CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.823/2000

This the 8th day of February, 2008

HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN

HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)

R.K.Gupta ... Applicant

(By Ms. Raman Oberoi, Advocate)

Versus

Union of India & Others ... Respondents

(By Shri A. K. Bhardwaj, Advocate)

1. Whether to be reported? Yes

2. Whether to be circulated to other Benches?

(V. K. Bali)
Chairman

(48)

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R.K.Gupta S/O R.S.Gupta,
R/O S-233, Greater Kailash Part I,
New Delhi-110048 and employed as
Assistant in the National Crime Records Bureau,
Ministry of Home Affairs, East Block-7,
R.K.Puram, New Delhi-110066. ... Applicant

(By Ms. Raman Oberoi, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
Government of India,
North Block,
New Delhi-110001.

2. Director,
National Crime Records Bureau,
Ministry of Home Affairs,
East Block-7, R.K.Puram,
New Delhi-110066.

3. Secretary to the Government of India,
Ministry of Planning &
Programme Implementation,
Sardar Patel Bhawan,
New Delhi-110001.

4. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110011. ... Respondents

(By Shri A. K. Bhardwaj, Advocate)

ORDER

Justice V. K. Bali, Chairman:

The wife of R.K.Gupta, applicant herein, while he was holding the post of Lower Division Clerk in 1980, formerly employed with Oberoi Group of Hotels, New Delhi as Stenographer took up the job of Receptionist with the Embassy of Arab Republic of Egypt, New Delhi. Due intimation of employment of his wife with the aforesaid foreign Embassy was given by the applicant to the concerned authorities on 2.4.1980 and permission was sought for the same. The application seeking permission as referred to above gathered dust in the archives of the relevant office for number of years, and inasmuch as, the applicant on the asking of the respondents could not make his wife resign from the job, he was chargesheeted, and pursuant to an enquiry held against him, has since been dismissed from service vide orders dated 2.5.2000. The applicant takes serious exception to the order dismissing him from service. Is the order of dismissal from service legally sustainable or justified in the facts of the case, is the only question, but seriously debated on variety of grounds during the course of arguments. Before, however, we may make mention of the rival contentions of the learned counsel representing the parties, it would be useful to trace out the history of the case culminating into filing of the present Application under Section 19 of the Administrative Tribunals Act, 1985, calling in question, as mentioned above, order dated 2.5.2000 dismissing the applicant from service.

2. The applicant joined government service in 1976 as a Lower Division Clerk and in course of time was promoted to the rank of Assistant. During his entire service by the time the present Application came to be filed in this Tribunal, he has served under Ministry of Home Affairs, Institute of Secretarial Training and Management, Special Protection Group, Prime Minister's Office, Ministry of Planning and Programme Implementation, Registrar General of India, and National Crime Records Bureau. It is the case of the applicant that towards the end of March, 1980, his wife, an erstwhile employee of the Oberoi Group of Hotels, New Delhi, took up the job of Receptionist with the Embassy of Arab Republic of Egypt. The applicant who was serving in the Ministry of Home Affairs submitted an application on 2.4.1980 to this effect for information and according permission if need be. It is further the case of the applicant that after submitting application for continuation of employment of his wife, he visited the concerned section of the Ministry of Home Affairs and was told that his application was received and kept on record. He was also shown the file to that effect. For nine years, the respondents did nothing and suddenly woke up in 1989 as if they had discovered for the first time that the applicant's wife was employed in a foreign mission, and directed him to force his wife to resign, to which she refused as she had already rendered 13 years of service by that time, i.e., in 1993. The applicant was chargesheeted accusing him of misconduct. Enquiry was held and completed in 1993 and the

report of the enquiry officer was forwarded to the applicant along with forwarding letter dated 22.9.1993, against which he submitted representation. Number of years rolled by thereafter. However, suddenly, towards the end of 1998 the respondents were reported to be taking punitive action against him. Apprehending action against him, he filed OA No.27/1999 in this Tribunal. The matter came up before the Tribunal on 5.1.1999 when show cause notice was issued to the respondents returnable on 19.1.1999, and till then, as an interim measure, the respondents were restrained from passing any final order in the disciplinary enquiry initiated by the memorandum dated 5.3.1993. On 5.2.1999 arguments were heard on interim prayer and by a detailed order the Tribunal confirmed its earlier order mentioned above. The OA came up for final disposal on 1.5.2000 when it was disposed of by observing that "We do not find any interference is called for at this interlocutory stage. If final orders in the disciplinary proceedings go adverse to the applicant, it goes without saying that it will be open to the applicant to impugn the same by raising all the contentions which have been raised in the present Original Application (No.27 of 1999) as also on grounds which may become available to him on account of passing of the final orders in the disciplinary proceedings." On the very next day, i.e., 2.5.2000, the respondents issued an order dismissing the applicant from service with immediate effect. Along with the order aforesaid, two letters from UPSC dated 14.10.1996 and 25.11.1997 were also annexed. The applicant challenged the

order aforesaid by way of present OA which was allowed on 29.10.2001. It is pertinent to mention here that even though number of grounds were raised to assail the impugned order, but the Tribunal allowed the Application by observing that there was serious legal infirmity in the conduct of the disciplinary proceedings which would strike at its very root. In that context, it was observed that neither the copy of UPSC's earlier advice dated 14.10.1996 which was favourable to the applicant nor the subsequent advice dated 26.11.1997 expressing disagreement with the view of the disciplinary authority and reiterating their earlier advice, had been furnished to the applicant before the disciplinary authority passed the impugned order dated 2.5.2000. This, in the opinion of the Tribunal, was denial of the principles of natural justice and consequent violation of provisions of Article 311 (2) of the Constitution. For holding the view as mentioned above, the Tribunal relied upon a Full Bench decision of this Tribunal in OA No.1744/1997 – ***Chiranji Lal v Union of India*** and also a Division Bench decision in OA No.1103/1988 – ***Raj Kamal v Union of India*** decided on 12.1.2000, and allowed the OA quashing and setting aside the impugned order dated 2.5.2000. The respondents challenged the order aforesaid in the High Court of Delhi by way of CWP No.1087/2002 which came to be disposed of on 5.10.2007 with the following observations/directions:

> "Union of India has filed this writ petition against the order dated 29.10.2001 passed by the Central Administrative Tribunal holding that

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furnishing of advice by UPSC was mandatory prior to imposition of punishment by the disciplinary authority. Union had inter alia challenged this finding contending that furnishing of such advice prior to the imposition of punishment by the disciplinary authority was not necessary. In view of the judgment of the Supreme court in "Union of India & Anr. Vs. T.V. Patel", this question is no longer res integra. The Supreme Court has held that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by UPSC does not afford the delinquent government servant a cause of action in a Court of law.

In view of this judgment, the impugned order of the Tribunal is not sustainable and is set aside. The case is remanded back to the Tribunal for decision on other grounds, which were not adjudicated upon by the Tribunal.

Parties may appear before the Tribunal on 6th November, 2007."

3. On the basis of pleadings made in the Application, it is the case of the applicant that the respondents took as many as nine years to wake up as if to a new reality of finding out the applicant's wife having been employed in a foreign mission and charged him with misconduct of not informing the government/not taking prior permission. It is the case of the applicant that the charge made against him was documentarily disproved on record as he was able to conclusively prove in the enquiry conducted against him that he had been mentioning about the employment of his wife in the foreign mission to every department that he had worked in, and the respondents came up with this belated action only to shield the guilty ones who were responsible or might have been culpable of not taking any action on the request of the

applicant dated 2.4.1980. It is further his case that the charge against him was subjected to second verification by the Intelligence Bureau which also contacted him and made detailed enquiries during the period he was working with the Special Protection Group (31st December, 1985 to 30th May, 1988) and even thereafter there was nothing against him, but the respondents chose to give him a belated chargesheet in 1993 after a delay of 13 years from the date of his earlier information submitted on 2.4.1980. It is the case of the applicant that when the respondents were required at the instance of Intelligence Bureau or the Ministry of Home Affairs or the DOP&T or even the UPSC to take action against those responsible for not responding to the applicant's request dated 2.4.1980 in time, the respondents chose the applicant to be made a convenient scapegoat and decided to punish him. It is also his case that along with the impugned order, two separate letters by the UPSC giving their opinion were also appended and both these letters go in favour of the applicant unequivocally for the reasons mentioned therein recommending his honourable exoneration in the case, however, for the reasons best known to the respondents and probably to shield the guilty, they manipulated the order in the name of the President of India to whom papers are never marked or seen by him personally because the entire administration of the country is carried on in his name. It is further his case that even if the papers were put up to the concerned Minister to sign on behalf of the President under Article 73 of the Constitution, the

subordinates and staff of the respondents must not have put up the correct picture to the Minister and certainly had misguided him, as otherwise the Minister would have found it very difficult to go against the express written advice of UPSC not once but twice. It is also the case of the applicant that he has been discriminated against by way of punishment of dismissal from service as against seven persons as per list given by him whose spouses continued to be employed in foreign missions, and that the list is only a symbolic one and not exhaustive because those were the cases within the personal knowledge of the applicant, and there may be many more; the discrimination resulted into his dismissal from service, which is violative of not only Articles 14 and 16 but also Article 21 of the Constitution.

4. Before we may refer to the pleadings made by the respondents in the counter affidavit filed by them opposing the cause of the applicant, it would be useful to find out the allegations made against the applicant which became subject matter of the charge, as also the order vide which he was dismissed from service. It is the case of the respondents that the applicant while working as Assistant in the Ministry of Programme Implementation wilfully disobeyed the directions of the Government of India communicated to him vide memorandum No.A-11019/15/88-Admn. dated 16.5.1989 by which he was directed to ask his wife to discontinue employment with the Embassy of Arab Republic of Egypt inasmuch as employment of the spouse of government servants in foreign

missions is not permissible under government instructions except with permission of the competent authority. It is the case of the respondents that by his said act of wilful disobedience the applicant had shown that his conduct was unbecoming of a government servant and thus violative of rule 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter to be referred as the Rules of 1964). The enquiry officer submitted his report on 23.6.1993 wherein he held the charge against the applicant as proved. The impugned order dated 2.5.2000 would reveal that the report of the enquiry officer and the submissions made by the applicant in regard to the findings of enquiry officer were carefully considered. Union Public Service Commission's advice on the case was obtained which was made available to the President vide Commission's letter dated 14.10.1996. The Commission also reiterated their advice tendered earlier vide letter dated 25.11.1997, which too was taken into consideration. It has been mentioned in the order that advice tendered by the Commission was that even though the charge against the applicant stood proved on the basis of evidence adduced during the course of enquiry, but taking into account all other aspects relevant to the case discussed in its letters, the proceedings against the applicant should be dropped and he should be exonerated. It has further been mentioned that the aforesaid advice was carefully considered by the President and the DOP&T had also been consulted in the matter. Taking into consideration the entirety of the facts and circumstances of the

case, including the advice given by the UPSC as also the opinion given by the DOP&T, the President decided to disagree with the advice of the UPSC on the ground that the Rules of 1964 are issued in public interest to regulate the conduct of a government employee, and since they are notified under Article 309 of the Constitution, they have the force of law, and these Conduct Rules bind the government servant in regard to his official and private conduct. In certain respects, even the family members of a government servant are bound by such rules. Since the employment of spouses of government servants in foreign missions and foreign organisations in India is prohibited, the applicant has been stated to have committed misconduct inasmuch as his spouse continued to be employed in the Egyptian Embassy on the date when the disciplinary proceedings were initiated against the applicant. The charge leveled against the applicant has been thus held to be conclusively proved.

5. The respondents, in the first instance, had filed a short reply which was required for interim relief only. In the main reply which was subsequently filed, it has *inter alia* been pleaded that the applicant had submitted an application (Annexure RI) stating that his wife had joined as Receptionist/Telephone Operator in the Egyptian Embassy. As per Government of India decision No.3 under rule 4 of the Rules of 1964, prior permission/intimation is necessary for accepting employment in foreign missions/ organisations by any member of family of a government servant. A

decision whether to allow or not the employment of the spouse of a government servant in a foreign mission/organisation is taken by the Ministry by taking into account all relevant instructions, in consultation with concerned agencies of the Government. It is the case of the respondents that the policy of Government of India prohibits employment of spouse of government servants in foreign missions. It is further their case that the prohibition is in respect of government servants working in government departments of both sensitive and non-sensitive categories, to safeguard the interest and security of the State, and, therefore, there is a complete bar/prohibition in regard to taking up of employment by the spouse of a government servant, and this rule was violated by the applicant. The applicant, it is pleaded, had not obtained prior permission of the government, and sought such permission after his wife had already joined the foreign mission, and, therefore, the applicant knowingly and deliberately violated the rules. It is further the case of respondents that the applicant had been repeatedly asked to discontinue his wife's services with the foreign mission but he refused to pay any heed; he used every fair and foul means to prolong the case and evaded the directions of the government given vide memorandum dated 16.5.1989 (Annexure R-III) asking him to discontinue the services of his wife in the said foreign mission; the applicant's wife also refused to discontinue her employment with the foreign mission vide statement dated 18.5.1993 (Annexure R-IV); after all efforts failed on the part of the

government and his wife continued in service of the said foreign mission, major penalty proceedings under rule 14 of the Central Civil Services (Classification, Control and Appeal) rules, 1965 were initiated against him. He denied the charge and, therefore, an enquiry was conducted. The enquiry officer held the charge as proved. His representation was rejected and a decision to impose penalty of dismissal from service was taken after consultation with UPSC and DOP&T. The disciplinary authority after considering the case in its entirety including the advice of UPSC, Department of Legal Affairs, DOP&T as well as other concerned agencies, decided to impose penalty of dismissal from service on the applicant. Insofar as the application made by the applicant informing concerned Ministry about the employment of his wife in the foreign mission is concerned, it has been mentioned that there is a complete bar/prohibition in regard to taking up of employment by the spouse of a government servant without permission of the government. It is submitted that it was at the time of his posting as Assistant in the Ministry of Programme Implementation that the disciplinary proceedings under rule 14 of the CCS (CCA) Rules were initiated against the applicant for his failure to make his wife discontinue her job with the foreign mission. With regard to the plea of discrimination raised by the applicant, it is pleaded that as for the statement of the applicant that spouses of some employees are employed in foreign missions in India and still they are allowed to continue, seeking prior permission of the government before

taking up employment by the spouse in foreign mission is necessary, and the government after taking into account all relevant factors and security of the nation decides whether or not to allow the spouses of government employees to take up employment in some foreign missions, whereas in the remaining missions they are strictly denied the permission. The Ministry of Home Affairs had examined the case of the applicant in consultation with the concerned agencies whether *ex post facto* permission could be given to him to allow his wife to continue with her job in the foreign mission, but that was not found feasible. With regard to the list of employees whose spouses are working in foreign missions, it is stated that none of the officials belong to the Ministry of Home Affairs, and that these officials might have taken necessary permission from the concerned Ministries. The legal grounds taken by the applicant, as mentioned above, have been contested.

6. The applicant filed rejoinder to the counter affidavit filed on behalf of the respondents, wherein he has pleaded that on 2.4.1980 he had intimated the respondents that his wife had joined the Embassy of Arab Republic of Egypt, but they had suppressed the fact that vide his application he had sought permission for the same, and that wherever he was posted in various departments like the Prime Minister's Office, Special Protection Group, Institute of Secretarial Training and Management, Department of Programme Implementation etc., he invariably submitted the prescribed proforma regarding employment of his wife in foreign mission. The

respondents never communicated any adverse comments on the applications, and, therefore, the applicant presumed that permission had already been granted by the government. With regard to Government of India decision as mentioned by the respondents, it is the case of the applicant that these instructions were issued by the government on 17.5.1988 and, therefore, had no retrospective effect because the applicant had already intimated the department way back on 2.4.1980 about the employment of his wife with the foreign mission. It is then pleaded that family members of an employee, if not in employment of the government, would not be servants of the government and, therefore, the Conduct Rules of 1964 would not be applicable to them. He denies that he has committed any misconduct in continuing his wife in employment of the foreign mission because she was not a government servant and was totally independent being a citizen of the Indian Republic, enjoying all the fundamental rights enshrined in Chapter III of the Constitution. It is his case that in spite of repeated requests made by him, she refused to resign the job and, therefore, he cannot be blamed or held responsible. It is also the case of applicant that he tried his level best and even put pressure on his wife to resign the job but she clearly informed that unless she got a comparable post, she would not resign the job and would rather prefer to divorce the applicant. The applicant has averred that there is no law by which he could compel his wife to resign from her job and be without livelihood in violation of her

fundamental rights guaranteed under Articles 14, 16 and 21 of the constitution. The applicant has stated that there are umpteen number of examples where the Indian diplomats/officials in Indian Missions are having foreign spouses. He also gives the example of the late Prime Minister Shri Rajiv Gandhi that he married a foreigner. The applicant then refers to the statement of his wife referred to by the respondents in their counter reply. He makes a pertinent mention of the part of the statement which reads, "However, should I find another job comparable with the present pay and status, I have no fetish for working with a foreign mission".

7. The respondents have filed an additional affidavit dated 6.2.2001, wherein it has been stated that the applicant had submitted an application on 2.4.1980 giving intimation about his wife joining the Embassy of Arab Republic of Egypt but the government did not accord necessary permission in this regard, and that the applicant could not presume that the permission had been granted until and unless there is a specific communication to this effect. It is their case that it is not a fact that instructions about giving information to government about employment of members of families of government servants in foreign missions were issued on 17.5.1988, and the fact is that the instructions had been issued much earlier and were being updated from time to time. Relevant extracts from the Ministry of Home Affairs' OM No.25/34(S)/67-Estt.A dated 22.5.1969 read as follows:

"Employment of wives/dependants of Government servants

A Government servant whose wife or dependant intends to take up employment under a foreign mission in India or with any foreign organisation (including a commercial concern) should apply to the Ministry/Department administratively concerned for permission."

In view of the instructions of 1969, it is the case of the respondents that the applicant was required to take prior permission of the government before allowing his wife to take up employment with the foreign mission even in April, 1980.

8. The applicant has filed rejoinder affidavit to the additional affidavit filed by the respondents, wherein he has by and large reiterated the pleas raised by him in the pleadings referred to above.

9. The respondents have filed yet another additional affidavit dated 9.5.2001, wherein they have explained the delay in initiating action against the applicant. It has *inter alia* been pleaded in the affidavit aforesaid that the applicant had submitted an application on 2.4.1980 stating that, "It is to bring to your kind notice that a couple of days back my wife Sushma Gupta was offered a position of a Receptionist/Telephone Operator in Embassy of Arab Republic of Egypt, New Delhi and she has subsequently joined. Necessary permission in this regard may please be accorded to me." It is stated that the concerned dealing hand to whom the receipt was marked on 3.4.1980 should have examined

the aforesaid application with reference to the relevant instructions available at that point of time about employment of spouses of government servants in foreign missions, but the said dealing hand did not examine the case properly and also did not bring the facts to the notice of senior officers. Initially the lapse on the part of applicant for not taking prior permission of the government before allowing his wife to take up a job with the foreign mission was brought to the notice of senior officers in October, 1988 through the report of one government intelligence agency, and as soon as the lapse came to the notice of senior officers, necessary action was taken in consultation with concerned authorities and the applicant was directed vide memo dated 16.5.1989 to ask his wife to discontinue the job with the foreign mission. Despite repeated reminders his wife continued her job with the aforesaid foreign mission. Eventually, formal disciplinary action against the applicant was initiated which culminated in his dismissal from government service. Insofar as the lapse on the part of the concerned dealing hand in not submitting the case to his senior officers is concerned, it is stated that by the time the matter came to notice and the proposal for fixing responsibility could be initiated against the erring dealing hand, he had already retired from service on 30.9.1986. The applicant has filed counter reply to this additional affidavit as well. There would be no need to refer to the pleadings made in the counter reply aforesaid as nothing based thereupon has been urged during the course of arguments.

10. The OA, as mentioned above, was allowed by this Tribunal on a short ground, vide order dated 29.10.2001, which order has since been set aside by the Hon'ble Delhi High Court. The case is now, for the first time, being contested on merits. Inasmuch as, there appears to be some contradiction in the pleadings made by the respondents with regard to relevant instructions that may be applicable in the facts of the present case, vide orders dated 17.12.2007 the Tribunal desired to peruse the instructions of 1969, May 1980, 1982, 1987 and 23.7.1988. The respondents were directed to produce the same. Shri A. K. Bhardwaj, learned counsel representing the respondents, has produced the aforesaid instructions of 1969, 1970, 1980 and 1982, which are stated to be relevant for purposes of deciding the controversy in issue. The same are ordered to be placed on record. He has also produced for our perusal the relevant records of the case.

11. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. Before we may, however, evaluate, comment and determine the controversy in issue based upon rival contentions raised by the learned counsel for parties, it would be useful to find out the relevant instructions issued from time to time.

12. Government of India, Ministry of Home Affairs, issued OM No.25/34(S)/67-Ests(A) dated 22.5.1969 with the caption

"Contacts of Government servants with foreign nationals/members of Foreign Missions". Vide OM aforesaid, Joint Secretary to the Government of India invited attention to the Ministry's OM dated 17.6.1965 on the subject and stated that the question of laying down instructions for regulating the contacts of government servants with foreign nationals/members of foreign missions in India had been under consideration of the government for some time, and that the entire matter had been reviewed in the light of existing instructions on the subject and it had been decided that the contacts of government servants with foreign nationals/members of foreign missions etc. should be regulated according to instructions contained in Annexure-I to the OM. Ministry of Finance, etc. were requested to bring the instructions contained in Annexure-I to the notice of all government servants working under them and to ensure that the instructions were followed scrupulously. Annexure-II to the OM contains an explanatory note on certain paragraphs of Annexure-I vis-à-vis the existing instructions. The guidelines to be followed by the Ministries/Departments in the matter of grant of permission etc. in certain cases has been explained in Annexure-II. Item No.11 of Annexure-I appended to the OM aforesaid that deals with employment of wives/dependants of government servants, reads as follows:

> "A Government servant whose wife or dependant intends to take up employment under a foreign mission in India or with any foreign

> organisation (including a commercial concern) should apply to the Ministry/Department administratively concerned for permission."

Annexure-II which is explanatory note on certain paragraphs of Annexure-I vis-à-vis the existing instructions, at item No.5, deals with paragraph 11 of Annexure-I. The same reads as follows:

> "The existing instructions on the subject are contained in the Ministry of Home Affairs O.M. No.81/55-Ests(A) dated the 15th June, 1965. These instructions have now been applied even to employment of wives and dependants of Government servants with any foreign organisation including a commercial concern. On receipt of a request for any such employment, as is referred to in paragraph 11 of Annexure-I, the Ministry/Department concerned should consider whether the acceptance of the employment is open to any objection and if so, prohibit such employment. Ordinarily, employment should be prohibited where the Government servant concerned is handling work of a secret nature or where such employment is not otherwise considered desirable. Doubtful cases may be referred to the Ministry of Home Affairs for advice. The Ministry of External Affairs should also be informed beforehand in case employment is sought with a foreign mission."

Pursuant to instructions contained in OM dated 22.5.1969, Government of India, Ministry of Home Affairs, appears to have taken a decision on 16.3.1970 with regard to wives and dependants of government servants taking up employment in foreign missions and foreign enterprises. In the decision aforesaid, it has *inter alia* been mentioned that:

"Keeping in view the fact that in the Defence Services, wives and direct dependants of Defence Service employees are, as a rule, not allowed to take employment under foreign missions/ enterprises or even private concerns and the position in regard to the Foreign Service was somewhat similar though exceptions were at times permitted, the need for restricting such employment in the case of other services also has been examined carefully and it has been decided that :

(a) the wife or dependants of any government servant who is employed or likely to be employed in a position where he may be required to handle work of a secret nature should not be allowed to take up employment in foreign missions or with any foreign organisation (including commercial concerns). In doubtful cases, the advice of the Ministry of Home Affairs should also be obtained in addition to the advice of the Ministry of External Affairs. If the doubt still persists, permission should not be given.

(b) In the case of officers employed in certain Services e.g. Defence and Foreign Services and officers employed in political work, police and Intelligence Organisations, permission should not be granted to wives and dependants of Government servants for taking up employment in any foreign mission or with any foreign organisation (including a commercial concern).

(c) Whenever permission is given to the wife or dependants of a Government servant for taking up employment in a foreign mission or any foreign organisation (including a commercial concern), the fact should be recorded on the personal file or the character roll of the officer so that this may be kept in view while considering the posting of that officer; and

(d) a complete list of officers whose wives or dependants are employed in foreign missions in India or with any foreign organisation (including a commercial concern) as on 31st March, 1970, may be forwarded to this

> Ministry by April 30, 1970, positively on the attached proforma I. A quarterly statement may also be forwarded to this Ministry in the attached proforma II, by the end of the following month indicating the permission, if any, granted to officers for employment of their wives/dependants in foreign missions in India or with any foreign organisation (including a commercial concern) during the quarter. The first quarterly statement for the quarter ending 30 June, 1970 may be sent to this Ministry by 31st July, 1970."

In Annexure-I to OM dated 16.3.1970, employment of wives/dependants of government servants, has been dealt with at item No.11, which is the same as in the OM dated 22.5.1969. In Annexure-II to the OM dated 16.3.1970, dealing with the procedure to be adopted on receipt of request for any such employment, it has been mentioned as follows:

> "The existing instructions on the subject are contained in the Ministry of Home Affairs O.M. No.81/55-Ests(A) dated the 15th June, 1965. These instructions have now been applied even to employment of wives and dependants of Government servants with any foreign organisation including a commercial concern. On receipt of a request for any such employment, as is referred to in paragraph 11 of Annexure I, the Ministry/Department concerned should consider whether the acceptance of the employment is open to any objections and if so, prohibit such employment. Ordinarily, employment should be prohibited where the Government servant concerned is handling work of a secret nature or where such employment is not otherwise considered desirable. Doubtful cases may be referred to the Ministry of Home Affairs for advice. The Ministry of External Affairs should also be informed beforehand in case employment is sought with a foreign mission."

The instructions contained in OM dated 22.5.1969 and 16.3.1970 respectively appear to have been reviewed, as would be apparent from OM dated 27.5.1980. Two categories, i.e., '(A) Sensitive and (B) Non-sensitive' appear to have been created. Category (A) would include Armed Forces or the Forces charged with the maintenance of public order, and those employed in 'sensitive' posts, employees in Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs, Departments of Space, Electronics, Atomic Energy, Economic Affairs, employees belonging to Intelligence Organisations, and all members of the Indian Administrative Service/Indian Police Service/Indian Foreign Service. Category (B) is to comprise of all those who do not belong to category (A). Restrictions on the following lines have been imposed:

> "(a) the spouse of a government servant of the sensitive category should be prohibited from taking up employment in foreign missions/international organisations/foreign commercial organisations;
>
> (b) the spouse of a government servant in the non-sensitive category should be prohibited from taking up employment in foreign missions, but may take up employment in international organisations/foreign commercial organisations with prior permission of the appropriate authority;
>
> (c) other members of the family of a government servant of the sensitive category should be prohibited from taking up employment in foreign missions, but may take up employment in international organisations/foreign commercial organisations with prior permission of the appropriate authority; and

(d) other members of the family of a government servant of the non-sensitive category may take up employment in foreign missions with prior permission of the appropriate authority, while they may take up employment in international organisations and foreign commercial organisations without prior permission but subject to intimation being sent to the appropriate authority within 15 days of joining such employment."

Vide OM dated 22.11.1982 the following restrictions were placed upon employees belonging to categories (A) and (B) respectively:

"I. The spouse of a Government servant of the sensitive category, Category 'A'

(a) should be prohibited from taking up employment in foreign missions and related organisations;

(b) should be prohibited from taking up employment in Group I international organisations;

(c) may take up employment in Group II international organisations with prior permission of the appropriate authority;

(d) should be prohibited from taking up employment in foreign commercial organisations.

II. The spouse of the Government servant of the non-sensitive category, Category 'B':

(a) should be prohibited from taking up employment in foreign missions and related organisations;

(b) may take up employment in international organisations (Group I and Group II) and foreign commercial organisations with prior permission of the appropriate authority."

As per para 8 of the OM aforesaid, the question of employment of members of family of a government servant in foreign

missions/international organisations/foreign commercial concerns, on the basis of earlier instructions, were examined and it was decided that all the Ministries/Departments should undertake review of cases of employment of spouses/other members of families of government servants which had taken place on the basis of earlier instructions and which would have come under the prohibited category if they had taken place after issuance of OM dated 27.5.1980 and refer such cases to the Ministry for further examination.

13. With a view to appreciate the controversy in issue, it would be appropriate to find out the allegations made against the applicant, which were summed up in the charge framed against him. The charge as framed against the applicant reads as follows:

> "Shri R. K. Gupta while working as Assistant in the Ministry of Programme Implementation wilfully disobeyed the directions of the Government of India communicated to him, vide Ministry of Programme Implementation Memorandum No.A-11019/15/88-Admn., dated 16th May, 1989 by which he was directed to ask his wife to discontinue employment with the Embassy of the Arab Republic of Egypt inasmuch as employment of the spouse of a Government servant in a foreign mission is not permissible under Government instructions except with permission of the competent authority. By his said act of wilful disobedience Shri Gupta has shown that his conduct is unbecoming of a Government servant and thus violative of Rule-3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

During the course of enquiry, the charge against the applicant was sought to be proved by the respondents on the basis of

memorandum dated 16.5.1989 referred to in the charge vide which he was directed to ask his wife to discontinue employment with the Embassy of Arab Republic of Egypt. It is the case of the department that the applicant did not comply with this direction and instead submitted an application dated 12.6.1989 seeking certain necessary clarifications which were available to him in published documents; nonetheless, the position was clarified and the applicant was again directed to ask his wife to discontinue her employment with the foreign mission vide Ministry's memorandum dated 28.7.1989, followed by reminders dated 27.9.1989 and 15.11.1989 but the applicant failed to take any notice of these communications; he was given yet another opportunity to comply with the directions vide memorandum dated 12.7.1991; the applicant once again did not obey the orders and instead submitted another representation dated 16.8.1991 raising certain unnecessary issues; and that his representation was rejected, and despite repeated directions he failed to carry out the instructions given to him and allowed his wife to continue her employment with the said foreign mission. The enquiry officer, on the basis of various memoranda issued to the applicant directing him to ask his wife to resign from her job with the foreign mission, and the explanations submitted by him, returned the finding which reads as follows:

> "It would be noticed from the above that Shri Gupta had been repeatedly directed to ask his wife to discontinue her employment with the Embassy

> of the Arab Republic but he failed to comply with the directions. He has wilfully disobeyed Government directions and has acted in a manner unbecoming of a Government servant. By his conduct, as aforesaid, Shri Gupta has violated Rule 3(1)(iii) of the Central Civil Services (conduct) Rules, 1964."

After so holding, the enquiry officer proceeded to deal with the defence projected by the applicant. In that regard, the enquiry officer referred to the plea of the applicant that he had informed the government in writing on 2.4.1980 with regard to his wife taking up employment with the foreign mission and inasmuch as the said application for permission had been taken on record, there was no wilful suppression of the fact of his wife's employment with the foreign mission by him, and that *ex post facto* permission for continued employment of his wife may be granted. The applicant, it was observed, claimed to have obeyed the directions contained in memorandum dated 16.5.1989 inasmuch as he had informed his wife but she was not willing to leave her job without first finding another one, and that the applicant had no power to terminate her employment, and further that it was the fundamental right of his wife to choose her profession. While analysing the evidence, the enquiry officer referred to memorandum dated 16.5.1989, wherein it was mentioned that in terms of government instructions the spouse of a government servant cannot be allowed to take up employment in foreign mission/related organisation. The applicant was informed that after careful consideration of the matter it had been decided by the government that his wife should not be allowed

to continue to work with the foreign mission any more, and, therefore, he was directed to ask his wife to discontinue employment with the Embassy. The government instructions were supplied to the applicant and he was directed to inform within seven days whether his wife had since discontinued employment with the foreign mission, but the applicant did not comply with the directions. The enquiry officer also referred to correspondence mention whereof has been made above wherein he was asked to intimate the date of resignation of his wife and acceptance thereof by the Embassy, but the applicant did not comply with the direction. The explanations furnished by the applicant were held by the enquiry officer to be flimsy and devoid of merit. It has been clearly mentioned by the enquiry officer that the charge against the applicant was of wilful disobedience which was distinct from the charge of wilful suppression of facts. In ultimate analysis, the applicant was held guilty by specifically holding that employment in foreign missions is not allowed, and despite the fact that the applicant had been repeatedly asked to make his wife resign from the job, he did not do so, and thus misconducted himself. Order dated 2.5.2000 passed by the disciplinary authority dismissing the applicant from service, it may be noted, does not make a mention of misconduct of the applicant in his disobeying the orders directing him to ask his wife to resign from her job, even though it is mentioned that the enquiry officer submitted his report on 23.6.1993 wherein he held the charge against the applicant as

proved. The disciplinary authority while holding the applicant guilty held that "Since the employment of spouses of Government servants in foreign missions and foreign organisations in India is prohibited, Shri R. K. Gupta, Assistant, has committed misconduct inasmuch as his spouse continued to be employed with the Embassy of Arab Republic of Egypt on the date when the disciplinary proceedings as mentioned above were initiated against him. The charge leveled against him in the Memorandum dated 5.3.93, therefore, stood conclusively proved."

14. Ms. Raman Oberoi, learned counsel representing the applicant, vehemently contends that the charge against the applicant, as would be clearly made out from reading of the same, has been that the applicant wilfully disobeyed the directions of the government communicated to him vide memorandum dated 16.5.1989 directing him to ask his wife to discontinue employment with the foreign mission, inasmuch as employment of spouses of government servants in foreign missions is not permissible under government instructions, except with prior permission of the competent authority. The disciplinary authority while, however, holding the charge as proved against the applicant, held that in certain respects, even the family members of a government servant are bound by such rules, and since the employment of spouses of government servants in foreign missions and foreign organisations in India is prohibited, the applicant had misconducted inasmuch as, his spouse continued to be employed with the foreign mission

on the date disciplinary proceedings were initiated against him. The core issue was as to whether employment of the spouse of applicant was prohibited, as has been held by the disciplinary authority, or it was permissible with permission of the competent authority. The other aspect of the case, which too would be equally relevant and important, would be as to whether if employment of the spouse of a government employee is permissible, whether prior permission for the same would be necessary. It is urged by the counsel that inasmuch as, under the instructions then in existence when the applicant informed the government with regard to his wife taking up a job with the foreign mission and seeking permission there was no prohibition for the spouse of an employee to take up employment with foreign missions and further that there was no requirement under instructions to seek prior permission, the charge against the applicant can well be termed to be wholly frivolous and unsustainable. Shri A. K. Bhardwaj, learned counsel representing the respondents, *per contra*, would contend that when the applicant was chargesheeted, instructions of 1980 had come into being and by virtue of provisions contained therein, employment of spouses of government employees in foreign missions is prohibited, and in that situation if the applicant is repeatedly directed to ask his wife to give up her job, the applicant disobeying such directions would bring him squarely under the misconduct for disobeying the government orders.

15. We have given our thoughtful consideration to the contentions raised by the learned counsel for the parties and are of the view that there was no absolute embargo for spouses of government employees to take up employment in foreign missions at the time when the applicant informed the government and sought permission. If, therefore, there was no bar for the wife of applicant to take up a job with the foreign mission, the direction issued by the government to the applicant to make his wife leave her job would be wholly illegal. We have already made an elaborate mention of the instructions relating to controversy in issue. It may be recalled that at the time when the applicant intimated the government with regard to his wife having taken up a job in the foreign mission and when he asked for permission for the same, the instructions dated 22.5.1969 were in vogue. As per item 11 of Annexure-I appended to the OM dated 22.5.1969, a government servant whose wife or dependant may intend to take up employment under a foreign mission in India or with any foreign organisation including a commercial concern, was to apply to the Ministry/Department administratively concerned for permission. Annexure-II which is explanatory note of Annexure-I, with regard to relevant item, recites that the instructions dated 15.6.1965 have now been applied even to employment of wives and dependants of government servants with any foreign organisation including a commercial concern, and on receipt of request for any such employment, as is referred to in para 11 of Annexure-I, the

Ministry/Department concerned should consider whether acceptance of the employment is open to any objection, and if so, prohibit such employment. It is also mentioned therein that ordinarily, employment should be prohibited where the government servant concerned is handling work of a secret nature or where such employment is not otherwise considered desirable, and that doubtful cases may be referred to the Ministry of Home Affairs for advice, and further that the Ministry of External Affairs should also be informed beforehand in case employment is sought with a foreign mission. It is manifest from reading of the instructions in existence at the time when the applicant sought permission that there was no absolute prohibition for spouse of a government employee to take up employment in foreign mission. While dealing with such cases, the concerned Ministry/Department was to consider whether acceptance of employment would be open to any objection and if that may be so, only then prohibit such employment. Ordinarily, employment could be prohibited when the government servant concerned was handling work of a secret nature or where such employment was not otherwise considered desirable. It would further appear from the decision taken by the Government of India, Ministry of Home Affairs, on 16.3.1970 pursuant to the instructions contained in OM dated 22.5.1969 that in Defence Services, wives and direct dependants of Defence Service employees are, as a rule, not allowed to take up employment under foreign missions/enterprises or even private concerns, and the

position in regard to the Foreign Service was also somewhat similar though exceptions were at times permitted. The wife or dependants of government servant who was employed or was likely to be employed in a position where he may be required to handle work of a secret nature were also not to be allowed to take up employment in foreign missions. In doubtful cases, advice of the Ministry of Home Affairs was to be obtained, in addition to advice of the Ministry of External Affairs, and if only doubts were to still persist, permission was not to be given. In the case of officers employed in Defence and Foreign Services, and officers employed in political work, police and intelligence organisations, permission was not to be granted to wives and dependants of government servants for taking up employment in any foreign mission or with any foreign organisation, including a commercial concern. Ordinarily, therefore, permission was not to be given to spouse or dependants of an employee if he was employed or was likely to be employed in a position where he was required to handle work of a secret nature, and to the spouse and dependants of those doing duties in Defence and Foreign Services, political work, police and intelligence organisations. There was no absolute bar even for the spouses or dependants of such employees to take up employment in foreign missions. It is manifest from reading of the instructions of 1969 and the consequent decision taken by the government in 1970 that there was no absolute prohibition for the spouse or dependant of an employee to take up employment in foreign missions. What we

have said above would be clear from the procedure which was to be followed in case permission was sought by an employee for his spouse or dependants to take up employment in foreign missions. On receipt of request for any such employment as referred to in paragraph 11 of Annexure-I to OM dated 22.5.1969, the Ministry/Department concerned was to consider whether acceptance of the employment is open to any objection and if so, prohibit such employment. Ordinarily, employment was to be prohibited where the government servant concerned was handling work of a secret nature or where such employment was not otherwise considered desirable, and doubtful cases were to be referred to the Ministry of Home Affairs for advice. The instructions contained in OM dated 22.5.1969 and 17.3.1970 were reviewed when OM dated 27.5.1980 came to be issued. Two categories – '(A) sensitive' and '(B) non-sensitive' were created. Category 'A' was to include Armed Forces or the Forces charged with maintenance of public order, and those employed in sensitive posts, employees in Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs, Departments of Space, Electronics, Atomic Energy, Economic Affairs, employees belonging to intelligence organisations, and all members of the Indian Administrative Service/Indian Police Service/Indian Foreign Service. Category 'B' was to comprise of all those who did not belong to Category 'A'. The spouse of a government servant of sensitive category was prohibited from taking up employment in foreign

missions/international organisations/foreign commercial organisations. Even the spouse of a government servant in non-sensitive category was prohibited from taking up employment in foreign missions, but could take up employment in international organisations/foreign commercial organisations with prior permission of the appropriate authority. Other members of the family of a government servant of the sensitive category were prohibited from taking up employment in foreign missions, but could take up employment in international organisations/foreign commercial organisations with prior permission of the appropriate authority. Other members of the family of a government servant of non-sensitive category could take up employment in foreign missions with prior permissions of the appropriate authority, whereas they may take up employment in international organisations and foreign commercial organisations without prior permission, subject to intimation being sent to the appropriate authority. It is absolutely clear that for the first time when the memorandum dated 27.5.1980 came to be issued there came about an absolute prohibition for spouse or dependants of a government employee in category 'sensitive' to take up employment in foreign missions, whereas others in category 'non-sensitive' could take up such jobs with prior permission. The other significant difference in the two sets of instructions of 1969 and 1980 is that whereas, as per instructions of 1969 while considering as to whether the spouse of a government employee should be permitted to take up

employment in a foreign organisation, ordinarily employment was to be prohibited where the government servant concerned was handling work of a secret nature or where such employment would not otherwise be considered desirable, whereas in the instructions issued in 1980, two separate categories have been created, and whereas in the first category of 'sensitive' nature the spouse of a government servant is prohibited from taking up employment in foreign missions, the spouse of a government servant in the 'non-sensitive' category should be prohibited from taking up employment in foreign missions but may take up employment in international organisations/foreign commercial organisations with prior permission of the appropriate authority. Insofar as thus, employment of the spouse of a government employee in foreign missions is concerned – whether of sensitive or non-sensitive category – such employment was prohibited. We may reiterate that as per instructions/OM dated 22.5.1969 there was no prohibition for the spouse of a government employee even of sensitive category, as defined in 1980 instructions, to take up employment with foreign missions. The embargo, it appears, was only for such employee who was engaged in discharge of secret duties.

16. We have perused the records of the case as well. Perusal of the records would further reveal that even the respondents were themselves aware that spouse of a government employee could seek employment in foreign mission, for which, of course, he had to seek permission. In a detailed note dated

13.10.1988 that came to be put up before the concerned authorities, the concerned official/officer has mentioned that the applicant was transferred from the Prime Minister's Office to the Ministry of Programme Implementation with effect from the forenoon of 5.8.1988 on the basis of the finding of Intelligence Bureau that his wife was working in the Embassy of Arab Republic of Egypt. It is mentioned that a government servant whose spouse is working in foreign mission cannot be allowed to work in any of the sensitive departments, and, therefore, the applicant was transferred to the Ministry of Programme Implementation, which is a non-sensitive department. Intelligence Bureau was informed of the action vide OM dated 29.8.1988. The Bureau vide their U.O. dated 7.9.1988 pointed out that in terms of para 5 sub-para II(a) of O.M. No.11/21024/10/87-IS(US-D-II) dated 25.8.1987, the spouse of a government servant of a non-sensitive category should be prohibited from taking up employment in foreign missions and related organisations. It is then mentioned that the copy of the OM aforesaid provides that the spouse of a government servant of the non-sensitive category should be prohibited from taking up employment in foreign mission and related organisations, and that whenever the permission is given or intimation is received in respect of the spouse or other members of family of a government servant for taking up employment in a foreign mission, the fact should be recorded in the personal file or the character roll of the government servant concerned so that this may be kept in view

while considering the posting of the government servant. It is further mentioned that Under Secretary (D-II) vide OM dated 27.9.1988 had desired to know whether permission was obtained by the applicant regarding acceptance of employment in a foreign mission by his wife. In that connection, it is further stated that an intimation was received from the applicant while he was working as LDC in the MHA (P) to the effect that his wife had been appointed as Receptionist/Telephone Operator in the Embassy of Arab Republic of Egypt. It was revealed that though the fact was brought on the note portion of the file, yet it was not seen by any of the senior officers, nor any permission was granted to the applicant, nor was he even told to discontinue employment of his wife with the foreign mission. Intimation of the employment of his wife with the foreign mission was given by the applicant on 2.4.1980. It is further noted that his wife had been working in the foreign mission for eight years and that he had given intimation about his wife's employment in the foreign mission well in time, and, therefore, there was no fault on his part. It is then mentioned that it was a case of sheer negligence on the part of the official who had processed the case in Ad-II Section. In this view, the matter was referred to US-D-II for his advice. We are not able to make out from the hand-written notes as to who then dealt with the case of the applicant, but the note dated 17.10.1988 immediately following the above mentioned note recites, thus:

> "There is no lapse on the part of the Government servant in this case as he duly sought permission vide his application dt. 2.4.80 placed at page 22/cor. of the linked file. Also the wife of Shri Gupta has been in the employment of the Arab Republic of Egypt for the last more than 8 years. It is therefore suggested that we may seek the advice of IS Dn. as to whether in this case action may be taken as contemplated in para 7 of their OM dt. 25.8.87 without according formal permission at this stage."

The file was processed further and the official/officer dealing with the matter vide note dated 21.10.1988, after mentioning about the employment of the wife of the applicant with foreign mission, stated that "Admn.II may please have this case reviewed in the light of the latest instructions and take appropriate action". Under Secretary (Ad.II) vide note dated 25.10.1988 clearly suggested that the case may be considered for grant of permission. The note made by him reads as follows:

> "This is regarding employment of the wife of Sh.R.K.Gupta, Assistant as Receptionist/ Telephone Operator in the Embassy of Arab Egypt. Note at pp.1-2/ante will recall.
>
> 2. IS Division to whom the matter was referred for their advice have desired that as provided for in para (8) of their OM dated 25.8.87, the case may be reviewed and if considered necessary referred to them for final decision. As already indicated in the earlier notes, Smt. Gupta has been in the service of the embassy for the last more than 8 years. Shri Gupta applied for permission in this respect soon after her employment in 1980 but unfortunately no action was taken on his application. In the light of the instructions issued by the IS Division in this behalf, the spouse of the Govt. servant should be prohibited from taking up employment in foreign missions and related organisations irrespective of

> whether he is working in a sensitive or non-sensitive Department. Thus ordinarily, Smt. Gupta cannot be allowed to continue in the service of the Embassy of Egypt. However, in view of the fact that she has already been employed with the Embassy for the last more than 8 years and para (7) of the OM contemplates grant of permission in respect of spouse or any other member of the family of a Govt. servant for taking up employment in a foreign mission, it is suggested that we may consider this case for grant of permission However, before taking a final decision, we may refer the matter to the IS Division requesting them to obtain the advice of IB in the matter."

Assistant Director, IB, did not agree with the suggestion of the department, as would be clear from note dated 17.1.1989. There would be no need to make a detailed mention of the reasons for disagreement in the note dated 17.1.1989. Suffice it, however, to mention that the instructions of 1969 had been taken note of and it has been clearly mentioned that a government servant whose wife or dependants intend to take up employment under a foreign mission in India or with any foreign organisation, including a commercial concern, is required to apply to the Ministry/ Department administratively concerned for permission and as per guidelines contained in MHA OM dated 16.3.1970 for considering such applications, the wife or dependant of any government servant who is employed or likely to be employed to handle work of secret nature should not have been allowed to take up employment in foreign missions or foreign organisations, including commercial concerns. It is then mentioned that the applicant joined MHA as LDC in 1976 and was working in 1978-79 in the I.S. Division of the

Ministry, where work of secret nature relating to national security is handled, and his wife took up employment in the foreign mission, though the date when she took up the employment had not been indicated; however, according to page 22 of MHA 20/C/2/26-Adm.II, the applicant intimated on 2.4.1980 that his wife had already taken up employment in the foreign mission and sought necessary permission, and that his application was apparently not seen by any officer. As per instructions which were applicable in April, 1980 the applicant was obliged to seek prior permission at the time his wife was selected for employment. It is further mentioned that as per further instructions, the applicant had to be refused permission and his belated application for seeking permission or non-communication of refusal to grant permission by the Ministry on receipt of his application, would not regularise his lapse. It is then mentioned that the instructions referred to above were superseded by MHA OM dated 27.5.1980 which, in turn, were revised by another set of instructions as contained in OM dated 22.11.1982, and as per both these instructions employment of the spouse of government servants whether working in sensitive or non-sensitive Ministries/ Departments, was prohibited, and that the said instructions also required taking up of review of all cases of employment of spouses of government servants in foreign missions/organisations. Under the instructions aforesaid, it is mentioned, the applicant would have been refused permission and even if his case was to be

reviewed, it was to be undertaken by the Ministry. In ultimate analysis, an opinion was expressed that since the case of the applicant's wife would not fall in any of the categories mentioned in para 5.I (b to d) and 5.II (b), her case would not be covered by para 7 of the instructions.

17. During the course of arguments we were informed by the learned counsel representing the respondents that even though the department as such may not have thought it expedient to proceed against the applicant, but such decision was taken on the advice of IB. We may, however, only mention at this stage that from the records, mention whereof has been made above, it clearly emerges that when the applicant intimated the department about the employment of his wife and sought permission for the same, instructions of 1969 were applicable, vide which there was no absolute prohibition for employment of spouses of government servants in foreign missions. The case of the applicant was processed by the department on the basis of instructions of 1969 and it was for that reason that initially the opinion was that permission should be accorded. However, it is the Assistant Director, IB who did not agree with the suggestion of the department. The instructions of 1969 and OM dated 16.3.1970 were dealt with but the opinion was expressed that spouse or dependant of any government servant who is employed or likely to be employed in a position where he may be required to handle work of a secret nature should not be allowed to take up employment in

foreign missions. Reference was made to later instructions of 1980 on the basis of which it was held that there was a complete prohibition for the spouse of a government employee to be employed in foreign missions. The department, thus it can be concluded from the records, may not have been interested in proceeding against the applicant, but the turn around in the opinion came about on the advice of IB, and this is what has been stated even during the course of arguments by Shri Bhardwaj, learned counsel representing the respondents.

18. It is significant to mention at this stage that the respondents were aware that employment of wife of a government employee is permissible, as in the very charge framed against the applicant which has been reproduced above, it is clearly mentioned that employment of the spouse of a government servant is not permissible in foreign missions except with permission of the competent authority (emphasis supplied). We shall comment upon the charge as framed against the applicant and the findings recorded by the enquiry officer and the disciplinary authority in the later part of the judgment, but suffice it so say at this stage that the respondents proceeded against the applicant on the charge of misconduct as the direction issued to him to ask his wife to discontinue employment with the foreign mission which was not permissible under government instructions, except with permission of the competent authority, was not complied with.

19. Having held that when the applicant sought permission for his wife to continue in the employment of foreign mission, the instructions that were in existence would not debar his wife to take up a job in foreign mission, it shall have to be found out as to whether the applicant could be charged for indiscipline that may be in violation of instructions that were in existence at that time or that came into being when he was chargesheeted. At the outset, it may be mentioned that when the applicant filed his first OA No.27/1999 and when he sought for an interim direction, which was granted, the Bench then seized of the matter applied its mind on the aforesaid issue. Even though, the observations made in the interim order may not be binding, it would be yet appropriate to mention that it was observed by the Bench that the later instructions of 1980 or 1982 or 1987 could not be made legally applicable in the applicant's case as the act of omission or commission related to an event happening prior to 27.5.1980 government instructions in operation as on 2.4.1980, i.e., when the applicant sought permission for employment of his wife in the foreign mission, would be only applicable, as executive instructions cannot be made operative with retrospective effect. The observations made by the Bench, as mentioned above, appear o be in tune with the law that is settled on the said issue. Reference in this connection may be made to the judgment of Hon'ble Supreme Court in ***Govind Prasad v R. G. Prasad & Others*** [1994 SCC (L&S) 579]. The facts of the case aforesaid would reveal that

regular promotions from amongst junior engineers in the electrical and mechanical branches had not been made since 1968-69, and it was in 1981 that the State Government intimated to the Public Service Commission that vacancies for the years 1968-69 to 1979-80 in the cadre of assistant engineers pertaining to the mechanical and electrical wings of the Public Works Department were to be filled by promotions. As per rules, procedure and practice, a junior engineer with seven years experience was eligible, but by instructions issued on 7.1.1980 a candidate was to have ten years experience on the post of junior engineer. By virtue of instructions dated 7.1.1980, thus some of the junior engineers became ineligible for consideration for promotion. They challenged the instructions. While considering the matter, the Hon'ble Supreme Court held that:

> "...Even if it is assumed that the memorandum was meant for all the three branches, it could not operate in respect of Building and Roads branch till the time the 1936 Rules were amended and since the Government was uniformly applying the 1936 Rules to all the three branches, the memorandum could not read to be applicable to the Electrical and Mechanical branches.
>
> 11. Para 3 of the memorandum gives deeming effect – from July 1, 1978 – to the provisions in paras 1 and 2 of the memorandum. It is settled law that an executive order of the Government cannot be made operative with retrospective effect. It is, thus, clear that the memorandum contained various proposals which were to be incorporated in the statutory rules."

That part, perusal of memorandum dated 27.5.1980, which appears to have been applied in the case of the applicant, would clearly show that employment of the spouse of a government

employee in foreign mission was prohibited by way of review of the earlier instructions, and the decision had then been taken that such employment would be governed by the said instructions henceforth (emphasis supplied). There cannot be any manner of doubt from the bare perusal of instructions dated 27.5.1980 that the same were prospective. We are of the firm view that the instructions dated 27.5.1980 could not possibly be applied in the case of the applicant.

20. The impugned orders appear to be illegal and without jurisdiction on the ground that the applicant has been punished by specifically holding that employment of the spouse of a government servant is prohibited under government instructions, whereas the charge unequivocally states that it is not permissible under government instructions except with prior permission of the competent authority. It could not be disputed during the course of arguments that if a finding was to be returned that the spouse of a government employee could be employed in a foreign mission at the time when the applicant intimated the respondents and sought permission, entirely different parameters would follow. The outcome of the enquiry in that case could not possibly be dismissal of the applicant from service. The only question in that situation would be as to whether wife of the applicant could continue with her job in the foreign mission when he had not received the specific permission from the competent authority. Since this is not the ground on which the authorities might have acted, there would be

no occasion for us to comment upon the same. We may, however, hasten to add that the applicant cannot be blamed for non response to his request contained in letter dated 2.4.1980, and he could well presume that such permission had been granted, when for number of years there was a complete lull and when the applicant every year was informing the respondents that his wife was employed in a foreign mission. There is no doubt in our mind from bare perusal of the instructions contained in memorandum dated 22.5.1969 that no prior permission was required for employment of the spouse of a government employee in foreign mission. The two sets of instructions dated 22.5.1969 and 27.5.1980 would fortify our observation made above as surely, the word 'prior' has not been mentioned in the instructions of 1969, but it finds a significant mention in the instructions of 1980 in cases where employment of the spouse of a government employee in foreign missions is permissible. In the facts as mentioned above, the plea of the applicant appears to be plausible that by sheer inadvertence, carelessness and slackness, the respondents failed to accord sanction when the applicant sought permission, and *ex post facto* permission should have been granted. It is significant to mention that when the applicant sought permission, he was dealing with pension of freedom fighters, and when the memorandum to proceed departmentally against him was issued in 1989, he was doing duty in implementation of 20-Point Programme.

21. The applicant has yet another forceful plea in support of the present Application in setting aside the impugned order of dismissal passed against him. It is fervently urged by the learned counsel representing the applicant that present is a proved case of hostile discrimination which has been meted out to the applicant. At the very first instance, the counsel has referred to the decision recorded by this Tribunal in OA No.603/1996 decided on 2.4.1997 in the matter of ***Smt. Vanaja Sivasankaran v Union of India & Others***. The facts of the case as can be made out from the order that came to be passed pursuant to the directions given in the OA aforesaid, reveal that on conclusion of disciplinary proceedings initiated against Smt. Vanaja Sivasakaran, UDC vide memorandum dated 31.3.1994 on the charge of not obtaining prior permission for entering into marriage with one Shri Sivasankaran who was then working in the French Embassy and for nor not complying with the instructions issued on 31.1.1994 directing her to resign from the post or in the alternative her husband should quit his job in the French Embassy, the penalty of compulsory retirement was imposed on her on 19.2.1996. On the direction of this Tribunal that in the event the applicant may file a self-contained appeal within two months, the respondents would, after giving the applicant personal hearing, dispose of the appeal by detailed, speaking and reasoned order in accordance with law, an order came to be passed on 4.12.1997 *inter alia* observing as follows:

"AND WHEREAS the undersigned after careful consideration of the facts and circumstances of the case and the points brought our in the Appeal and during the course of the personal hearing, is of the opinion that the disciplinary proceedings on the stipulated charges were initiated due to misinterpretation of the provision of the MHA's OM of 1969 stipulating seeking of prior permission for employment of spouse or dependant in a foreign mission or foreign commercial organization and has come to the conclusion that the charges are not sustainable in law."

In wake of observations as made above, the appeal of Smt. Vanaja Sivasankaran was accepted and the order imposing penalty of compulsory retirement was set aside. The applicant has submitted a list of persons whose spouses are employed in foreign missions in India and still they are allowed to continue. The list has been placed on record as Annexure P-5. The same reads as follows:

"1. Mrs. Shovana Narayan, Jt. Controller of Accounts, M/o Finance – husband Dr. Herbert Traxi a very senior Austrian Diplomat.

2. Smt. Vanaja Sivasankaran, UDC M/o Defence in the office of the Joint Secretary (Trg.) & C.A.O. – husband working in the French embassy. (Action taken with result as mentioned above).

3. Mrs. Sashi Srinivasan, office of the Controller of Defence Accounts. C.G.D.A. M/o Defence – husband working in the French Embassy.

4. Mrs. Devraj. L.D.C., M/o Industry – husband working in the French Embassy.

5. Mrs.Sashi, National Informatics Centre, M/o Planning – husband working in American Embassy.

6. Mrs. Jayanti Panchanan employed in A.G.C.R's office – husband working in Japanese Cultural Section.

7. Mr. S. C. Sagar, Deputy Secretary, Bureau of Industrial Financial & Restructuring, M/o Finance wife working in British Council Division."

The list of persons reproduced above would show that Smt. Vanaja Sivasankaran is a UDC in the Ministry of Defence and her husband is working in the French Embassy. There is a complete ban on employment of spouse of an employee who is working in Defence. Smt. Sashi Srinivasan is also an employee of Controller of Defence Accounts, Ministry of Defence and her husband is working in the French Embassy. Despite the fact that persons mentioned at serial numbers 2 and 3 may be belonging to prohibited category for employment of their spouses in foreign missions, they have been permitted. In reply to the plea raised by the applicant, all that has been mentioned in the counter affidavit is that none of the seven persons mentioned by the applicant belongs to the Ministry of Home Affairs, and records of their cases are not available with the Ministry, and that these persons might have taken prior permission of the respective Ministries before allowing their spouses to take up employment with foreign missions. It is also mentioned that the Ministry of Home Affairs has sought further details from the concerned organizations. Shri A.K. Bhardwaj, learned counsel representing the respondents, has not informed the Court at all as to whether on seeking of further details from the concerned organizations, what has been done in their cases. The charge of the applicant of invidious discrimination is writ large on the face of

records. The spouses of government employees even in prohibited category are working in foreign missions. It would be wholly immaterial whether they had sought permission or not, as by virtue of no instructions the spouses of such employees could take up employment in foreign missions. The case of the applicant is on a far better footing, as surely at the time when the applicant sought permission, he was not in the prohibited category, which could be only if he was engaged in secret work and employment of his wife was not prohibited.

22. It is not in dispute that the Union Public Service Commission, a constitutional authority, twice opined that even if the applicant might have misconducted himself, the facts of the case would not warrant any punishment to him. In fact, recommendation of the Commission was to exonerate the applicant. The relevant part of the advice given by the Commission dated 14.10.1996 and its reiteration vide letter dated 25.11.1997 is reproduced below:

> "3.3. The Commission observe from the material evidence on record that the Charged Officer was conveyed vide Memo dated 16.5.89 that the spouse of a Government servant cannot be allowed to take up employment in foreign mission. Further, he was specifically informed that it has been decided by the Government that his wife should not be allowed to continue to work with the Embassy of the Arab Republic of Egypt any more and therefore he was directed to ask his wife to discontinue employment with the Embassy of Arab Republic of Egypt within a period of one month from the receipt of the Memo. Since his wife has not resigned from her job in Arab Mission, the Commission conclude that the

Charged Officer has disobeyed the instructions of the government and therefore article of charge stand proved against the Charged Officer. The mitigating factor, however, is that the charged officer had not suppressed any fact and had informed the Department in 1980 when his wife took the employment in Arab Mission. The Department kept the application on file and did not take any action upto 5.3.1993. The Commission observe that in the modern times when we talk about the empowerment of women, an independent wife who served for 5 years in the mission was not prepared leave her job for the sake of her husband unless she got some other equivalent job. From the material evidence on record, the Commission find that the wife of the Charged Officer did not agree to leave the job and refused to agree to this request from her husband. The Commission are of the view that the husband cannot force his wife who is also an independent person to leave her job which she was doing on her own merit. The Commission conclude that it was beyond the control of Charged Officer to make his wife leave the job in present case."

"3. The Commission have re-examined the records of the case in detail. They observe that their earlier advice in the case of Shri R.K. Gupta has taken into account all the facts and circumstances relevant to the case. The Commission are of the view that the points mentioned by the Ministry of Home Affairs have already been taken into consideration by the Commission earlier and hence they do not now call for reconsideration of the advice of the Commission. The Commission further observe that the Ministry have not placed on record either any new fact or point of law to necessitate reconsideration of their advice dated 14.10.1996. The Commission, therefore, reiterate their advice conveyed by the Commission's letter of even number dated 14.10.1996. They advise accordingly."

23. The impugned orders have also been assailed by the applicant on the ground that an absolute bar of employment of spouse of a government employee in foreign missions would be

wholly unreasonable and thus, violative of Article 14 of the Constitution of India. It is also the case of the applicant that circular/OM prohibiting employment of spouse or dependant of a government employee in foreign missions would be violative of the fundamental rights guaranteed to them under Articles 19 and 21 of the Constitution. It is further the case of the applicant that in the present scenario when the prices of even essential commodities have gone sky-rocketing, it would be well-nigh impossible for an employee to live a comfortable life if his income is not to be augmented and supported by his spouse, and, therefore, a complete ban irrespective of the nature of job held by an employee would be oppressive. Shri Bhardwaj, *per contra*, would, however, press into service national security, which he says is of paramount importance. The questions raised above are multi-dimensional, multi-faceted and of great significance. Ms. Raman Oberoi, the learned counsel representing the applicant, may be for the reason that she is sanguine of the success of this case on the other points raised in the Application, has not seriously pressed into service the said issues. No occasion arises for this Tribunal thus to comment upon the controversy based upon legal issues, as mentioned above, even though we are tempted to say that a right balance needs to be struck, whereby, while vouchsafing the national security, which is of paramount importance, it may be possible or permissible that employment of the spouse of a government servant in foreign missions may not be totally barred.

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24. For the reasons recorded above, this application is allowed. Orders dated 2.5.2000 dismissing the applicant from service are set aside and quashed. The applicant shall be reinstated in service with all consequential benefits. We are of the considered view that the applicant deserves to be compensated by way of award of costs of this litigation, as for no fault of his, he has been driven into litigation spanned over a period of eight years. At no stage, he was at fault and even his department was also of the opinion that *ex post facto* sanction for employment of his wife in the foreign mission should be accorded. The opinion of Union Public Service Commission, though may not be binding, was also likewise, and yet the respondents proceeded against the applicant and dismissed him from service by applying later instructions which prohibited the spouse of an employee to take up employment in foreign missions, even though the charge was based upon the earlier instructions, wherein it was clearly mentioned that such employment is not permissible except with permission of the competent authority. The costs are quantified at Rs.10,000/- (Rupees ten thousand).

(L. K. Joshi)
Vice-Chairman (A)

(V. K. Bali)
Chairman

/as/