy, Berne and conditions of employment, pay and allowances are fixed from time to time by the Ministry of External Affairs, Government of India but the recruitment, pay and allowances, conditions of service etc. of the locally recruited staff in the Missions/Posts abroad are not covered under the Fundamental/Supplementary Rules of Government of India but are based on the guide-lines issued by the Ministry of External Affairs and the employment is basically a contractual one based upon the terms and conditions of the contract. This contract solely decides the terms and conditions of employment. The local staff is free to accept or reject the employment conditions or the pay scale offered.

8. It is also pleaded that Article 14 of the Constitution of India cannot be invoked because the employees recruited in different Indian mission in

h

different countries cannot be governed by the same set of rules but they are governed as per rules and local laws which prevail in the country where the local staff is recruited which differ from country to country whereas equal protection of law means the right to equal treatment in similarly circumstances and hence there is no infringement of Article 14 in case the local staff in Holland and Belgium as compared with the local staff of Switzerland. It is denied that there is any infringement of Article 21.

9. As regards Article 33(3) of the Vienne Convention of Diplomatic Relations is concerned, the plea of the respondents is that Article 33(3) place an obligation on the sending state, i.e., India but there is no mandatory provision vis-a-vis Switzerland to implement the social security measures.

10. It is also stated that there is no contractual obligation or any bilateral agreement between the Government of India and Switzerland with regard to the Social Security or any such matters. The model contract relied upon by the applicants is also stated to be not applicable as it is only a guide-line so the Mission has been following most of the aspects of the model contract form as also the model appointment letter.

11. It is further submitted that in Germany the SSS is mandatory and Government of India is bound to extend these benefits.

12. It is further stated that Ministry of External Affairs has laid down a set procedure vide their letter dated 16.9.93 for revision of pay scales and for grant of cost of living allowance. The employees are granted Cost of Living Allowance (COLA) when the price index registers a rise of 15% otherwise they depend on the Local Cost of Index. The Heads of Missions are empowered themselves to grant COLA upto 50% based on UN statistics and in case UN statistics are not available, the case has to be based on the data provided by local government and referred to Ministry for approval. 13

13. It is further stated that since the local staff are governed by the terms and conditions of contract which do not mention any obligation on the part of Embassy of India, Berne to pay social security contributions. The Swiss Government has never pursued this matter with Government of India.

14. We have heard the learned counsel for the parties and have gone through the records of the case.

15. Shri D.C. Vohra appearing for the applicants submitted that as per Article 33 of the Vienna Agreement on the basis of which A Diplomatic Privileges Act has been passed for a diplomatic oath to whom the exemption in paragraph 3 of Article 33 does not apply, shall observe the obligations with the social security provisions of the receiving State imposed upon the employees. The counsel for the applicant has also emphasised the word "shall" and submitted that it is

for

binding on the sending State to observe the Social Security Provisions of the receiving State which have been imposed upon the employees so on the basis of the same the applicants are entitled to the SSB.

14

15. Shri Vohra has also submitted that since the Government of India is observing the Social Security Provisions in Germany and other countries so there is no reason why the applicants should be discriminated and they should not be paid SSB.

16. On the contrary the learned counsel for the respondents submitted that for all those employees who are recruited by the local Indian Embassys abroad, their service conditions are governed by the letter of appointment issued by the respective Indian Missions. The engagement of the local recruited Indians in the Indian Missions/Embassys abroad are in the nature of pure contract. Though the Indian Missions are bound to observe the local laws of the country where they are employed but in the case of the applicants the Swiss Government had never bothered the Indian Missions to pay to their local recruited employees the SSB nor there is any terms of conditions in the contract entered into between the parties for payment of SSB.

17. We have considered the arguments advanced by the rival parties.

18. The main contention of the counsel for the applicants is that Article 33 of the Vienna Agreement

A
K

which has also been given a legislature sanction and under the same the respondents have a legal duty to pay the SSB allowance to the locally recruited Indian staff as it is done in the other countries.

15

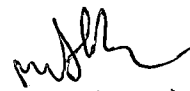
19. To our mind, the applicants cannot compare themselves with the service conditions of those employees who have been recruited at Germany, Holland and Belgium as cited by the counsel for the applicants because admittedly those countries are different countries than the Switzerland and local laws of these country vary. The respondents have given an explanation that in those countries the provisions with regard to SSB are mandatory to be observed on the part of the Indian Missions meaning thereby that without it observing the SSB they cannot recruit anyone in those countries whereas it is not mandatory in Switzerland because the Swiss Government has never bothered the Indian Missions to pay for the SSB of the local recruited staff. Thus we find that comparison of the local recruited staff that too of one country with other countries cannot be made because in that event there ~~are~~ countries like Bangladesh and Bhutan where there is no SSB and if at all a SSB is then the same may be at very low ebb. An employee has to compare with another employee who is similarly situated person and not with regard to the employees of other countries. The fact that the Indian Mission at Bern, Switzerland had been recruiting local employees and Swiss Government has never raised any objection with that regard which shows that the provisions of SSB as prevalent in Switzerland are not mandatory to be observed by the Indian Missions and since

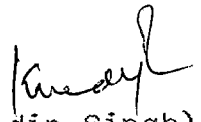
h

the terms and conditions of appointment are governed by the appointment letter which has made it clear itself about the service conditions so the applicants cannot asks for any benefit beyond that.

16

20. In view of the above discussion, we find that the OA has no merits and the same is dismissed. No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

Rakesh