

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 318/94

New Delhi this 3rd June, 1994.

CORAM:

Hon'ble Mr. S. R. Adige, Member (A)

A. P. Sunny,
s/o Sh. A. M. Pappachan,
r/o Chitterth Ayyamkeril,
Ernakulam, Kerala Applicant.

By Advocate Shri P. I. Commen

Versus

1. Union of India through
the Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

2. Director (ADP),
Ministry of External Affairs,
South Block,
New Delhi Respondents.

By departmental representative Shri V. Katju,
Joint Secretary.

ORDER

This is an application filed by Shri A. P. Sunny, praying that the respondents be directed to grant him gratuity/terminal benefits on the basis of 15 years of service rendered by him in the Indian Embassy Bonn, Germany.

2. Admittedly, the applicant, who is an Indian Citizen, was locally recruited in the Indian Embassy, Bonn, Germany on 19.7.71 as a Typist vide letter dated 12.7.71 (Annexure-A1) and continued to work there without any break till 17.4.86. On 30.1.86, due to personal reasons he voluntarily submitted his resignation with one month's notice, vide his application of even date

(Annexure-A2), which was accepted. It appears that on 22.2.89, the applicant represented to the Indian Ambassador, Bonn for terminal benefits (Copy of this representation not filed) in reply to which the Ambassador informed him in March, 1989 that there were no rules obliging the Government to give him the terminal benefits in form of gratuity for completed years of service with the Embassy, but a case had been made out and sent to the External Affairs Ministry requesting that the local staff should be given some terminal benefits and when a general decision in the matter was taken, the applicant would be informed. Thereafter, the applicant sent a reminder on 2.7.90 in reply to which he received a communication dated 17.7.90 (Annexure-A6) that the matter was under consideration, but receiving no further reply, the applicant filed O.A.No.1737/91 in this Tribunal, which was disposed of by judgment dated 2.4.92 (Annexure-A7) which, without entering into merits of the case, directed the respondents to dispose of the applicant's representation dated 2.7.90 and if no such representation was available with them, the applicant was allowed to submit a supplementary representation, which the respondents were directed to dispose of within six months of its receipt. In case any grievance survived thereafter or the representation of the applicant was not disposed of by a reasoned order, or was not disposed of at all, liberty was given to the applicant to come-up again.

3. He alleges that as the respondents have failed to dispose of his supplementary representation

(F)

dated 21.7.92, he was compelled to file this O.A.

4. I have heard Shri P.I.Oommen, learned counsel for the applicant and Shri V.Katju, Joint Secretary, Departmental Representative on behalf of the respondents. At the out set, Shri Katju raised the question whether this Tribunal has jurisdiction to adjudicate upon the claims arising out of this O.A. Admittedly, the applicant is an Indian Citizen and without doubt, the post of Typist in the Indian Embassy Bonn, Germany is a Civil post under the Union. Under Section 14(1)(b), the Tribunal has jurisdiction in respect of all service matters concerning persons appointed to any civil post under the Union and under the circumstances, the Tribunal has full jurisdiction to adjudicate upon the claims arising out of this O.A. In fact, if the Tribunal did not have jurisdiction to entertain such a prayer, O.A.No. 1737/91 itself would have been dismissed at the admission stage.

5. It is ^{true} ~~no doubt~~ that by MEA's letter dated 8.10.65 (Annexure-A3), the Government had communicated its decision that the members of local recruited staff, serving in the Indian Missions and Posts abroad, whether temporary or otherwise, would be granted terminal benefits at certain rates and subject to certain conditions. Condition No.X laid down that these terminal benefits were not applicable in those cases where it was obligatory under local laws/regulations to pay gratuity/retirement benefits at different rates.

JK 8

or where the Missions/posts are making contribution on behalf of the employees, to the Health/Unemployment/Medical/Old Age Insurance or any other Scheme. On 3.3.81, by Annexure-A4 the MEA's letter dated 8.10.65 was marginally amended in respect to the rate at which the gratuity would be admissible, and this amendment was made applicable to the locally recruited staff working in the Indian Embassy, Brussels only. Meanwhile, on 30.4.65 itself the MEA in its letter of even date addressed to the Secretary, Indian Embassy, Bonn, and the Consulate General of India, Berlin, ^(Annexure-RIV) communicated the Government's sanction to the payment of the employer's share of contribution to the compulsory Social Insurance, at a rate not exceeding 16% of the salaries of the local employees working there, subject to the condition that no terminal benefits would be allowed to the locally recruited staff at the time of their leaving the service. These orders came into effect from 1.1.65. Subsequently by MEA's letter dated 18.2.81(Annexure-RV), the Government communicated its sanction to the payment by the respective Missions/Posts of the employees' share of contribution towards the Compulsory Social Insurance Scheme of the German Government, on behalf of the locally recruited staff working in the Indian Embassy, Bonn, Consulate General of India, Berlin, Hamburg and Frankfurt, subject to the conditions that:

- a) the employer's contribution would be equal to that of the employee concerned and subject to a ceiling of 18% of his/her pay;
- b) no terminal benefit would be admissible to the locally recruited staff, at the time of their leaving the services or their services being terminated;

c) the payment would be made direct to the Insurance Company authorised by the Government of the Federal Republic of Germany on this behalf after received the contributions of the employees through deductions from their respective pay-bills.

This revised rate was to take effect from 1.1.76, and was to be treated as ex-post-facto for the period that had already lapsed. It was further stated that the contributions to this scheme would be in addition to the contribution towards statutory Accident Insurance of the German Government authorised by the MEA's letter dated 19.7.78.

6. There is considerable force in the stand taken by the respondents that as per the applicant's own documents, he is covered by the Social Security Scheme, in pursuance of which the respondents have paid their own contributions to the said scheme and having enjoyed the benefit of Social Security Scheme, the applicant cannot at this stage claim other terminal benefits. The respondents have drawn attention to Provision (X) of the order dated 8.10.65 which clearly states that a local employee shall not be entitled to the payment of gratuity if the Mission is making contributions on behalf of the employee to Health/Unemployment/ Medical/Old Age Insurance or any other Scheme. As the Indian Embassy, Bonn was making contributions on behalf of the applicant to the Social Security Scheme of the local Government, the applicant is not entitled to payment of any terminal gratuity in terms of the order dated 8.10.65. The order dated 3.3.81 amends the earlier order dated 8.10.65

and enhances the rate of gratuity payable to the locally recruited employees in the Indian Embassy, Brussels, but mentions that this amendment is applicable to the locally recruited employees in the Indian Embassy, Brussels only.

7. The rules and instructions referred to by the respondents are quite clear on the subject, and manifestly the applicant is not entitled to any terminal benefits. The mere fact that the rate of gratuity was enhanced in respect of the locally recruited staff working in Indian Embassy, Brussels, does not make out a case for the applicant to be granted terminal benefits also, because the MEA's letter dated 3.3.81 (Supra) was specifically limited to the locally recruited staff working in the Indian Embassy, Brussels. The applicant can only plead hostile discrimination if other locally recruited staff in Bonn were given the terminal benefits and he was denied the same, but this is not the case here. Further more, the applicant's contention that the respondents had not counted his service in the Indian Navy, does not advance his claim for terminal benefits as an employee locally recruited in the Indian Embassy, Bonn.

8. No good grounds have been advanced by the applicant to warrant any interference by the Tribunal in this matter, and this application is accordingly dismissed. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

/ug/