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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. 1. OA-1399/88 ✓
2. OA-1886/88

Date of decision: 29.10.92.

1. Shri R.C. Joshi }
2. Shri N.S. Rawat & } Applicants
20 Others }

Versus

Union of India & Ors. Respondents

For the Applicants Shri D.C. Vohra, Advocate

For the Respondents Shri P.P. Khurana, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

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

The applicants, who have worked as India based staff at the Indian Embassy in Cairo, are aggrieved by the quantum of Foreign Allowance paid to them and the decision of the Government of India in the Ministry of External Affairs (Respondent No.1) to pay the said allowance in the local currency. It is proposed to deal with the two applications in a common judgement. *Q*

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The payment of salaries, inclusive of Foreign Allowance abroad, is governed by the Indian Foreign Service (Pay, Leave, Compensatory Allowances and other Conditions of Service) Rules, 1961, as made applicable to the staff of Indian Foreign Service (B). ('the Rules' for short).
3. Rule 7 of the said Rules refers to foreign allowance as under:-

"CHAPTER III

FOREIGN ALLOWANCE AND REPRESENTATIONAL GRANT

7. Foreign Allowance: A member of the Service serving outside India may be granted a foreign allowance at such rates and subject to such conditions as may be prescribed by the Government from time to time".
4. Annexure III to the said Rules provides, inter alia, as follows:-

"1. Foreign Allowance - (1) Foreign Allowance is intended to cover the additional cost of living at the station where the officer is posted as well as expenditure which an officer, while serving abroad, has necessarily to incur either at home or abroad, over and above that which an officer of corresponding category serving in India is expected to have to bear.

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2. Married and Unmarried Officers - The Government may prescribe different rates of foreign allowance to 'married' and 'unmarried officers...."

5. There are several categories of officers and staff in the Indian Missions abroad, each with entitlement to foreign allowance at different rates fixed by the Government. There was also difference in the rates applicable to married persons and those who were single. Thus, for example, the applicant in OA-1399/88 was entitled to Rs.4,740/- as a Non-representational Gazetted Officer as per the rate fixed since 1.7.1985. There were two devaluations of the Egyptian Pound as per the following details:-

S.No.	Date of devaluation of the Egyptian £	Extent of Devaluation
01	24 July, 1986	60%
02	12 May, 1987	62%

6. The applicants have stated that the devaluation of the Egyptian £ brought the value of the local currency down both in terms of the US \$ in which the staff was paid their salaries prior to devaluation as also in terms of Indian rupees. According to them, prior to the two devaluations the staff was paid their salaries in terms of US \$ because the Egyptian currency was fully convertible

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in terms of US \$ and it was immaterial whether the payments were made in terms of the Egyptian £ as these got converted automatically into the stable US \$ the moment salaries got credited in the staff members' bank accounts. But, after the devaluation, payment in terms of the Egyptian £ meant loss of salaries and a cut in the foreign allowance of the staff members.

7. The applicants have stated that the devaluations took place because of the balance of payments problem of Egypt and it should have in no way affected the salary payments to the India-based or the local staff of the Respondent No.2 because India remits funds to its missions through a system of centralised accounts in New Delhi, London and Washington and this involves dollar remittance which gets converted into local currencies when the salaries are disbursed according to the rupee equivalent sanctioned by Respondent No.1.

8. The different rates of foreign allowance admissible to the married and single officers was abolished by the Government in February, 1986 but this is not relevant for determining the issues raised before us.

9. As a result of the devaluations, the Egyptian £ lost its purchasing power in the market and with the abolition of the free convertibility of the Egyptian £ into US\$ the salaries of the staff were no longer

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available in any stable currency. The Respondent No.1 continued to stick to the old rate of Re.1 = LE 0.083 or LE 1 = Rs.12.05 with the result, the payment of salaries in the declining Egyptian £ lost all links with the US \$ or rupee equivalents. By the end of May, 1987, the Egyptian £ commanded only Rs.8.96 in the market, while the applicant and his similarly placed colleagues were being paid at the rate of LE 1 = Rs.12.05. The applicants have stated that the respondents protected the emoluments of only the local Egyptian staff working in the Indian Embassy (Respondent No.2).

10. The first impugned order dated 10.9.1987 was passed by the Government providing for the drawal of emoluments by the India-based staff as under:-

A. For the period from 1.8.86 to 30.4.87 - 85% in US \$ and balance 15% in local currency/RBI drafts
Rate of exchange: US \$ 1 = Rs.12.10 (1.8.86 to 31.3.1987)
US \$ 1 = Rs.13.10 (1.4.87 to 30.4.1987)
LE 1 = Rs.0.083 for entire period

B. For the period from 1.5.87 to 31.7.87 - disbursement to be made in local currency at the rate of Re.1 = LE 0.1074, i.e., LE 1 = Rs.9.31.

11. In addition, it was also proposed to effect recovery from them as under:-

"3. Excess amount paid to the officers and staff for the month of April, 1987 by using the old

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exchange rate of Rs.12.10 = 1 US \$ instead of the prevailing official rate of exchange of Rs.13.10 = 1 US \$ may be recovered immediately. Further recoveries for the period from 1.8.1986 to 30.4.1987 would be intimated later after the relevant UN indices (COL) and other information for the period becomes available on the basis of which derivation of unintended benefit, if any, through irregular drawal of emoluments in US \$ is established."

12. By the second impugned order dated 11.9.1987, the Government reduced the rates of foreign allowance. In the case of officers of the category of Applicant in OA-1399/88, it was reduced from Rs.4740 to Rs.3955.

13. Further, whereas the local staff has been given 100 per cent protection from future devaluation of local currency by sanctioning full emoluments to them in US dollars, India-based staff is forced to take 40 per cent of the Foreign Allowance in Egyptian Pounds. Thus, Egyptians are being paid their full salary in foreign currency and foreigners (India-based) are forced to take local currency.

14. The applicants have, therefore, prayed for setting aside and quashing the aforesaid impugned orders dated 10.9.1987 and 11.9.1987, being violative of Rule 7 of the aforesaid Rules and for directing the respondents to fix the foreign allowance in the Indian Embassy in a

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manner in which ensures a nexus between the cost of living in the city of Cairo and the rates of foreign allowance. They have also sought for a direction to the respondents to make all payments to the staff in terms of either floating rates of Egyptian Pound, or any stable currency such as the US \$ to protect their emoluments as fixed from time to time, because the local currency is susceptible to frequent changes through devaluations and loses its purchasing power. By way of interim relief, they have sought for a direction to the respondents not to effect any recoveries on the basis of the aforesaid interim orders.

15. The applicants have challenged the validity of the impugned orders on a variety of grounds and they have relied upon numerous rulings* in support of their contentions. We have duly considered them.

16. The stand of the respondents is that foreign allowance is not 'pay'. According to them, foreign allowance is meant mainly to compensate an officer for increased cost of living at the station of posting. The cost of living that is relevant in the instant case is that of Egypt and, therefore, the foreign allowance is initially to be assessed in Egyptian Pounds. An allowance cannot be made a source of profit.

* Case law relied upon by the learned counsel for the Applicants:
AIR 1968 SC 240; AIR 1972 SC 2472; AIR 1974 SC 1889;
SLJ 1986 (2) CAT 1; SLJ 1987 (4) CAT 155; 1978(2)
Cal LJ 75; AIR 1986 1499.

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The respondents have contended that in terms of the aforesaid Rules, they have full authority to vary the foreign allowance by increasing or decreasing it according to circumstances. They can make foreign allowance subject to any conditions under which they can pay it in local currency or any convertible currency or partly in one currency and partly in another. They have also stated that the India-based staff and local staff are two different categories enjoying different conditions of service. In addition to pay and foreign allowance, the applicants are given free furnished residential accommodation, free medical assistance, almost free education of children upto a certain age and other facilities. As against this, the local staff is paid one consolidated salary for everything.

17. The foreign allowance is subject to periodical review and revision on the basis of the recommendations of the Foreign Service Inspectors which is a high power body and after on the spot visits and investigations. In the instant case, the impugned orders were passed on the basis of the recommendations made by the Foreign Service Inspectors. Rule 7 read with Annexure III to the aforesaid Rules gives the power to the Government to fix the foreign allowance admissible to each officer or each category of officers at each station or post

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abroad, including the currency in which it may be paid and to vary it from time to time according to circumstances. The applicants have not alleged any mala fides on the part of the Foreign Service Inspectors whose recommendations constitute the basis for passing the impugned orders. We, therefore, hold that the decision of the respondents to vary the foreign allowance as per the impugned orders cannot be faulted on legal or constitutional grounds, subject to what is observed hereinafter.

18. The aforesaid rules do not, however, empower the Government to vary the rate of foreign allowance to the disadvantage of the employees from a retrospective date or to order recovery of any amount already paid by way of foreign allowance, on the ground that on a subsequent date, it had been decided that what was paid was in excess of the entitlement of the person concerned. The rules do not empower the Government to effect recovery of any amount from a retrospective date.

19. In H.L. Trehan and Others Vs. Union of India and others, 1988 (2) SCALE 1376, the Supreme Court has observed that "it is now a well-settled principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a

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Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard." It was further observed that "the post-decisional opportunity of hearing does not subserve the rules of natural justice".

20. In view of the above, we are of the opinion that the decision of the respondents to effect recovery of foreign allowance from the applicants from a retrospective date on the basis of subsequent revision of the same by the Government, is not legally sustainable.

21. In the conspectus of the facts and circumstances, the applications are disposed of with the following orders and directions:-

- (i) We hold that on a true interpretation of Rule 7 read with Annexure III to the Indian Foreign Service (Pay, Leave, Compensatory Allowances and other Conditions of Service) Rules, 1961, the respondents are entitled to fix the foreign allowance admissible to each officer or each category of officers at the Indian ~~XXXXXX~~ Embassy in Cairo, the currency in which the same may be paid and vary it from time to time but only prospectively and not retrospectively. To this extent and

subject to the directions in (2) below,
the impugned orders dated 10.9.1987 and
11.9.1987 cannot be faulted on legal or
constitutional ground.

(ii) We hold that the aforesaid Rules do not
the Government
empower to vary the rates of foreign
allowance retrospectively. We set aside
and quash the direction contained in the
impugned order dated 10.9.1987 to effect
recovery of any excess amount paid to the
applicants. We direct that the amounts
already recovered from the applicants in
this regard, if any, shall be refunded to
them expeditiously and preferably within a
period of three months from the date of
receipt of this order.

(iii) There will be no order as to costs.

Let a copy of the order be placed in both the case
files.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)