

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 356/1989
T.A. No.

199

DATE OF DECISION 06.03.1992

Shri H.J. Irani & Others Petitioner
Shri D.C. Vohra Advocate for the Petitioner(s)
 Versus
Union of India & Others Respondent
Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

The fifteen applicants before us have worked in various capacities in Akbar Hotel before its closure in April, 1986 and in different pay scales ranging from Rs.300-465 to Rs.700-1085 (pre-revised). The Akbar Hotel Employees Union had filed Writ Petition No.468 of 1986 in the Supreme Court challenging the decision of the Government regarding the closure of the said Hotel and shifting of the offices of the Government of India in the building of the said Hotel. By order dated 28.01.1988, the Supreme Court dismissed the Writ Petition as it saw no valid reason to entertain the same so far as vires of Section 25-L of the Industrial Disputes Act was concerned.

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In regard to adjustment of the retrenched employees of the Hotel, a statement was made on behalf of respondent No.1 (India Tourism Development Corporation) as follows:-

"Every retrenched employee has already been provided alternate service and learned counsel for the respondent No.1 has also stated before us that in regard to each of such adjusted employee, last pay drawn before the Hotel closed down, shall be paid and wherever necessary the difference would be treated as personal pay until appropriate pay scale is available".

2. On 14.04.1986, the ITDC wrote to some of the retrenched employees wherein they stated that they had notified a list of the employees who were under consideration for fresh alternative employment under the Ministry of External Affairs consequent upon the closure of the said Hotel and that the list included his/her name. To enable the Ministry of External Affairs to complete the necessary formalities connected with the said alternative fresh employment, the employee concerned was advised to convey his/her willingness to the officer concerned of the Ministry of External Affairs by 19.4.86 failing which it shall be presumed that he/she was not interested in any fresh alternative employment consequent upon the closure of the said Hotel.

3. On 21.4.1986, the Government decided that the Ministry of External Affairs would take over 137 employees of the said Hotel for maintenance of the building and that the said Ministry would bear, as part of the acquisition cost, compensation to be paid for retrenchment of 550 persons.

4. The applicants and others who expressed their willingness for fresh alternative employment in the Ministry of External Affairs and had been taken in employment of the said Ministry had filed a case before the Industrial Tribunal as regards their pay and allowances and other related matters which was withdrawn on 23.12.1988.

5. The reliefs sought in the present application are the following:-

(1) An order by this Hon'ble Tribunal to Respondent No.1 to regularise the services of the applicants and their similarly placed colleagues in appropriate pay scales and granting them appropriate status as civil servants.

(2) An order to the respondent No.1 to give all the benefits of past service in the matter of pension on superannuation and family pension etc. in the event of death etc.

(3) An order to the respondent No.1 to calculate all the arrears of pay and allowances to which the applicants and their similarly placed colleagues are entitled in terms of the commitment made by the Union of India before the Hon'ble Supreme Court of India on 28.1.1988.

(4) Anyother or further relief that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(5) The cost of these proceedings may be awarded in favour of the applicants and against the respondents 1, 2 and 3.

6. Union of India through the Ministry of External Affairs has been impleaded as the first respondent, Ministry

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of Tourism and Civil Aviation as the second respondent and the I.T.D.C. as the third respondent.

7. I.T.D.C. moved MP No.1326/89 praying for deleting their name from the array of respondents on the ground that the Tribunal has no jurisdiction over it. The MP was allowed and the name of respondent No.3 was directed to be struck off from the array of respondents.

8. We have gone through the records of the case carefully and have heard the learned counsel of both parties at length. At the outset we may consider the preliminary objections raised by the respondents.

9. The applicants filed the present application without waiting for a period of six months after making their representations on 14.10.1989. With regard to this preliminary objection, we feel that even during the pendency of the application, nothing prevented the respondents from passing appropriate orders redressing their grievances in whole or in part.

10. The other preliminary objection deserving consideration is that the applicants choose to file an application instead of moving the Supreme Court for appropriate directions, as that Court had already disposed of Writ Petition No.468/1989 pertaining to their grievances. In our view, the litigation before the Supreme Court related to the validity of the closure of the Akbar Hotel and their grievance in the present application relates to the regularisation of the services

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of the applicants and the giving of appropriate pay scales to them with consequential benefits.

11. The grievances of the applicants consist of two parts, namely, (i) their absorption and regularisation in suitable posts and (2) fixation of their pay scales with all consequential benefits.

12. With regard to the absorption or regularisation of the services of the applicants, the respondents have stated that they have been vigorously considering their case for creation of new posts and absorption in consultation with various authorities at a very high level. The question of creation of 126 ex-cadre posts in the Ministry of External Affairs has to be taken ^{with} ~~with~~ the Cabinet Committee in consultation with various authorities concerned. In our opinion, this should be done as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

13. The applicants and those similarly situated appear to be equally agitated about the delay in fixing them on appropriate scales of pay in the Ministry of External Affairs and non-payment of what, according to them, is their entitlement as monthly pay packet. The I.T.D.C. had

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informed the Parliamentary Committee on Public Undertakings, Eighth Lok Sabha that these employees are being paid presently on the basis of total emoluments as drawn by them at the time of closure of the Hotel. The said Committee in its sixty first Report on ITDC presented to Lok Sabha on 26.7.1989 has regretted to note that the matter regarding pay scales of employees who have been employed by the Ministry of External Affairs was still under consideration and urged the Government to finalise the matter at the earliest.

14. Pursuant to the interim orders passed by the Tribunal on 23.5.1989 and 24.7.1991, the respondents provisionally fixed the pay of the applicants and those similarly situated in the corresponding pay scales recommended by the Pay Commission. The learned counsel for the applicants submitted that the pay so fixed have given rise to distortions and anomalies in some respects. This has been refuted by the learned counsel for the respondents.

15. In our opinion, the fixation of pay of the applicants should be delinked from the creation of posts in which the applicants have to be adjusted pursuant to the Government decision already taken to absorb them and regularise them in the Ministry of External Affairs. The creation of regular posts have greater relevance to seniority and like matters. Till the regular posts are

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created, as proposed by the respondents, we are of the opinion that the applicants and those similarly situated, should be given consolidated salary by taking into account the proposed pre-revised scales indicated in the statement accompanying the letter dated 14.4.86 at Annexure 'A', pages 21-26 of the paper-book and the corresponding scales as per the recommendations of the Fourth Pay Commission. The consolidated salary should include, in addition to the basic pay, the various allowances admissible to a Government servant from time to time, as also the annual increments from the respective dates of the applicants joining the Ministry of External Affairs. The applicants should also be paid arrears w.e.f. 1.1.1986 in the same manner as other Govt. servants have been paid. The legal representative of the applicant No.1(Sh. H.J. Irani) should be given provisional family pension from the date of his death, in accordance with the relevant rules, treating the deceased employee as a Govt. servant for this purpose.

16. ^{also} We would commend to the respondents to appoint an Expert Committee in which a representative of the ITDC should be included, to take a final decision on the equivalence of posts held by each employee in the ITDC with a Govt. post in which he could be absorbed formally on regular basis. Thereafter, in the light of the recommendations made by such a Committee, the respondents shall take steps to create suitable posts as

expeditiously as possible, but preferably within six months from the date of communication of this order.

17. After the applicants have been absorbed formally in regular posts, in case they feel aggrieved, they will be at liberty to file a fresh application in the Tribunal in accordance with law, if so advised. We also make it clear that the payment to the applicants as directed hereinabove, is liable to adjustment after the final decision is taken by the Govt. in the light of the recommendations made by the proposed Expert Committee.

There will be no order as to costs.

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(D.K. CHAKRAVORTY)

MEMBER (A)

6/3/92

Arrived 6/3/92
(P.K. KARTHA)
VICE CHAIRMAN (J)