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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.22/1988

Date of decision: 27.11.1990.

Shri Ajaib Singh

...Applicant

Versus

Union of India & Ors.

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Advocates:

For the applicant

...Shri Sant Lal

For the respondents

...Shri K.C. Mittal

(Judgement of the Bench delivered by Hon'ble Mr. Justice
Amitav Banerji, Chairman).

Shri Ajaib Singh, the applicant in this OA has prayed for a direction to the respondents to treat the period of his deputation on foreign service from 21.3.1973 to 28.2.1982 as a period spent on duty for the purpose of increments, pension and gratuity etc. with consequential benefits. There is a further prayer that the respondents be directed to implement the order dated 28.1.1986 (Annexure-A-5) to the OA.

The applicant was appointed as a Pharmacist under the Central Government Health Scheme (for short CGHS) on 5.2.1958. He was promoted as Store Keeper w.e.f. 21.8.1969. He was selected and offered an appointment by the Government of Libya for Foreign Service Deputation through the Government of India, Ministry of Health & Family Planning (department of Health) memorandum dated 13.11.1972. He was relieved of his duties under CGHS, Delhi w.e.f. 21.3.1973 to join

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foreign service in Libya. He joined there the very next day. He was relieved from foreign service in Libya on 20.2.1982 and was allowed to join duty as Store Keeper in his parent department. Although he was granted selection grade yet the grade of selection grade had not been granted to him. The reason appears to be that the time spent on foreign service was not being counted towards his service.

In the reply filed by the respondents on 25.4.88 it was stated that the applicant overstayed beyond the period of his deputation in Libya without any valid sanction and concurrence of the Government of India and as such his application is totally devoid of any merits and deserves to be dismissed on this ground alone.

The main question to be considered in this case is: whether the period spent on foreign service counts as on duty for the purposes of increment in the time scale to the post of Store Keeper under CGHS, in which the applicant had a lien under F.R. 26 (d). This is a case where the applicant had overstayed his deputation period -- instead of two years he had stayed over for 7 years. A further question arises as to whether the period overspent in Libya would be treated as spent on duty for the purposes of promotion, seniority etc.

However, it will not be necessary to decide these questions as the same appears to be pending before the Govt. and have yet to be decided.

In paragraph 6.7 of the reply by the respondents it is stated: **However, the position explained in the preceeding paragraph 6.6 is reiterated to pinpoint the conditions governing his deputation under the Government of Libya.** In fact the case of the applicant for

overstaying the period of deputation in Libya is still under consideration in consultation with the DPAR and the matter has not yet been finalised.

In para-6.8 a further plea is raised:

"Unless a final decision is taken to admit the said period of overstayal as the valid period spent on Foreign Service, the applicant cannot be given the benefit of the period of Foreign Service under reference and he cannot be given the benefit of his annual increments for the period overstayed by him in Libya."


This reply was verified on 21.4.1988. On a query from the learned counsel for the respondents Shri K.C. Mittal, we were informed that the matter is still pending consideration with the Government and the matter has not yet been finalised. We noted that more than 2½ years has elapsed and this matter needs to be decided at the earliest by the Government. In our opinion this cardinal point has to be decided by the Government before the Tribunal expresses any opinion on this point.


We are of the view that it would meet the ends of justice if we give a short period of time to the respondents to decide this question. In case the matter is decided in favour of the applicant there will not arise any further occasion to decide the question here in the Tribunal. In case it is decided against the applicant he will have to state fresh facts and challenge the order by which it was decided against him. If the present Application is to be retained it would entail largescale amendments to raise points that

would then arise. We do not think that any useful purpose will be served to keep the OA pending. A fresh OA may be filed, if need be occasioned by the order to be passed by the government/respondents. It is always open to a party to file an OA in accordance with law. We, therefore, reject the prayer made by the learned counsel for the applicant to keep the OA pending.

In view of the above, we dispose of this OA with the direction that the respondents shall decide the matter pending before them viz., the question of deputation to Libya and overstaying there and its impact on his service for the purposes of increments, pension, seniority, etc. by the 1st January, 1991. We order accordingly.

Parties to bear their own costs in this OA.


(I.K. RASGOTRA)
MEMBER(A)
27.11.90.


(AMITAV BANERJI)
CHAIRMAN
27.11.90.

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