

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1522/97

Decided on 6.8.1998

Mrs. Asha Sharma
(By Advocate: Shri S.S. Rana)

Applicant

Vs.

U.O.I. & Ors.
(By Advocate: Mrs. P.K. Gupta)

Respondents

CORAM

HON BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

Adige
(S.R. ADIGE)
Vice Chairman (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1522/97

New Delhi: this the 6th August 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

Smt. Asha Sharma,
Wd/o Late Shri Satish Kumar Sharma,
Employment No. 00009950,
Ex. AAO in the Office of LAD (A), Ambala Cantt.,
C-97, East of Kailash,
New Delhi - 110 065 applicant.

(By Advocate: Shri S.S. Rana)

Versus

1. Union of India through
the Secretary,
Ministry of Defence, Govt. of India,
South Block,
New Delhi.
2. Director General Personnel Services,
Adjutant, General Branch,
4th Floor, Sena Bhawan,
SHQ, HQ, PO,
New Delhi - 110011.
3. The Embassy of India in Nepal through
the Secretary,
Ministry of External Affairs,
North Block,
New Delhi.
4. The Controller of Defence Accounts (Pensions),
Allahabad, UP.
5. The Senior Accounts Officer,
Office of the CDA, Western Command,
Chandigarh Respondents.

(By Advocate: Shri Harvir Singh for Mrs. P.K. Gupta)

JUDGMENT

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicant seeks a declaration that

(i) her late husband Shri S. K. Sharma
was an India based employee with
the Indian Embassy in Nepal and
be treated as Central Govt. servant
w.e.f. 3.10.60 and is entitled to
all service benefits including pension.

- (ii) she is entitled to family pension being Shri S.K.Sharma's widow;
- (iii) to sanction and release family pension w.e.f. 31.5.94 as well as gratuity and group insurance to her with 18% p.a. interest thereon with effect from the date it became due;
- (iv) costs.

2. Respondents in their reply do not deny that the late Shri S.K.Sharma , an Indian National and of Indian domicile was originally recruited as an LDC from India in the Office of the Pension Branch, Indian Embassy Nepal vide letter dated 28.9.60 (Annexure-A1) and he joined the said post on 3.10.60 . The appointment letter which was issued from the Military Branch, Indian Embassy, Nepal and was addressed to applicant at his Delhi address stated that it would not confer on him any right to earn a full pension and he would have to retire on attaining the age of superannuation. Respondents do not deny that he received a telegram which read as under:

" Report at Kathmandu for taking appointment LDC forthwith. Terms appointment posted Indian Embassy Nepal."

3. Respondents also do not deny that the establishment for Pension Payment Offices in Nepal was sanctioned w.e.f. 1.10.60 vide Defence Ministry's letter dated 5.9.60 (copy taken on record) whereby Class IV Staff were to be recruited locally on terms and conditions as applicable to local Embassy Staff while Class III Staff (Clerks, Cashiers etc.) were to be recruited locally as far as possible, but if local hands were not available they would be (i) recruited from India or (ii) found from existing

staff or (iii) deputed from offices in India. While local recruits would be governed by terms applicable to similar local staff of the Embassy, those recruited from India would be governed by Defence Ministry's letter dated 6.10.59 which sanctioned "India based terms" to all of them. Furthermore respondents also do not deny that on a clarification sought by the Indian Embassy in Nepal, the Defence Ministry reiterated in their letter dated 20.12.60 (Annexure-A2) that the Civilian Clerical Supervisory Staff at Headquarter of the Military Branch of the Indian Embassy, Nepal who were of Indian domicile, and who had been recruited by the Embassy from India, would be governed by the terms and conditions as laid down for "India based" staff. It is also not denied by them that by Defence Ministry's letter dated 21.6.67 it was decided that such of the posts as were originally filled by recruitment/deputation of Indians domiciled in India from India would be classified as India based, and those which were originally filled through recruitment of Nepal citizens/Indians of local domicile would be classified as local.

4. Respondents also do not deny that Shri S.K. Sharma was granted India based terms effective from 1.9.80 vide letter dated 7.1.82 (Annexure-A3). By this letter applicant was governed by the same terms and conditions applicable to India based Staff, but they were not entitled to outfit allowance as they were already in Nepal. In the OA it is stated that Shri Sharma filed a representation against the order dated 7.1.82 but the same has not been filed.

5. It is also not denied by respondents in their reply that Shri Sharma was promoted as Head Clerk and then promoted as Sub-Treasury Officer, P.P.O Nepal w.e.f. 6.8.82 (See Defence Ministry's letter dated 2.1.85 at Annexure-A4) and served in that capacity till he was transferred on deputation from there to the Defence Accounts' Deptt. GOI as PAO (ORs) Panchmahi vide orders dated 12.6.90 (Annexure-A 6) where he joined on 6.8.90, and was thereafter transferred as Asstt. Accounts Officer, Office of LAD (A) Ambala Cantt. where he continued to work till his unfortunate demise on 30.5.94, after putting in 34 years' continuous service.

6. Meanwhile Defence Ministry by letter dated 24.4.85 (Annexure-D to respondents' reply) had stated that Foreign Allowance; Free Furnished accommodation; Home Leave Fare; Children holiday passage; Children's education allowance; Medical facilities and Baggage allowance would be admissible to employees mentioned in letter dated 7.1.82. It was however clarified that they would not be treated as Central Govt. Employees as they neither belonged to any Central Govt. Office in India; nor had they been deputed/ posted from such offices/ deptts. Subsequently by letter dated 27.1.86 (Annexure-A5) in addition to the benefits extended by aforesaid letter dated 24.4.85, the benefits of Central Govt. Employees, Group Insurance Scheme on self financing and contributory basis, as well as Productivity linked bonus and LTC were also extended to those who were recruited

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from India for PPO in Nepal.

7. Upon Shri S.K.Sharma 's demise, applicant (his widow) moved for release of his retiral benefits including grant of family pension. It is not denied that sums relating to Shri Sharma's leave encashment, GPF and CGEIS have been released or sanctioned for release to applicant vide letter dated 30.1.95(Annexure-A11). Regarding grant of family pension however respondents in their letter dated 15.4.96(Annexure-A17 Dolly) stated that the matter was still pending a final decision. It is for early finalisation of the matter that applicant had filed this OA.

8. Respondents in their reply to the OA now state that the case has finally been decided by the competent authority in consultation with the concerned department and the Ministry has decided that applicant is not entitled to family pension as her husband Shri S.K.Sharma was appointed as an LDC in P.P.Branch of Indian Embassy Nepal as a local recruit. It is further stated in the reply that locally recruited employees in Indian Missions abroad are not entitled to pensionary benefits under the existing pension rules, and the late Shri Sharma was granted India based terms which did not confer any right in any way for grant of pension but only extended the benefits of some allowances to locally recruited personnel. Reiterating the terms and conditions of grant of India based terms to late Shri Sharma by Defence Ministry's letters dated 7.1.82 and 24.4.85 (Supra), it is stated that Shri Sharma cannot be treated as a Central Govt.

employees." Reference has been made in Respondents' reply to the CAT PB judgment dated 19.2.93 in OA No.3012/92 J.N.Gupta Vs. UOI & Ors. wherein it has been held as follows:

"Having not been confirmed, the applicant as a temporary employee cannot claim pensionary benefits also. Further, in accordance with rule 2(f) of this Central Civil Services(Pension) Rules 1972 persons locally recruited for service in diplomatic Consular or other Indian establishments in foreign countries, are excluded from the benefits of pension Rules. Since the applicant admittedly is a locally recruited person, recruited in Nepal for working in the Pension payment Office in Nepal, he is not entitled to pensionary benefits."

9. In the reply it has also been stated that the terms and conditions on which the applicant's husband was employed did not provide for pensionary benefits, hence pension cannot be sanctioned to applicant being not entitled.

10. I have heard Shri Rana for the applicant and Shri Harvir Singh for respondents.

11. Shri Rana has emphasised that applicant's husband had served the GOI sincerely for 34 years continuously at different places in Nepal and India; was given promotions and was paid salary from the Defence Accounts Estimates. He was a subscriber to GPF, and CGEGIS; and was deriving benefit of LTC which are permissible only to permanent Govt. servants, and was treated as a Central Govt. Servant for all purposes. Having been granted India based status in the Indian Embassy, Nepal, and being a Central Govt. Servant he was entitled to all the benefits of a Govt. servant. He has emphasised that locally recruited staff in the Embassy was confined to Peons

and Daftaries, and other Class III and Class II Staff posts to be manned by "India based staff," that is Indians recruited from India. He has placed great reliance on the H.P. High Court's judgment in S.S. Raghubans Vs. Embassy of India Nepal and another decided on 8.1.87 (LPA No.4 of 1976).

12. On the other hand respondents have taken the preliminary objection that as the cause of action has arisen in Nepal, the OA is fit to be dismissed for lack of jurisdiction. A second preliminary objection has been taken that persons locally recruited for service in diplomatic, counsellor or other Indian Establishments in foreign countries are excluded from the purview of the pension rules, and are entitled only to retirement gratuity by way of terminal benefits. The OA has also been challenged on merits on the grounds discussed in the foregoing paragraphs.

13. I have given the matter my careful consideration.

14. The first preliminary objection is summarily dismissed, because the judgment in J.N. Gupta's case (Supra) relied upon by respondents themselves, ^{explains} ^{has} ~~says~~ that CAT jurisdiction in service matters ^{arising} outside the territory of India, but under GOI's control.

15. Coming to the second preliminary objection and the other grounds taken by respondents to deny family pension to applicant their stand is that

- i) applicant's late husband being a locally recruited employee in the Indian Embassy Nepal is excluded from the benefits of the CCS(Pension) Rules in view of Rule 2(f);

ii) As he neither belonged to any Central Govt. Office in India nor was deputed/ posted from such office/deptt., he cannot be treated as a Central Govt. Employee and is hence not entitled to pension.

iii) Para 6 of his appointment offer dated 28.9.60 disentitles him to pension.

16. In so far as Shri Sharma's case^{being} hit by Rule 2(f) CCS(Pension) Rules is concerned, my attention has been invited to Himachal Pradesh High Court's judgment dated 8.1.87 (LPA No.4/76) titled Shri S.S. Reghubans Vs. Embassy of India in Nepal and another. In that case applicant had retired as a Hawaldar Clerk from the Army in 1956. Prior to his retirement he had served on the personal staff of the Military and Air Attaché in the Indian Embassy, Nepal from 1952 to 1955 during which period he was treated as an India based official. While on retirement in his village Arla Distt. Solan in Himachal Pradesh State, he received a telegram from the Indian Embassy, Nepal seeking his willingness to join as LDC for six months in the Indian Embassy Nepal. While expressing his willingness he sought further details regarding the terms and conditions of his service. Meanwhile he received another telegram calling upon him to join duties at Kathmandu in Nepal forthwith in response of which he joined the said post at Kathmandu in November, 1958. He was initially posted as LDC for six months, but ultimately was absorbed in a permanent post sanctioned for the pension paying branch under Indian Embassy, Nepal, and upto the date of filing writ petition, had held various

posts, including LDC, UDC, ATD, STO etc. Applicant presumed that having regard to the administrative instructions issued by the President of India on 6.10.59, 5.9.60 and reiterated on 20.12.60 his case would be governed by the same and he would be treated as an India based official, but eventually in March, 1973 he was informed that the Govt. of India had not agreed to granting the pay and allowances admissible to an India based employee. Thereupon he preferred an appeal against that order in 1973, upon which he filed the aforesaid LPA. The UOI in the aforesaid LPA took the stand that the appellant's terms and conditions of service were at the time of appointment governed by Defence Ministry's letter dated 25.4.56 wherein any person employed by Embassy of India, Nepal was to be treated as locally recruited and not India based and an India based employee would be treated as such only in cases where before proceeding to the foreign country he was holding a post in India and was expected to return to a post in India at the end of the period of assignment abroad. Such India based employees consisted of two categories, namely (i) those recruited in India on scales payable to them at the place of their appointments and (ii) those who were transferred at Govt cost for service in India employment abroad. All other officials were treated as local, whether recruited in India or abroad. Respondents had taken the stand that as the applicant was not recruited in India but in Nepal he could not be treated as an India based official.

17. Negativ ing the construction put by the respondents on the phrase "India based employee" as not only arbitrary but ridiculous on the very face of it, the H.P. High Court in the aforesaid judgment held that to say that a man recruited for a post in Nepal from India who had his domicile in India at the time of recruitment, was a local recruit in Nepal,

"a based recruit in Nepal, was a contradiction in terms, since a person with a residence and domicile in India at the time of recruitment could not be said to be a locally recruited person in Nepal. The contents of Govt. letter dated 5.6.60 were also noted in the judgment, wherein the terms and conditions of service had been specially clarified and it had been stated that while Class IV Staff would be locally recruited by the Embassy and their terms and conditions of service would be governed by the directions contained in the letter dated 16.2.60, Class III Staff would be recruited locally as far as possible, but if suitable hands were not available they would be recruited from India or found from existing staff or deputed from offices in India and those recruited from India would be governed by the terms and conditions as laid down in the letter dated 6.10.59, which laid down that India based employees would be allowed pay scales on the terms and conditions of service admissible to similar India based civilians serving on the staff of the Indian Embassy, Nepal."

18. Accordingly, the aforesaid LPA of appellant Shri Raghubans was accepted by the Himachal Pradesh High Court and it was held and declared that he had been an India based employee in the service of Union of India from 8.11.58 till his superannuation on 1.4.80 on different posts and was entitled to salary and other allowances for all this period as India based employee along with retiral benefits such as pension, death-cum-retirement, gratuity etc. and respondents were directed to work out and pay all these monetary benefits within 9 months of that

judgment along with costs of Rs.500/-.

19. Nothing has been shown to me to establish that the aforesaid judgment in Raghubans's case (Supra) has not become final.

20. In my view the judgment in Raghubans' case (Supra) is fully applicable to the facts and circumstances of the present case. In fact, the present case stands on a better footing than Raghubans' case (supra) because the applicant's late husband served not only in Nepal but thereafter served in various places in India including Panchmarhi, Ambala etc. where he continued to work till his unfortunate demise on 30.5.94. Under the circumstance as applicant's late husband was not a locally recruited employee in the Indian Embassy Nepal, his case is not hit by Rule 2(f) CCS(Pension) Rules, 1972.

21. As regards the objection in para 15(ii), namely applicant not coming within definition of Central Govt. employee, we have to go by CCS (Pension) Rules, 1972. Rule 2 of those rules makes them applicable to Govt. servants including Civilian Govt. servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but those rules shall not apply to certain categories of Govt. servants specified in Clause (a) to (h) of Rule 2 including Clause (f) already noticed above. Admittedly, applicant's late husband Shri S.K. Sharma was a Govt. servant appointed to a post in connection

with the affairs of the Union which was borne on a pensionable establishment. No doubt, Rule 2 refers to substantive appointment but Rule 10 CCS (Temporary Service) Rules makes even temporary Govt. servant retiring from service on attaining the age of superannuation eligible for pension and DCRG, and Rule 10(2) thereof provides that in the event of death of a temporary Govt. servant while in service, his family shall be eligible for family pension and DCRG at the same scale and under the same provisions as applicable to permanent Central Civilian Govt. servant under the CCS(Pension) Rules, 1972. Under the circumstance, although there is no specific averment in the OA that after Shri Sharma's initial appointment, he was made substantive, even if he continued to remain temporary that by itself would not debar him from the grant of pension and DCRG, and his widow from the grant of family pension and DCRG as per rules. Furthermore just like Shri Raghubans' case (supra) applicant's late husband cannot but be treated as an India based employee in the service of the Union of India, and hence the objection in para 15(ii) above, to the grant of family pension to the applicant also cannot be sustained.

22. In regard to the objection contained in para 15(iii) above, namely that para 6 of Shri Sharma's appointment offer dated 28.9.60 disentitles him to pension, we have noted that after coming into effect the CCS(Pension) Rules, 1972, it is these rules that would have overriding effect, and his case would have to be governed by the provisions of those rules according

to which, as we have seen above, he is entitled to pension and DCRG.

23. In the light of the foregoing discussion, this OA succeeds and is allowed. Applicant being widow of Shri S.K. Sharma is entitled to get family pension along with DCRG (admissible to her late husband at the prescribed rate w.e.f. 30.5.94 together with arrears. Respondents should release the same to her within three months from the date of receipt of a copy of this judgment. The prayer for payment of interest and costs is rejected as there is nothing to suggest that there was any wanton or malafide delay on the part of the respondents in releasing the aforesaid claim of applicant.

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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