

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.443/95

New Delhi this the 7th Day of April, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

Shri Jagdish Lal Sehgal,
S/o Shri Munshi Ram Sehgal,
R/o Dennigkofenweg 77 3073 Gumligen,
Switzerland. Applicant

(through Sh. D.C. Vohra, advocate)

versus

1. Union of India,
through the Foreign Secretary,
to the Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi-11.
2. Embassy of India,
through the Head of Chancery,
BERNE - Switzerland,
C/o Ministry of External Affairs,
South Block,
New Delhi.

Respondents

(through Sh. Madhav Panikar, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This application No.443/95 is directed against Order No.BERN/661/8/75 dated 19.12.1994 issued by Respondent No.2 vide Annexure A-1 of the paperbook. The same was repeated and has been enclosed as Annexure A-3 of the paperbook.

The admitted facts are that the applicant Sh. J.L. Sehgal was a locally recruited Indian National by Respondent No.2 and had joined as a Messenger with the said Respondent No.2 during 1975 and served in the same capacity till 16.10.1988. He was appointed as a temporary chauffeur in the Embassy of India, BERN w.e.f. 17.10.1988. Paragraph-1 of the appointment letter

No.BERN/661/8/75 dated 14.10.1988 lays down the terms and conditions of the appointment as chauffeur. These terms are as follows:-

- "(a) Your pay will be fixed at Sf.1355/- in the scale of pay Sf.1250-35-1600. The date of next increment will be 1st November, 1988 which was the original date of increment in your present grade as Messenger. The increment however will be released only after successful completion of the probation period.
- (b) In addition to pay you will be eligible to get Cost of Living Allowance at the prescribed rate which is at present at 45% of the basic pay.
- (c) Your duties will be assigned to you from time to time.
- (d) The appointment is purely temporary and you will be on probation for a minimum period of THREE months. The period of probation can be extended at the discretion of the Embassy. In case your performance is found unsatisfactory you will be reverted back to your original post of Messenger and draw pay and allowances as applicable to that post. On successful completion of probation period your appointment will be purely on temporary basis terminable at one month's notice on either side. This is subject to the right of the Embassy to terminate your services without notice, on disciplinary grounds, without assigning any reasons for the termination of your services. In case you wish to terminate your appointment with the Embassy without any notice you may do so by surrendering one month's pay in lieu of the notice.
- (e) You will be subject to the Standing Administrative regulations applicable to the locally recruited staff of the Embassy. You must comply with such rules, regulations, instructions and office orders as may be issued from time to time.
- (f) While in the employment of this Embassy you will not undertake any other remunerative work elsewhere."



The applicant has been serving with Respondent No.2 as Chauffeur since 17.10.1988 for the last 6 1/2 years to the best satisfaction of the respondents. It is stated in the O.A. that as a temporary employee he is governed by the Central Civil Services (Temporary Service) Rules and the Standing Administrative Regulations applicable to the locally recruited staff of Respondent No.2-Embassy and there has been no complaint against him that he violated any of the provisions of the rules, regulations, instructions and office orders issued by the respondents No.1 & 2 from time to time. In view of his satisfactory performance, the applicant was aggrieved by the notice served on him that his services would be terminated w.e.f. 31.3.95 (forenoon). Aggrieved by that order, this O.A. was filed on 6.3.95. An interim stay was granted till 28.3.95. This, however, was not extended. The matter was heard finally on 31.3.95 and in the ordersheet dated 31.3.95 there is a clear mention that the interim relief passed earlier was not extended beyond 28.3.95. It was, however, stipulated that the impugned order shall be subject to the final decision taken in this O.A.

The reliefs prayed for are:-

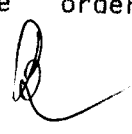
- (i) an order/direction quashing the impugned order dated 19.12.94 terminating the services of the applicant on the ground of some revised administrative arrangements envisaged by the Respondent No.2;
- (ii) an order/direction to the Respondent No.1 and Respondent No.2 to continue the applicant against the post of Chauffeur there being no charge of unsuitability or indiscipline or misconduct on the part of the



applicant at any time of his long years of his service with the Respondent No.2.

A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for. The applicant has filed a representation regarding proposed illegal termination of his services vide Annexure A-4 dated 11.1.1995 after the receipt of three months notice terminating his services w.e.f. 31.3.95. The terms of appointment will show that his appointment as chauffeur was purely on a temporary basis and he was kept on probation for a minimum period of three months. It was further stipulated that if his performance during the period was found unsatisfactory, his services could be terminated during the probation period itself or he could be reverted to the post of Messenger. The service condition further stipulated that even after successful completion of probation period, he will be appointed as chauffeur on a purely temporary basis. According to the said offer of appointment, his services were terminable at one month's notice on either side. On disciplinary grounds, his services could be terminated without assigning any reasons therefor and without giving any notice.

The main argument advanced by the learned counsel for the applicant was that he has been serving Embassy to the best of his ability and to the entire satisfaction of the respondents. He was never communicated any adverse comment about his performance as a chauffeur during 6 1/2 years. It was further argued that he never violated any of the standing instructions, rules or regulations or office orders issued by



Respondents No.1 & 2 from time to time. Therefore, the order of termination is illegal and without any basis. It was further argued that he is a married person and has a family of two school going children aged 12 & 14 and it would be unjust and unfair to terminate his services without any basis when he had in all put in 19 years of satisfactory service and his work and conduct were never adversely commented upon by the respondents. It was further stated by the learned counsel that from the orders issued to the applicant it is not clear whether his services are being terminated for good or he is being reverted to the post of Messenger from which post he was appointed as a chauffeur and it is also not understood as to why the respondents chose to give three months notice when the offer of appointment stipulated the condition that the services could be terminated on one month's notice on either side. The reasons for termination of his services are shrouded in mystery. It is not known whether services have been terminated on administrative grounds or on ground of unsuitability/unsatisfactory performance or on grounds of misconduct. The latter grounds cannot be true in his case since his work and conduct were never found unsatisfactory. The notice period of three months also does not fall within the parameters of rules and regulations governing appointment of the locally recruited staff. No opportunity to show cause was given to the applicant and no reasons were assigned and he was not given any opportunity of being heard and, therefore, he has been denied an opportunity to state his case and, therefore, the entire order is based on non-application of mind. According to him this kind of termination will amount to removal or dismissal



from service and as such Article 311 (2) of the Constitution will be attracted. According to him there is no rule, regulation or law which empowers the Respondent No.2 i.e. Embassy of India BERN to terminate the applicant's services after 19 years of service as Messenger/Chauffeur and it is a colourable exercise of power and is mala fide since there is no charge of unsuitability or misconduct warranting such a termination. It was further argued that there are many other similarly situated locally recruited staff whose services have not been terminated and it is only the applicant who has been singled out for such a treatment and, therefore, the action of the respondents is hit by Articles 14 & 16 (1) of the Constitution. The applicant did file a representation to which he did not receive any reply and the Embassy proposes to terminate his services when he has put in 19 years long service without even payment of any compensation whatsoever and, therefore, it is a fit case for being quashed and set aside.

The learned counsel for the respondents drew the attention of the court to the terms and conditions contained in the offer of appointment itself. He further clarified that Indian Diplomatic Missions abroad are run by two sets of employees. (i) India based personnel (ii) locally recruited staff. He stated that India based personnel are governed by the Civil Services Rules as applicable to them in India, the service condition of locally recruited employees are governed by a different set of instructions issued by the Ministry of External Affairs from time to time. These locally recruited employees are appointed by Head of the Mission



(Ambassador/High Commissioner) taking into account the local needs/requirements in respect of each Mission abroad. Under the existing instructions governing services of locally recruited employees, the service of an employee can be terminated by giving one month's notice. A copy of MEA order No.Q/LC/583/1/68 dated 4.6.1969 is enclosed with the counter and marked as Annexure-I. Individual local employee is recruited under a separate contract (letter of appointment) entered into by the employer and employee. A copy of the appointment letter No. BERN/661/8/75 dated 14.10.1988, issued by Embassy of India, Berne, in the instant case is enclosed as Annexure-II.

It was further pointed out that a local post in our Missions abroad is manned either by nationals of the host country or persons of Indian origin. However, in certain cases, Indian nationals who are permanent residents in the host country also are recruited and employed in Indian Embassy/Mission. Local employees are governed by the host country's regulations like social security contributions, health insurance etc. wherever applicable. Foreign diplomatic Missions i.e. the employers are expected to follow these regulations in respect of their local staff. It was argued by the learned counsel for the respondents that for all practical purposes they are governed by the local laws, including labour laws and come under the jurisdiction of local courts. Foreign courts have taken the stand that these locally recruited staff and permanent residents of

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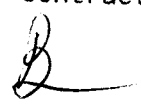
who are employed in the Indian Embassy/Missions fall within their jurisdiction in respect of matters relating to their service conditions.

It was pointed out that in the instant case due to administrative reasons one post of local chauffeur in the Embassy of India BERNE had to be abolished. It was decided by the Ministry of External Affairs to post an India based chauffeur. Consequently, one post of local chauffeur in the Embassy became surplus necessitating the termination of services of Shri Jagdish Lal Sehgal. As per the relevant provisions of the contract i.e. the letter of appointment, the Embassy of India, Berne was required to give only one month's notice to the applicant. But on humanitarian grounds, three months notice was given to the applicant with a view to provide him ample time to enable him to locate alternate employment elsewhere. From the offer of appointment it is clear that he was recruited purely on temporary basis and it was practically contractual appointment and the provisions of the contract have not been violated at all in terms of appointment dated 14.10.1988. It is a bilateral contract between the Embassy and the applicant Sh. Jagdish Lal Sehgal. It was argued that the Embassy has shown magnanimity and sympathy to the applicant by giving him three months notice in lieu of one month's notice. It was further argued by the learned counsel for the respondents that in terms of appointment letter itself a locally recruited employee of the Embassy cannot claim any vested right to continue in the Embassy's employment after the post against which he was appointed, stands abolished due to

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administrative reasons. The employer i.e. Indian Embassy Berne had discharged its contractual obligation by giving the advance notice of its intention to dispense with the services of the employee. It was further pointed out that the applicant's services were being terminated not on any disciplinary grounds but due to reduction in the post of local chauffeur in the Embassy as per decision of the Ministry of External Affairs. The post of local chauffeur was abolished because the functional requirements of the Embassy demanded posting of an India-based chauffeur. In reply to the contention of the applicant's counsel that it is not known whether the applicant is being reverted to his original post of Messenger or his services are being dispensed with for good without assigning him any work in the Embassy, it was pointed out that when the applicant got the appointment as chauffeur, the respondents appointed a Messenger in his place and as such the incumbent is continuing in the post of Messenger; thus there is no vacancy available where the present applicant could be reverted or could be accommodated.

After hearing the rival contentions of the parties, it is clear that the termination of the applicant is founded on the right flowing from the contract or the service rules and prima facie the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted at all in this case. Under the service jurisprudence, a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant rules and the terms of contract of service.



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This view was held in *Shrinivas Ganesh Vs. U.O.I.* reported in AIR 1956 Bombay 455. It clearly lays down that if a termination takes place as per service rules or as per the terms of the contract without assigning any stigma then it is not punitive and it cannot be described as a dismissal or removal and as such Article 311(2) of the Constitution will have no role to play in such a termination. The same principle has been reiterated in case of *Ram Chander Tripathi Vs. U.P. Public Service Tribunal (iv) & Ors.*, Lucknow reported in JT 1994(2) SC 84. The services in this particular case were terminated giving one month's salary in lieu of month's notice. The Hon'ble Supreme Court upheld the decision of the High Court of Allahabad which had stated that the termination of the applicant was not as a punitive measure and, therefore, the Hon'ble Supreme Court did not find any justification in taking a contrary view. The applicant in this particular case had put in 16 years of service as a temporary employee. While discussing this case, the Hon'ble Supreme Court also referred to its decision in the case of *Triveni Shanker Saxena Vs. State of U.P. & Ors.* reported in JT 1992(1) SC 37. In this case also the applicant had put in 18 years of service and his services were terminated and the Hon'ble Supreme Court held the view that protection of Articles 14 & 16 (1) is available only when a temporary government servant has been arbitrarily discriminated against and singled out for harsh treatment. This was the view held in the case of *State of U.P. & Anr. Vs. Kaushal Kishore Shukla* reported in JT 1991(1) SC 108. The employer has discretion under the conditions of service but such discretion has to be exercised in accordance with reason

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and fair play and not capriciously. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal opportunity and offend the equality clause enshrined in Articles 14 & 16(1) of the Constitution. In the present case of the applicant we do not find that the applicant has been arbitrarily discriminated and singled out for harsh treatment. His services have been terminated on account of the abolition of the post. It is true that the applicant has put in practically 19 years of service and the circumstances in which he was not reverted to his original post is based on the plea that another person was appointed in his place when he was promoted as a chauffeur. The Hon'ble Supreme Court in case of State of U.P. & Anr. Vs. Kaushal Kishore Shukla reported in JT 1991(1) SC 108 has laid down the principle of 'last come first go' as the guiding principle when an applicant is retrenched on account of reduction of work or shrinkage of cadre. In a case where retrenchment becomes inevitable and the services have to be terminated the retrenchment should take place on the principle of 'last come first go'. The senior in service is retained while junior services are terminated. It is not understood how another person was appointed in place of Shri Sehgal who was working as a Messenger prior to his appointment as Chauffeur. It is clear that out of 19 years he had put in 6 1/2 years of service as chauffeur. The rest 12 1/2 years must have been put in as a Messenger. Therefore, a person who has taken his place must be junior to him in service as a Messenger because he would have come only 6 1/2 years back when Shri Sehgal was appointed as a chauffeur. This

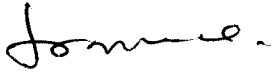


principle of 'last come first go' is not applicable only when it is shown by the respondents that the services of the temporary employee were terminated on the assessment of his work and suitability in accordance with terms and conditions of his service. Nowhere there is an averment in the counter reply nor was it mentioned during the course of arguments by the learned counsel for the respondents Shri Madhav Panikar that the applicant was found unsuitable. If out of several temporary employees working in the Embassy, a senior is found unsuitable on account of his work and conduct only then it will be open to the competent authority to terminate his services and retain the services of the junior who may be found suitable for the service. Since there is nothing in the pleadings to this effect and since there has been no adverse comment about the work and conduct of the applicant, it will be difficult to accept the contention of the respondents that a junior has been appointed in his place when he was appointed as a chauffeur. Even if the post of chauffeur is abolished the post of a Messenger exists and the incumbent being junior to the applicant will have to make room for the applicant i.e. Sh. J.L. Sehgal and the respondents have no option but to pass suitable orders with respect to the present messenger in the light of the law laid down by the Hon'ble Supreme Court in case of Kaushal Kishore Shukla (supra) unless they show that the work and conduct of the applicant Sh. Sehgal was found to be unsatisfactory and he was considered unsuitable for retention in the job of a messenger. No such plea is available in the pleadings. This being so the last person who has joined as messenger will have to go first and the applicant shall be reverted

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to his original post of messenger. The O.A. is thus partly allowed. The applicant will revert to the post of messenger which he was holding prior to his appointment as chauffeur w.e.f. 1st April, 1995 on the principle of 'last come first go'. In the facts and circumstances of the case there will be no order as to costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

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