

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.894/95

New Delhi this the 2nd day of May, 2000.

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Ms. Madhuri Gupta,
D/o late Sh. C.B. Gupta,
C-7, Krishna Park, ^{ANNU}
Main Najafgarh Road,
New Delhi-110 018.

...Applicant

(Applicant in person)

-Versus-

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

2. Embassy of India,
Baghdad (Iraq)
through the Head of Chancery,
C/o Ministry of External Affairs,
South Block,
New Delhi-110 011.

...Respondents

(By Advocate Shri N.S. Mehta)

ORDER (ORAL)

By Reddy, J.

The applicant is an employee of respondent No.1 in the grade of Assistant of the Indian Foreign Service (B). She served in the headquarters and missions abroad. During 1992-94 she served in the Embassy of India at Baghdad (Iraq). She bought a personal car for a sum of US \$ 2800/- from a diplomat in the local Embassy of Afghanistan in Baghdad, after obtaining the approval of respondents 1 and 2. She was relieved of her duties on 3.9.94 and she left Baghdad on 11.9.94 for headquarters, entrusting the car to a local agent for sale. The car has later been sold for a sum of ~~Rs~~ 5,000/- Iraqi Dinars on 17.1.95 to a ^{an} Jordian National. The applicant thereupon made a representation to



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R-1, requesting permission for repatriation of the sale proceeds. It was, however, rejected by the impugned order dated 30.3.95. The applicant submits that the order is illegal and that she has been discriminated, as in three other identical instances the sale proceeds were transferred to the headquarters in 1992, 1993 and 1994. The present OA is, therefore, filed for a declaration that the applicant is entitled for repatriation of the sale proceeds in Indian currency through an RBI draft of a sum equivalent to Iraqi Dinars.

2. The case of the respondents is that, as the applicant's sale of the car was in violation of the relevant rules dated 26.4.93 and 21.9.93 the applicant is not entitled for repatriation of the sale proceeds of the car. It is also the case of the respondents that the applicant was given permission to sell the car either to Iraqi Custom Authorities or similar entitled persons, i.e., foreign diplomatic and U.N. missions, etc., but she sold it to a Jordanian National in Iraq. The respondents filed the additional affidavit stating that the permission was given in other cases on the basis of the rules available at that time and that the said rules have no application in the case of the applicant.

3. We have given careful consideration to the pleadings and the arguments advanced by the applicant who argued herself in person and the learned counsel for the respondents.

4. The learned counsel for the respondents relied upon Annexure R-1 dated 26.4.93 (as amended by the rules dated 21.9.93). In the said order in paragraph-3,

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conditions are provided for repatriation of the entire sale proceeds. The conditions (i), (ii) and (iii) are relevant and are extracted below:

"(i) the car has been in possession of the officer for the last 13 months.

(ii) the sale has been made with the knowledge of the HOC;

(iii) the declaration of the sale price of the car by the official is certified correct by the HOC and HOM/HOP; and"

5. It is, therefore, necessary that for the purpose of repatriation of the sale proceeds of the car, the car should be in possession of the officer for the last 13 months and the sale should be made with the knowledge of the HOC and HOM/HOP should certify that the sale price of the care was correct. The first condition, was fulfilled as the car was in her possession for about two years. However, the other two conditions have not been complied with. The applicant's car has been sold by a private agent authorised by the applicant. It was not shown that it was with the knowledge of HOC and that the sale price was certified by him. It is, therefore, a clear case, where these conditions were not fulfilled for the sale of the car. The applicant relies upon the instructions regarding the sale of the motor car and repatriation of the sale proceeds which are now stated to have been superseded by the order/rules of 26.4.93, as amended on 21.9.93. Thus the instructions are, therefore, no longer valid.

6. It is next contended by the applicant that the proceedings dated 14.5.95 of the Ministry of External Affairs, Republic of Iraq accorded permission for sale of the car. But it is clear from these proceedings that the

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permission was given to sell the car only to the 'entitled categories'. In the reply, as regards who are 'entitled categories', it is stated as under:

"The official Iraqi policy regarding sale of cars by foreign entitled personnel, i.e., foreign diplomatic and UN missions and their home based employees, is that such cars can be sold only to similar entitled personnel. According to the Iraqi Ministry of Foreign Affairs Note No.11/85/40/96829 dated 14.5.1994 (Annexure A7 of the applicant's representation), Ms. Gupta was given such permission. Alternatively, entitled persons can also sell their cars to the Iraqi Customs authorities, who will buy the car at a price fixed by them after working out depreciation."

7. In the instant case the applicant has sold the car to a Jordanian National who does not come within the entitled category. In the circumstances the sale of the car was not in conformity with the permission granted under Annexure A-8.

8. The contention that the similarly placed persons have been allowed repatriation, is also without force. In the additional affidavit, it is stated by the respondents as under:

"Sanction orders regarding repatriation of car sale proceeds of Shri A.M. Gondane, Second Secretary and Shri A. Ramesh, Counsellor were issued by the Ministry of External Affairs on 21.9.1992 (R-4) and 22.11.1993 (R-5) respectively as the officers had sold their cars before issue of Ministry's orders dated 26.4.93/21.9.93. Therefore, the cases of Shri Gondane and Shri Ramesh are not similar to that of Ms Madhuri Gupta who sold her car on 5.12.1994. Her case regarding repatriation of car sale proceeds would be governed by Ministry's orders dated 26.4.93/21.9.93. As per these orders HOMs are empowered to sanction the repatriation of the sale proceeds of car in respect of themselves and officers under their charge subject to fulfilment of the conditions mentioned in these orders.

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Shri R.S. Kalha, Ambassador, himself being the Head of Mission, exercised the powers and availed the repatriation facility in January, 1994. Ambassador himself being his own controlling officer in this regard was satisfied that all the conditions mentioned in Ministry's orders dated 26.4.93/21.9.93 were fulfilled. This has been certified by the Embassy of India letter No.BAG/586/3/92 dated 13.6.1995 (R-6)."

9. In view of the above, the cases of other three persons, viz. S/Sh. A.M. Gondane, A. Ramesh and R.S. Kalha which were considered in accordance with the instructions prevailing prior to 26.4.93 and the sale proceeds allowed as their cases cannot be treated as similar to the case of the applicant. Though the case of R.S. Kalha, Ambassador was made in 1994, as stated supra, the Ambassador himself being his own controlling authority as HOM and as it was found that the conditions mentioned in the rules of 1993, fulfilled and were certified by the Embassy of India by letter dated 13.6.95., this case also cannot be treated as identical to the case of the applicant.

10. The allegations of malafides were liberally alleged but in the absence of any material to establish them, they are liable to be rejected, without any discussion on each of the allegation.

11. The OA, therefore, fails and is accordingly dismissed. No costs.

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(SMT. SHANTA SHAstry)
MEMBER (ADMNV)

'SAN'

Ambrupulu
(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)