

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No.459/94

Friday this the 30th day of July, 1999

CORAM

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

1. M.B.L. Nigam, Director Cum Deputy
Economic Advisor, Ministry of Agriculture,
Krishi Bhavan,
New Delhi.
2. P.L.Sodhi, Jr.Engineer (Retd)
PG Institute of Med.Education& Research
Chandigarh C/o Shri Dharam Vir
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New Delhi..3
K.K.Sinha, Professor,
Motilal Nehru College
Delhi University
Delhi.
4. B.W.Khubchandani
CPWD, Executive Engineer,
Nirman Bhawan, New Delhi.
5. S.C.Sharma, Personal Secretary
Member Planning Commission
New Delhi. ..Applicants

(By Advocate Mr.Venkataramani Sr.Counsel with Mr.Garg
Brijesh)

Vs

Union of India through its
Secretary
Ministry of External Affairs
Economic Division
South Block (Gate No.4)
New Delhi. ..Respondent

(By Advocate Mr.N.S.Mehta)

The application having been heard on 26.7.1999, the
Tribunal on 30.07.1999 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicants 1 to 5, who were employed
with the Department of Economic Affairs, Ministry of
Finance, Post Graduate Institue of Medical Education

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and Research, Chandigarh, Motilal Nehru College, Delhi University, Delhi, CPWD Nirman Bhavan, New Delhi and Planning Commission, New Delhi respectively were deputed to the Government of Afghanistan under the programme known as ITEC of the Ministry of External Affairs. Their deputation commenced on various dates between 31.5.91 and 4.4.92. The period of their deputation ranged upto two years. The terms and conditions of deputation of the applicants were identical and the applicants reported for duty in terms of the assignment in Afghanistan. The applicant No.1 came back to India on 2.4.92 on casual leave from Kabul. He was by an order dated 16.4.92 advised to cancel his departure to Kabul and to join on temporary duty in the Economic Division of the Ministry of External Affairs until further notice. The other applicants were also hold back to India and were attached with the External Affairs Ministry at Delhi on temporary duty. This was owing to the turbulent situation in Afghanistan. No decision was taken as to whether the applicants were to be repatriated to their parent department or to be sent again to Kabul for a fairly long period. Though the applicants were attached to the Economic Affairs Division of the Ministry of External Affairs, they were not paid pay and allowances. They went on making representations. They also requested that the premature termination of their deputation may not be considered till they were allowed to bring back their personal belongings

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which were left in Afghanistan and without settling their dues with the Indian Embassy, Kabul. The respondent had on 14.12.92 issued an order conveying the decision of the competent authority to terminate the deputation of the applicants to Afghanistan with effect from 31.12.92 on the ground that the situation in that country continued to be unsettled and not conducive to their return. It was further provided in the order as follows:

(i) The period of their temporary attachment with the Ministry of External Affairs will be treated as leave-cum-consultation duty in India as an exceptional case.

(ii) They would be paid basic pay plus 50% compensatory allowance admissible minus servants wages from the date of joining the Ministry in April, 1992 to December, 1992.

(ii) They would also be paid daily allowance applicable to New Delhi for the period of consultation duty subject to a maximum of 180 days.

(iv) They would be allowed to go and stay in Kabul for a period of five days to wind up their establishment. This would be done as and when the security situation improves in that country. During their stay in Kabul they would be entitled to hotel accommodation and daily allowance as admissible under rules.

2. The applicants were thus relieved of their temporary attachment and were reverted back to their parent department. However, they were allowed to go to Afghanistan and bring back their belongings. According to the applicants their personal belongings, the value of which was between 30 to 50 thousand each, were lost and the claim in regard to this has not been settled. When they went to Kabul they were paid their fifty percent compensatory allowance on an undertaking that

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they would refund in case it was found to be in excess. The respondent sent a communication to the applicants stating that there has been some over payments and directing them to refund the same. The applicants are aggrieved by the ^{treatment} ~~by~~ of the period while they were temporarily attached to the Ministry of External Affairs as leave-cum-consultation duty in India. According to the applicants the respondent could not have taken such a unilateral decision against the terms of the contract. If the situation in Afghanistan was not conducive for the continued deputation of the applicants there, it was open for the respondents to repatriate them to their parent department. However, during the period they were attached to the Ministry of External Affairs, the respondent is bound to treat the same as also period spent on deputation, submit applicants. In view of the action of the respondent in treating the period as leave-cum-consultation, the applicants have suffered monetary loss, allege applicants. With the above allegations, the applicants have filed this application for the following reliefs:

- (a) Call for the records of the case;
- (b) Pass an order declaring that the contents of the communication dated 14.12.1992 issued by the respondent are illegal, discriminatory and violative of Article 14 of the Constitution.
- (c) Pass an order directing the respondent to pay the applicants their pay and allowances in terms of their letter of deputation and in the currency concerned as was paid to some of them in Kabul during the subsistence of deputation.

(d) Pass an order directing the respondent to appropriately recompense the applicants towards the losses they suffered by reason of damages to their property and personal belongings in Afghanistan, as loss suffered is an incident of service; and

(e) Pass such further or other orders (s) or directions (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. The respondent seeks to justify their action in treating the period during which the applicants were temporarily attached to the External Affairs Ministry on the ground that the situation in Afghanistan being turbulent and not conducive for the continuance of the applicants there, respondent had no option but to do so. Justifying the treatment of the period during which the applicants were temporarily attached to the Ministry of External Affairs, the respondent states that in the case of personnel of Embassy of India, Bagdad under similar situation in the year 1991 the period of stay at H.Q. in Delhi was treated as leave-cum-consultation period vide Ministry's Order dated 25.6.92 (Annexure.E). Regarding the loss of personal belongings the respondent contends that the respondent has no liability and the applicants should have insured their belongings.

4. We have heard the arguments of Shri Venkataramani, Sr.Counsel appearing for the applicants and Shri N.S.Mehta appearing for the respondent and have perused the pleadings and other materials.

5. Shri Venkataramani with considerable tenacity argued that as the terms and conditions of the applicants' deputation were settled between the parties before the deputation commenced, it was not open for the respondent to unilaterally vary the terms. While conceding that the temporary attachment of the applicants at Delhi for some period was because the situation in Afghanistan was not conducive for the applicants' continuance there, Shri Venkataramani argued that the respondent was obliged either to put an end to the deputation and repatriate the applicants to their parent department or to honour the terms of the agreement, under which the applicants were taken on deputation till the date of their repatriation. Shri Venkataramani further argued that while the applicants were temporarily attached to the Ministry of External Affairs, New Delhi, they should have been treated as on temporary duty at Delhi as was made known to the first applicant by Ministry's letter dated 16.4.92 (Annexure.3). The decision of the competent authority conveyed in Annexure.B dated 14.12.92 to treat this period as leave-cum-consultation is unsustainable, argued the learned counsel. We are of the opinion that this argument of the learned counsel has considerable force. While the applicants were detained in Delhi on temporary attachment with the Ministry of External Affairs on temporary duty they should have been treated as on temporary duty in the same manner as the officers in the Embassy at Afghanistan while in Delhi on temporary duty were treated. This ^{discriminatory treatment} according to the applicants entailed financial loss to them. We find

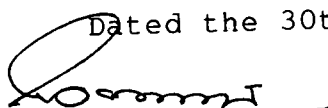
that the respondent is bound to treat the period as temporary duty at Delhi and settle the claims of the applicants accordingly.

5. Regarding the loss of personal belongings, we do not find any undertaking in the terms of agreement by the respondent to compensate the applicants for the loss of their belongings. Therefore, we do not find that the applicants are entitled to that claim.

6. Regarding the claim of the applicants for payment in the currency concerned, it would be sufficient to state that the settlement would be made treating the period of their temporary attachment with the Ministry of External Affairs in Delhi as Temporary Duty at Delhi.

7. In the result, in the light of what is stated above, the application is allowed in part. The provision in the impugned order that the period of their temporary attachment with the Ministry of External Affairs will be treated as leave-cum-consultation duty in India as an exceptional case is set aside and the respondent is directed to settle the claims of the applicants treating the said period as temporary duty at Headquarters in Delhi as in the case of officials of Indian Embassy in Afghanistan while on temporary duty in Delhi. The claim of the applicants should be so settled and orders communicated to the applicants within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated the 30th day of July, 1999



S.P. BISWAS
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN