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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(12)

O.A./T.A. No. 1907/1996

Decided on: 10.7.97

Dr. Jaimini BhagwatiApplicant(s)

(By Shri D.N. Goburdhan Advocate)

Versus

U.O.I. and AnotherRespondent(s)

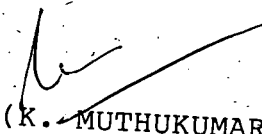
(By Shri N.S. Mehta and Shri Madhav Panikkar Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal? *h*


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO.1907 of 1996

NEW DELHI THIS THE 10th DAY OF JULY, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Jaimini Bhagwati
S/o Shri Bihoy Chandra Bhagwati,
R/o 1719, Melbourne Drive,
MCLEAN VA 22101,
U.S.A.

...Applicant

By Advocate Shri D.N. Goburdhan

Versus

(1) Union of India
C/o Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

(2) Secretary,
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel,
Government of India,
North Block,
New Delhi.

...Respondents

By Advocates Shri N.S. Mehta for respondent No.1 and
Shri Madhav Panikkar for respondent No.2.

ORDER

Hon'ble Mr. K. Muthukumar, Member(A)

Applicant alleges discriminatory treatment meted out to him by the respondents in not granting him extension of his term of deputation with the World Bank and contends that the respondents in exercising their discretionary power and relaxation of the rules acted in an arbitrary and discriminatory manner.

2. A short recital of the facts of this case is necessary. Applicant is an I.F.S. officer, who on the basis of a direct offer was permitted to serve on deputation, in the World Bank initially for a period of 2

years. The period of deputation was subsequently extended upto a period of 5 years. His deputation period expired in September, 1996. In February 1996, the then Indian Ambassador, USA recommended the extension of the deputation of the official with the World Bank on the ground that he was offered the position in the World Bank Treasury department on the basis of his academic qualifications in the area of finance and his position was a "net additionality" from the point of view of the Government of India that he has been working in the World Bank and it was suggested that it would be in the India's interest if the applicant was allowed to work for an additional year beyond September, 1996. This was followed up by another representation from the applicant to the respondents in August, 1996. In this representation, the applicant cited the case of one Shri Amitav Banerji and Ms. Bhaswati Mukherjee, two other IFS officers, who were granted extension of deputation beyond 5 years. The World Bank gave a letter of 'Verification of Employment' of the applicant by their letter dated September, 1996, in which it was stated that the applicant was expected to be in his current assignment for a period of 2 years and his date of appointment was shown as 9th September, 1991. At Annexure-A, the applicant was informed by respondent No.1 that the prevalent rules on deputation of Government of India personnel to the International organisations provided for a ceiling of 5 years for overall period of deputation and that the Ministry of External Affairs were not able to obtain relaxation of the rules in his case and, therefore, he was directed to wind up his assignment with the World Bank and return to Headquarters on conclusion of his current term. Aggrieved by this decision, this application

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has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant seeks a direction to the respondents to extend the period of his deputation till September, 1988 without any break in service and also reckoning the seniority of the applicant from the original date of joining service. The applicant has also prayed that his case may be treated on the same principles as was followed in the case of Shri Amitav Banerji. The main ground taken in this application is that while respondent No.1 had recommended his case to respondent No.2, the respondents have discriminated against him and have not followed the principles which guided in deciding and granting extension of deputation to Shri Amitav Banerji and there has been non-application of mind of the respondents and, therefore, his right under Articles 14 and 16 have been denied.

3. In a short reply filed by the respondent No.1 it was averred that when the applicant's deputation to the World Bank was finally approved till September, 1996 for a total period of 5 years, it was made clear that the applicant must return to the cadre on the expiry of that period. It was averred that although on the basis of the recommendation of the Indian Ambassador his case was recommended to the Department of Personnel & Training, i.e., respondent No.2, the approval of the DOP&T could not be obtained in this regard. The decision of the DOP&T was in line with the consolidated instructions, which provided in para 9 thereunder, that an officer might be permitted to remain on long term assignment upto a maximum of 5 years during the first 25 years of service and, therefore, the applicant was rightly governed by this provision. The

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respondents also averred that by citing the case of Shri Amitav Banerji, the applicant was trying to confuse the issue. In the case of Amitav Banerji, the Civil Services Board relaxed the terms and conditions of his deputation with the Commonwealth Secretariat in public interest and this relaxation in one particular case does not automatically confer a right on the applicant for the same or similar relaxation. Applicant's case had been dealt with as per provisions of the prevalent rules on the subject and there had been no arbitrariness or discrimination in this case.

4. Respondent No.2 also filed a separate reply. In their averment it is stated that clearance was given by the cadre controlling authority and the DOP&T initially for a period of 2 years. It is the period given for non-sponsored candidates. However, this period was extended as per the amended guidelines which came into operation on 20.6.1991 initially for one year upto September, 1994 and later on upto September, 1996. It is also averred that the line of work which he has been handling in the World Bank does not fall in line with the normal assignments given to the IFS officers and, therefore, the relevance of the experience gained by the applicant does not arise. Keeping in view the guidelines and the merit of the case, further extension of the deputation of the applicant was not agreed to by the competent authority. In regard to the case of Shri Amitav Banerji, referred to by the applicant, it is averred that this officer was sponsored by the Government of India from among other eligible officers for an assignment in the Common Wealth Secretariat and it was considered that this

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post required experience in multilateral diplomacy and political analysis and needed the experience of a Foreign service officer. He was initially sent on deputation for a period of 3 years as per the extant instructions applicable to a deputation for a sponsored officer and later on his term was extended for a further period of 3 years in relaxation of normal period of 5 years provided in the amended guidelines of 20.6.1991, keeping in view the importance of the post and also the fact that the contract period for Commonwealth Secretariat is for 3 years term at a time. The respondents, however, avers that in the case of the applicant he was given a direct offer by the World Bank keeping his qualification in view and, therefore, his claim was not similar to that of Shri Amitav Banerji, who was a sponsored officer. They have also submitted that the continuance of the applicant beyond permissible period of deputation is unauthorised as deputation beyond September, 1996 has not been approved by the competent authority. The Cadre Controlling Authority of the officer, i.e., respondent No.1 was duly communicated of the decision of the competent authority in the matter.

5. Learned counsel for the applicant argued that arbitrariness and mala fide of the respondents are writ large in this case. His main attack was that the respondents refusal in the case of the applicant and permission in the case of Shri Amitav Banerji were not based on any substantial policy. He argued that there were no guidelines as such for deciding cases of extensions. He also argued that there were no material before the authorities to show that the case of Shri Amitav Banerji satisfied the criteria of public interest. He has stressed

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that public interest can be tested only on sound parameteres and guidelines. He argued that in the case of Shri Amitav Banerji although there was no specific recommendation of the respondent No.2, the applicant's case was directly sent at his request to the Prime Minister's office and the extension was approved by the then Prime Minister. The Prime Minister's office had not substantiated any superior public interest in this case. He also argued that in implementing administrative instructions, the executive cannot exercise the discritionary power arbitrarily. He strenuously argued that the exercise of the discritionary power even if it had to be exercised, had to be regulated and should be not only fair but should also appear to be fair. He also stressed that in recognition of public interest, the respondents have to be impartial and have to take into account all the facts and circumstances of the case. He argued that the applicant's further service, which was approved by the World Bank itself, lot of good would accrue by his vast experience and this was specifically considered by the respondent No.1. He also argued that it was not within the purview of the respondent No.2 to determine to what extent public interest would be served by the applicant's further extension as respondent No.2 was not the Cadre Controlling Authority and have no locus standi in the matter. He also argued that while the power of relaxation is exercised for relaxing the terms specified in the guidelines, this power had been exercised arbitrarily and by the example of the case of Shri Banerji, the respondents have established that the power of relaxation can be used to favour in one case and to deny in another, as in the case of the applicant. The learned counsel also contended that the discritionary

power is not an unfettered one and has to be exercised in a fair manner and the power has to be regulated by some reasonable consideration of the guidelines which are totally absent in the decisions taken by the respondents. He also contended that the respondents have not prescribed any reasonable circumstances and conditions in which such power of relaxation can be exercised. To support these contentions, the learned counsel relied on plethora of judgments. We shall advert to them as and when necessary.

6. The learned counsel for the Ministry of External Affairs, i.e., respondent No.1 argued that deputation of any kind as in the case of the applicant who was sent on deputation on the basis of the direct offer, did not confer any vested right. He relied on *Rati Lal Soni Vs. U.O.I., 1990 Supple. SCC page 240*. The counsel for the respondent No.2 referred to para 8.10. of the Consolidated Instructions of Foreign Assignment of Indian Experts circulated by the respondents under their letter dated 20.6.1991 and pointed out that in the case of the direct offer to a Government servant due to past work or expertise, the expert has to take cadre clearance from the Cadre Controlling Authority as well as as from the Department of Personnel and Training before accepting the offer. In view of this, the learned counsel pointed out that it was very much within the jurisdiction of the Department of Personnel to be involved in the final decision in such cases. He also argued that as far as the applicant's case was concerned, the respondents had given due consideration to all the aspects of the matter and there had been full application of mind. He pointed out that more than the reasoning cited by the applicant in his

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application, for his usefulness in the foreign assignment, it should be noted that as pointed out by him in para 4.18 of the O.A. that his family, namely, his wife and daughter were living with him in USA and that his daughter was studying in the High School. He pointed out that he had referred to this to show that there was an element of personal interest in his seeking extension of deputation beyond the stipulated period of 5 years, as was already granted to him.

7. We have given our careful consideration to the pleadings and the arguments of the learned counsel for the parties.

8. It is an admitted position that the applicant was directly offered this assignment in the World Bank initially for a period of 2 years, which was subsequently extended upto 5 years in terms of the guidelines. The applicant argues that in view of the fact that Ministry of External Affairs had itself recommended extension of deputation beyond 5 years, the public interest should be deemed to have been served by his continuance. He was treated as on deputation only in public interest. We find from the orders issued by the respondents in this behalf that the sanction of extension of deputation of the applicant for appointment in the World Bank was given initially for a period of 2 years subject to certain terms and conditions. We were informed that even in the case of a direct offer to the Government servant by a U.N. agency, the assignment would be treated as on deputation. The guidelines in this behalf deals with various classes of deputation of Indian Experts on assignment abroad. This

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include assignments on foreign posts of the Government of India under the various Ministries, Bilateral assignments to the developing countries, Captive posts of Government of India in the international organisations where recruitment is limited to Indian officials and International assignment to the UN and its agencies and other multinational organisations, the Governments and public institutes in the oil-rich and developed countries. Admittedly, the applicant falls under the last one above. Even in the international assignments falling under this category, there can be nominations by the Government of suitable and qualified officers for various posts under the international organisations or Foreign Governments with the objective of securing key international assignments for Indian experts. This naturally involves consideration of all qualified experts including those who have been on foreign assignment earlier for such nomination. The only condition is that nomination would be subject to condition that those who have completed maximum period on this international assignment would be required to resign or seek voluntary retirement from the service on selection of this assignment. Second category is by way of direct offer wherein, the offer is made directly to the employee due to his past work or expertise and in the third category comes cases of Government employees applying in response to open or public advertisement of vacancies by the international organisations and foreign Governments with prior permission of the Cadre Controlling Authority concerned. As stated earlier, the applicant's case is admittedly one of a direct offer. It is also provided in para 9 of the aforesaid guidelines that an officer may be permitted to remain on long-term assignment adding upto a

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maximum of 5 years during the first 25 years of service and beyond this period of 25 years of service, there will be no ceiling on the period of assignment. The applicant is admittedly within his first 25 years of service and, therefore, will be subject to the provisions of this part in the guidelines. These general guidelines do not specifically provide for relaxation of the term of deputation as such. It is, however, provided in para, 14.1 of the aforesaid guidelines as follows:-

" While the cadre controlling authorities and the nodal Ministries and Departments are competent to give various clearances as per these guidelines, any deviation proposed to be made therefrom, would require prior consultation and clearance from the Department of Personnel and Training".

9. From this, it is clear that any deviation in regard to the term of deputation, even if recommended by Administrative Ministry would require prior consultation and clearance of Department of Personnel & Training. We are unable to appreciate the argument of the learned counsel for the applicant that Department of Personnel and Training has no locus standi in the matter, in view of what has been provided above. The learned counsel's contention that it is for the Ministry of External Affairs to decide the utility of the applicant continuing on deputation as it is a cadre controlling authority, overlooks the fact that it is ultimately the personnel policy which includes the policy of assigning Indian experts on foreign assignment which is involved here for which the Department of Personnel and Training under the relevant Allocation of

Bussiness Rules will be the concerned nodal ministry. Therefore, this contention of the applicant is not acceptable.

10. The other argument of the learned counsel for the applicant is on arbitrary exercise of the discretionary power by the executive. He cites the case of Indian Nut Products & Others Vs. U.O.I. and Others and Kerala Nut Foods Co. and Others Vs. U.O. I. & Others, 1994(4) SCC page 269 to point out that even in matters of exercise of statutory powers it is open in a judicial review to examine the relevancy of the grounds. The power of judicial review in matters relating to exercise of discretionary power is not in doubt. It is always within the powers of the Courts or the Tribunals to ensure that executive power is not exercised arbitrarily and is exercised after due application of mind. In the aforesaid case, however, taking into account the facts and circumstances of that case, which dealt with issue of notice to certain Cashew Factories with certain bald statements made in the 'ground mentioned therein' was found to be not in accordance with the provisions of the law in that case. We are, therefore, of the view that this case is of no direct relevance to the facts and circumstances of the present case.

11. The learned counsel referred to the decision in Dr. Rash Lal Yadav Vs. State of Bihar & Others, 1994 (5) scc 267 to urge before us that exercise of statutory power is not absolute. His contention is that even the exercise of statutory power is not absolute and unguided and is also subject to judicial review. It is

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only to satisfy that there is no arbitrary exercise of power or exercise of discretionary power without due application of mind, that we called for and perused the connected records in the case of the applicant as well as that of Shri Amitav Banerji. We shall revert to this matter subsequently.

12. We have to refer to the contention of the learned counsel for the applicant that by the recommendation of the cadre controlling authority and also by certain precedents in other cases, there was a legitimate expectation on the part of the applicant on his request for extension of his deputation. Referring to the principle of legitimate expectation, he cited the cases of U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by Lrs. and Others, 1995(2) SCC 326 and U.O.I. & Others VS. Hindustan Development Corporation and Others, AIR 1994 SC 988. In the aforesaid cases, the principle of legitimate expectation was dealt with to consider whether the local authority/company in the aforesaid case was entitled to notice to enable him to lead evidence in the proceedings before the collector. It was observed that in the absence of any provision in the Act conferring any such right on the party, Courts would apply the principle of legitimate expectation. Justice Sahai as he in his dissenting judgment in the aforesaid case referred to the expression of "legitimate expectation" which originated from the judgment of Lord Denning in Schmidt Vs. Secretary of State for Home Affairs. In another case, i.e., Attorney General of Hong Kong Vs. Ng Yuen Shiu Privy Council applied this principle and observed that 'legitimate expectations included expectations which went beyond any enforceable

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rights provided they had some reasonable basis'. The learned counsel argued that the applicant had legitimate expectation in this case although he had no enforceable applicant. The principle of legitimate expectation as is understood from above, does not seem to arise in this case. Here is the case where the applicant had been clearly told that he will not be entitled to a deputation beyond the permissible period of 5 years when his last extension was given in 1994 wherein it was shown that final extension was given upto September, 1996. Therefore, there cannot be a question of legitimate expectation beyond this period of deputation. The applicant could have had expectations, but they could not be considered legitimate. The fact that in the other cases, there were extensions also would not make his expectations legitimate. On the question of discretionary power, the learned counsel argued that the power of relaxation and use of discretion in granting relaxation are not governed by any guidelines in this behalf and he cites reference to the decision in Centre for Public Interest Litigation Vs. Union of India & Others, 1995 Supp (3) SCC 382. We find that the decision in this case is not of very material assistance to us. In this case, the Apex Court found that in the exercise of discretion in making allotments of retail outlets for petroleum products and dealership to exclude the likelihood of arbitrariness and to minimise the area of discretion, it was felt that certain norms should govern future allotments and, therefore, certain guidelines were prescribed in this behalf. This arose as a result of Public Interest Litigation in a Writ Petition. The facts and circumstances of this case are not parimateria here. The applicant has not made out that there has been a widespread misuse of

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discretionary power by the respondents in granting extensions beyond the guidelines prescribed in an indiscriminate manner. He has cited the case of Shri Amitav Banerji. In this case we have perused the relevant record in regard to the assignment of Shri Banerji. His was a case of assignment under the Commonwealth Secretariat wherein his assignment was by nomination to the Commonwealth Fund for Technical Cooperation. One of the objectives of making such nominations as is clear from the guidelines is to secure key international assignments for the Indian experts. Shri Banerji was on deputation since August 13, 1990 and the Commonwealth Secretariat itself has requested the Government of India for the services of Shri Banerji for a further period of 3 years. Taking into account the various facts and circumstances of the case, it was felt that in view of his contribution and the specific proposal of the Secretary General of the Commonwealth Secretariat, the extension was granted to him with the approval of the Prime Minister. We find that this was an exceptional case. The learned counsel for the respondents submitted that there had been no cases of extensions beyond permissible period and wherever certain officers overstayed the period of deputation without competent authorities approval, they had suggested disciplinary action against the concerned Government servants. In the case of the applicant, however, the question of extension of deputation was discussed at great length in departmental record. We find that unlike in the case of Shri Amitav Banerji, the case of the applicant was a case of direct offer to him. Respondent No.2 examined the proposal for extension of deputation at considerable length taking into account the assignment of the applicant in the World Bank and its

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relevance for the applicant in the Indian Foreign Service and after reasoned arguments, it was felt that his experience in the World Bank would not be useful in the normal assignment in Foreign service where the applicant was expected to serve a large part of his career. It was also pointed out that in appointment in multilateral/international agency where an officer had applied directly or received offer directly was a 'net additionality' and would not be governed by any country quota restriction and, therefore, the case of the applicant was not considered as unique as to warrant a departure from normal Department of Personnel & Training's guidelines regarding the tenure of deputation. We are satisfied that the decision in the case of the applicant was taken after careful consideration by the respondents and was not made without any application of mind.

13. Regarding learned counsel's contention that the respondents have adopted pick and choose policy and in his case extension was denied, while they had allowed other cases. For this, he relies on Asha Kaul and Another VS. State of Jammu and Kashmir, (1993) 2 SCC 573. We are satisfied that the respondents had not discriminated against the applicant and the allegation that the respondents had chosen a policy of 'pick and choose' is not established even in the case of Shri Amitav Banerji relied upon by the applicant. As pointed out above, it was a deputation sponsored by the Government of India and his extension was also allowed on the basis of careful consideration of the facts and circumstances of the case and keeping in view the assignment involved and the public interest likely to be served in giving an extension.

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14. Another point stressed by the applicant in the case of Amitav Banerji was that for this assignment, which is a sponsored assignment, the extension given to the officer had actually denied the opportunity to several other IFS officers who were eligible for this assignment. We are unable to appreciate this contention. The assignment in question does not fall within the category of 'Captive posts in the Government of India'. It is open to any other suitable candidate from the Commonwealth Countries including India. In the case of Shri Amitav Banerji, as pointed out above, it was the Secretary General of the Commonwealth Secretariat who had himself sought the extension of the officer which was considered at the highest level in the Government. The question of discrimination against the similarly placed IFS officer does not arise in such a situation. The learned counsel then referred to the case of State of Assam Vs. P.C. Mishra, 1995 (4) SCC 139 to advance his thesis that the highest competent authority should have exercised his discretionary power in public interest. We are unable to see how, by not granting extension to the applicant, as prayed for by him, it is established that the respondents had not acted in public interest. On this basis any decision taken in exercise of the discretionary power, could be challenged. The applicant has not shown any grounds or circumstances by which the denial of the extension of the term of deputation to him could seriously injure public interest.

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15. On our perusal of the relevant records relating to the applicant, we are satisfied that the respondents have acted in a reasonable and rational manner. The decision is free from "whims and arbitrariness" and there is no good ground to interfere as there has been no lack of objectivity in the decisions taken here. In regard to the question of absence of necessary guidelines for the exercise of discretionary power, the learned counsel for the applicant relied on New India Public School and Others Vs. HUDA and Others, (1996) 5 SCC 510. In the aforesaid case, there was a question of allotment of sites for schools by the Haryana Urban Development Authority. The Statute provided for public auction, allotment or otherwise for the allotment of sites and in such cases, it was held that clear guidelines/ criteria are necessary. The word "otherwise" would be construed to be consistent with the public purpose and, therefore, it was held that clear and unquivocal guidelines or rules are necessary so that the exercise of discretionary power conferred by the Statute is not at the whim and fancy of the public authorities or under their garb or cloak to exercise their discretionary power. We are of the considered view that exercise of the discretionary power in the aforesaid case within certain guidelines or specific relations have to be dealt with in the context of the statute which provided for allotment of sites, either by public auction, allotment or otherwise and it was felt that taking advantage of the word 'or otherwise', the public authority cannot go on allotting the sites in an indiscriminatory manner. The facts and circumstances of the case of the applicant in the case of grant of extension of deputation, are not parimateria with the above case.

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16. In the conspectus of the discussion and in facts and circumstances of the case, we are of the considered view that there is no merit in the application. The application is accordingly dismissed. In the circumstances, there shall be no order as to costs.

A. Veda Valli

(DR. A. VEDAVALLI)
MEMBER (J)

K. Muthukumar

(K. MUTHUKUMAR)
MEMBER (A)

Rakesh