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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2658/2000

New Delhi this the 6<sup>th</sup> day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

R.A. Narayanan,  
S/o Sh. Late Rangnath,  
R/o C-1842, Sushant Lok, Phase-I,  
Gurgaon-122 002.  
(Haryana)

-Applicant

(By Advocate Shri S. Guru Krishna Kumar, proxy for  
Sh. Rajesh Pathak, Advocate)

-Versus-

Union of India through  
Secretary,  
Ministry of External Affairs,  
Videsh Mantralay,  
South Block,  
New Delhi.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R

The applicant has put challenge to SRO No.609 dated 20.2.1957, which has excluded from its purview the locally recruited staff in the Mission Abroad in the Ministry of External Affairs and also assailed an order dated 28.3.2000, whereby the request of the applicant for pensionary benefit has been rejected by the respondents.

2. Briefly stated, the applicant was locally recruited as Lower Division Clerk in the Embassy of India, Rangoon (Burma) on 5.2.1947 and had been working as Assistant. By a letter dated 20.9.50 some concessions like free leave passage have been accorded to the locally recruited Indian staff and their families on the condition that he must be a citizen of India and has not acquired the citizenship of any foreign State and his domicile is in India. It is also provided in this letter that locally recruited staff would continue to draw pay, foreign or dearness or local allowance as the case may be and house

rent allowance as at present sanctioned. It was also decided in this letter that there would be no recruitment locally to regular posts meant for India based establishments. The applicant was retrenched in September 1968. By another letter of the Ministry of External Affairs dated 12.1.51 it has been decided that the staff who are educationally qualified and considered suitable for foreign service would be considered for appointment to regular Central Secretariat Service (CSS), but the applicant has not opted for it. The applicant made various representations for accord of pension to him, treating him to be a regular incumbent after completion of more than 20 years service, as admissible to the Indian based staff and as per the rules and instructions in vogue.

3. The contention of the applicant is that on the basis of the decision in D.S. Nakara v. Union of India, SLJ 1983 (1) 131 (SC) the pension cannot be treated as a bounty or concession but it is a legal right of a Government servant. It is also stated that he has been discriminated in the matter of pension as his brother who opted for CSS his salary has been fixed and the period rendered as a locally recruited staff has been reckoned for the purpose of pensionary benefits. The learned counsel of the applicant states that local staff in Burma were granted home based status by Ministry's letter dated 20.9.50 and have been treated at par with their counter-parts. It is stated that the respondents have violated Articles 14 and 16 of the Constitution of India, as he has been discriminated. The applicant also challenges the SRO No.609 dated 28.2.57 on the ground that it arbitrarily excludes the staff from pension which is unconstitutional. As regards limitation it is contended that now by a letter

dated 28.3.2000 the respondents have rejected the claim on the basis of a decision of the Patna Bench of this Tribunal in OA-382/88 decided on 8.2.90 in the matter of Deo Kumar Thakur v. U.O.I. & Ors. The learned counsel of the applicant has further placed on on a decision in A.P. Srivastava v. U.O.I., 1995 (6) SCC to contend that he cannot be discriminated in the matter of accord of pension. It is also contended that the applicant has been issued a certificate of his having worked by the Embassy and there is no question of issuing a circular in 1950 and the applicant is having the status of a government servant and his services were not contractual. It is stated that treating the Indian staff posted abroad on local deputation amounts to meeting out a differential treatment to equals. It is also stated that the applicant is entitled for the benefit of pension as envisaged in the letter issued in 1951<sup>h</sup>, which clearly stipulates that the locally recruited Indian staff who have not been selected for CSS will be allowed to continue with pay and allowances etc. which are admissible to them, which, inter alia, includes pensionary benefits. It is also stated that the decision referred to by the respondents of the Patna Bench (supra) has not taken into consideration the question of interpretation of letter and also the case-law which has now been cited by the applicant. It is also stated that if the service rendered as Indian local staff abroad is reckoned in other cases as qualifying service for pension after opting for CSS, the same should also be treated as qualifying service for pensionary benefits to the applicant who opted to retire voluntarily after completing 20 years of service and GPF and Gratuity etc. would not be sufficient.

4. The respondents in their reply contended that as per Rule 2 (f) of the Pension Rules, 1972 persons locally recruited for service in Indian Establishment in foreign countries are excluded for accord of pension and SRO which has been issued keeping in view these provisions is justified and reasonable and is not ultra vires. It is stated that the locally recruited Indian staff have employed for the purpose of giving assistance to Government of India home based officers. The recruitment of local Indian staff is against local post of temporary nature and continued from year to year and they are accorded certain concessions like leave passage, medical etc. The applicant while being offered option to opt for CSS having refused the same and failed to exercise option to join CCS had lost his right to be treated as a regular incumbent. The letter issued in 1951 does not envisage within its meaning etc. of pension benefit and concessions granted by letter dated 20.9.50 are for a limited purpose and they have not been granted status of a home based staff. As regards the case of R. Rajagopala is concerned, the applicant cannot claim any parity or entitlement. Pension and counting of service are two different issues. The aforesaid incumbent was offered the post of LDC and having attained the status of a government servant this period has been reckoned for the purpose of pensionary benefits, whereas the applicant has not been appointed after following the relevant rules and hence his appointment cannot be treated as regular appointment of the Indian home based staff. The learned counsel of the respondents placing reliance on a decision of the Patna Bench of this court contended that the said issue has been dealt with in detail in Deo Kumar Thakur's case (supra) wherein in view of the provisions of Rule 2 (f) of the Pension Rules the claim of the applicant therein

has been rejected for accord of pensionary benefits. The plea of hostile discrimination has been rejected therein. It has been held that locally recruited Indian staff in the Mission abroad form a different and distinct class and it is the <sup>h</sup>prerogative of the State to make reasonable classification based on intelligible criteria and in absence of any justified grounds to show that the same is arbitrary the applicant has no case.

5. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the applicant that by letter dated 20.9.50 the locally recruited staff has been declined as home based staff for the purpose of all the benefits admissible to them at par with the regular staff cannot be countenanced. What has been provided in the letter is that the Indian based staff and their admissibility to some of the concessions including free leave passage, medical etc. was under consideration of the Government and the same has been made entitled to them subject to the condition that they are citizens of India and domiciled in India too. There is nothing in this letter which suggests that the locally recruited Indian staff has been treated at par, for all purposes, with home based staff by the Government. There is no iota of evidence to show that these concessions, inter alia, included pensionary benefits. Apart from it, the claim of the applicant is also liable to be rejected on the ground that in pursuance of the letter dated 12.1.51 which stipulates that those who are educationally qualified for the appointment and suitable for foreign service will be considered for appointment to regular CSS of branch of the Indian Foreign Service and those who would be opting for it would be absorbed/selected

and continued and would be subjected to all other conditions as prescribed for regular incumbent. The applicant having offered the option has not elected to exercise the same and as such as per clause-v of this letter dated 12.1.51 he is entitled to continue on the present terms regarding pay, leave allowances, rent allowance and other concessions made available in the letter of 1950 and this does not, inter alia, include any pensionary benefits. As such the contention of the applicant that he has been accorded of the pensionary benefits by equating him with home based staff and are to be treated as regular government servant, is not legally sustainable.

6. As regards the issue that one Rajagopala the brother of the applicant after being opted for CSS his service rendered as locally recruited employee has been reckoned for the purpose of pensionary benefits whereas the applicant who has rendered 20 years service and has not opted for CSS has been discriminated arbitrarily in violation of Articles 14 and 16 of the Constitution, is not tenable. Unequals cannot be treated equally. The applicant is not at par with Rajagopala, who had opted for CSS and after getting the status of regular employee the Pension Rules etc. were made applicable to him and as such his erstwhile service as locally recruited staff has been reckoned for the purpose of pensionary benefits whereas the applicant who has not elected and opted for CSS cannot claim parity and as such there is no question of any discrimination under Articles 14 and 16 of the Constitution of India.

7. As regards challenge of the applicant to SRO is concerned, and the letter dated 23.2.2000 the respondents have already disbursed the gratuity and GPF to the applicant and the Patna Bench of the Tribunal in the case of Deo Kumar Thakur (supra), where the same issue and SRO were in question, has declared the same as intra vires. Apart from it, there is no legal infirmity in the SRO 609. The applicant cannot claim himself to be at par with home based staff as he has been appointed to assist the home based staff and was a holder of a local post and was not a regular government servant. One who belongs to service cadre is only entitled for pension, the applicant who has not been in the cadre and having failed to exercise the option for CSS cannot be equated with the regular government servants although it is true that the pension is not a bounty or concession but is a legal right. But, on the other hand, Rule 2 (f) of the Pension Rules ibid clearly debars applicability of these rules to locally recruited persons in mission abroad. The SRO does not suffer from any legal infirmity, arbitrariness and is not violative of articles 14 and 16 of the Constitution of India. The Government is free to make provisions and in this case there is an intelligible differentia and object sought to be achieved by issuing the SRO. The locally recruited staff who are not holders of regular posts and have already been accorded certain concessions cannot be equated with regular staff and cadre as such they are not entitled for the pensionary benefits. In the decision of the Patna Bench this Tribunal has meticulously dealt with the provisions of the Pension Rules as well as the ground of discrimination, as alleged therein by the petitioners and in view of the several provisions it has been held that equality of opportunity means equality between the members

of the same class and not equality between separate and independent classes and as the applicant is not forming the same class and having separate and independent class the rules framed by the Government of India governing the conditions of his service are found neither reasonable nor arbitrary, as such the prayer of the applicant for declaring the SRO as ultra vires is rejected.

8. In this view of the matter and having regard to the discussion made above the OA is found bereft of merit and is dismissed, but without any order as to costs.

S. Raju  
(Shanker Raju)  
Member (J)

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