

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1576/2000

New Delhi, this day the 11th September, 2001

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Shiv Mangal Rai S/o Late Sri Huseni Rai
C/o Mr. Rajendra Kumar Advocate Raxaul
Sub-Divisional Court, Raxaul P.O.
Raxaul Distt. East Champara, Bihar.

Permanent Address: Vill. Lalparsa P.O./P.S.
Sugauli Distt. East Champaran, Bihar

.... Applicant

(By Advocate : Shri Pankaj Kalra)

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi
2. Secretary, Ministry of External Affairs, Union of India, New Delhi
3. Controller of Defence Account Central Command, Meerut, U.P.
4. Ambassador, Embassy of India, Kathmandu, Nepal
5. Defence Attache, Embassy of India, Kathmandu, Nepal
6. Asstt. Military Attache (Pension), Embassy of India, Kathmandu, Nepal
7. Officer-in-Charge Indian Embassy, Pension Paying Office, Pokhara, Nepal

.... Respondents

(By Advocate : Mrs. P.K. Gupta)

O R D E R (ORAL)

HON'BLE MRS. LAKSHMI SWAMINATHAN, V.C. (J) :

The applicant has impugned the termination orders passed by the respondents as wholly illegal whereby his services were terminated i.e. orders dated 19.5.2000 and 7.6.2000 (Annexure 'J' collectively).

2. In the aforesaid order dated 19.5.2000, it is stated, inter alia, that the applicant's services

(2)

were no longer required by their Office i.e. Indian Embassy Nepal, Military Pension Branch, Kathmandu from 1.6.2000. In terms of the conditions of his appointment, he was granted pay and allowances for one month i.e. for June 2000 in lieu of notice period. The order dated 7.6.2000 confirms the position stated in the order dated 19.5.2000. The impugned orders have been issued from the Office of respondents 4 - 6.

4. The applicant was initially appointed by the Ambassador of India in Nepal by the order dated 6.10.1963. In the order, it has been stated that he has been appointed on a purely temporary capacity as Lower Division Clerk (LDC) in the Pension Paying Office, Pokhara w.e.f. 25.8.1963. The order further states that his services may be terminated at any time without any notice or pay in lieu. Admittedly vide order dated 28.3.1972, respondent 4 issued an order after the meeting of the Board of Officers in the Embassy to confirm the applicant in the post of LDC against an existing permanent post. The Board of Officers have selected the eligible staff who have been confirmed in various posts by this order, which was based on seniority and suitability. Thereafter, the respondents do not deny the fact that the applicant had earned several promotions and was promoted to the rank of Sub-Treasury Officer (STO) on 2.3.1989. They have also stated that his promotion to the rank of STO has been done by virtue of seniority and rules governing the appointment/promotion policies relating to locally recruited employees. The applicant is an Indian

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citizen, but recruited as staff of the Indian Embassy, Nepal at Kathmandu by the aforesaid order dated 6.10.1963. The applicant thereafter, continued in the post for a number of years and has rendered more than 37 years of service with the respondents.

3 5. The applicant is aggrieved by the show cause notice issued to him by order dated 12.5.2000. By this show cause notice, the Officer Incharge of the Pension Paying Office, Pokhara, has alleged that the applicant had failed to follow certain orders and had desired him to send a reply to him by 1200 hrs on the same day without fail. This, the applicant did by his reply dated 12.5.2000. In this reply he has submitted, inter alia, that he had no intention of dis-obeying any orders and also that he would, in future, certainly put up all dak/letters not seen by the Officer Incharge through the concerned officers. Within a week of the reply, the respondents have issued the Discharge Notice dated 19.5.2000 stating that his services are no longer required by the Office from 1.6.2000. The learned counsel for the applicant states that a representation has been submitted to respondent 4 against the termination of his service. During the hearing Mrs. P.K. Gupta, learned counsel for the respondents, has, however, submitted that there is no statutory appeal provided to the applicant in such cases. In any case, the representation of the applicant to respondent 4 has also not been replied and no action ^{has been} taken, as submitted by the learned counsel for the applicant.

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6. Both learned counsel has relied on the judgement of the Hon'ble Supreme Court in Chandreshwar Narain Dubey and Ors vs. Union of India & Ors (Civil Appeal No. 4569 of 1996) with connected cases which has been decided on 14.8.1998. These sets of appeals had arisen out of the orders passed by the Tribunal (PB) regarding persons who have been employed in the same Office i.e. the Pension Paying Offices attached to the respective Ministries in the Embassy of India at Nepal. While dealing with C.A. No. 4569 to 4571/1996, the Supreme Court has held as follows:-

"On the basis of these tests, the Tribunal examined cases of appellants and held that the appellants who a (sic) locally recruited in Nepal cannot claim as a matter right parity of pay-scale with their counter-parts India. Classification between locally recruit employees in Nepal and India Based employees in Pens Paying Offices is a valid classification. However, Tribunal allowed the claim to the extent of declaring that those of the appellants who had been confirmed in various posts pursuant to order dated 20th March, 1972 shall be deemed to be confirmed employees and shall be entitled to benefits flowing from there as are admissible to locally recruited employees who are confirmed." (Emphasis supplied).

7. The learned counsel for respondents has submitted that the aforesaid order dated 20.3.1972 confirming the applicant was cancelled vide MBO dated 23.10.1975. However, he states that this order was neither placed before the Hon'ble Supreme Court in the aforesaid case nor before the Tribunal, even though it is noticed that the order dated 28.3.1972 is stated to have been cancelled as far back as 23.10.1975. It is further relevant to note that the respondents have

nowhere averred that the cancellation order dated 23.10.1975 has been served on the applicant and other persons. The learned counsel for applicant has submitted that the applicant was not aware of any such order until he saw it in the reply filed by the respondents on 12.1.2001 in the present OA. In the circumstances of the case, as nothing has been brought on record to show that the cancellation order has been given effect to or any reason whatsoever as to why the same had not been placed before the Hon'ble Supreme Court or the Tribunal earlier when they were dealing with the relevant orders issued on 28.3.1972, the respondent cannot take recourse to the later order at this stage.

8. Hon'ble Supreme Court in Chandreshwar Narain Dubey's case (supra) while dealing with other sets of appeals which had also been dealt with by the Tribunal in respect of termination of services of the concerned appellants, has held as follows:-

"As regards the order made by the Tribunal in respect of termination of services of the appellants is concerned, again we may state that the Tribunal had noticed that the appellants had not been recruited on a permanent basis, but are purely employees whose services could be terminated at any time, but in doing so bore in mind the circumstances available to each one of the appellants under which their services were terminated. While in the case of some, where the order was termination simplicitor, the Tribunal held the same as valid and in case of others, ground such as disciplinary or other reasons were set out, the same was held to attach a stigma to such persons and therefore, set aside the termination, but in lieu thereof granted compensation. The Tribunal has adopted a rational basis in dealing with the matter. We do not think there is any

21

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reason to interfere with the order made by the Tribunal." (Emphasis added).

9. Having regard to the facts and circumstances of the present case, as the impugned termination order dated 19.5.2000 has been issued by the respondents, which has been preceded by a show cause notice dated 12.5.2000, the same cannot be held as an order simpliciter terminating the services of the applicant. The termination order is based on the alleged misconduct and disobedience of the applicant in following the relevant orders which, according to the respondents, have been repeatedly given to him and counselling and so on. In the reply filed by the applicant, he has, inter alia, stated that due to an oversight, he had failed to check that ^{for} Officer-in-Charge wordings have not been typed thereon for which he has assured that in future he will put up all dak/letters to the concerned officer. In the facts and circumstances of the case and following the observations of the Hon'ble Supreme Court in the aforesaid case, the order of termination is, therefore, based on a ground which would be the basis of ^{as} ~~the~~ disciplinary action. It is also relevant to note that if the fact ^{is} ~~that~~, as contented by the respondents, the termination is in terms of the appointment order, then even a show cause notice was not required as, according to them, he has been appointed on a purely temporary capacity as LDC. However, as it is not denied that the applicant has, while being in service with the respondents ^{for} ~~for~~ over 37 years, earned a number of promotions up to the rank of STO, on which post he was

29

(7)

promoted as far back as 2.3.1989 against a permanent existing post, it will no longer be open to the respondents to contend that he continued on a purely temporary capacity.

10. In the circumstances of the case, we find that the respondents have totally ignored the principles of natural justice as they have failed to afford the applicant a reasonable opportunity to put forward his case. As mentioned above, the show cause notice issued on 12.5.2000 appears to be a mere formality as the applicant was required to give his reply within hours by 12 noon on the same day. No doubt, the applicant has done so. It is also relevant to note that the termination order dated 19.5.2000 is a cryptic and a non-speaking order which again is in violation of the principles of natural justice. The subsequent order dated 7.6.2000 merely reiterates that the services of the applicant have been terminated w.e.f. 1.6.2000 with the approval of the Defence Attache of the Embassy of India in Nepal.

11. In the facts and circumstances of the case and having regard to the judgements of the Tribunal and the Supreme Court, referred to above, we, therefore, hold that the impugned orders dated 19.5.2000 and 7.6.2000 cannot be sustained in law. The impugned orders of termination are accordingly quashed and set aside. In the circumstances, the applicant shall be entitled to be reinstated in service as early as possible, and in any case, within two months from the

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23

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date of receipt of a copy of this order. The competent authority shall pass appropriate orders with regard to regulation of the period from the date of termination of the services i.e. 19.5.2000 to the date of reinstatement in accordance with the relevant provisions of law, rules and instructions and this will also be done within two months of his reinstatement.

No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

/pkr/

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)