

(4) ✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 914 198 6
T.A. No.

DATE OF DECISION 3.9.1987

Shri Sultan Aziz

Applicant
Petitioner

Mrs. Sarla Chandra,

Applicant
Advocate for the Petitioner(s)

Versus

Union of India & others

Respondents

Mrs. Raj Kumari Chopra,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, 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 to be circulated to all the Benches ? No

Kaushal Kumar
(Kaushal Kumar)
Member
3.9.1987

K. Madhava Reddy
(K. Madhava Reddy)
Chairman
3.9.1987

Central Administrative Tribunal
Principal Bench: Delhi

(5)

Regn. No. OA 914/86

Date of decision: 3.9.1987

Shri Sultan Aziz Applicant

Vs.

Union of India & others Respondents

Coram: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Mrs. Sarla Chandra, Counsel

For the Respondents Mrs. Raj Kumari Chopra, Counsel

(Judgement of the Bench delivered by Hon'ble Mr. Justice
K. Madhava Reddy, Chairman)

Judgement

The short question that falls for consideration in this application under Section 19 of the Administrative Tribunals Act, 1985 (for short, hereinafter referred to as the Act) is whether the applicant, who is a foreign National appointed as Translator-cum-Announcer(Baluchi) with the All India Radio, New Delhi for a period of five years under an agreement is entitled to claim the Overseas Allowance. This agreement was entered into between him and the President of India on 25.2.1984 and continues to be in force till 21.2.1989.

2. The Respondents raise a preliminary objection to the maintainability of this application on the grounds:

- (i) that he is a foreign national; and
- (ii) that he does not hold a civil post under the Union.

According to the Respondents even otherwise under the terms of the agreement entered into between the applicant and the President of India, he is not entitled to payment of Overseas Allowance.

3. There can be no dispute that the applicant is a staff artist of the All India Radio, the agreement itself

[Signature]

describes him as such. If the staff artist is holding a civil post under the Union then undoubtedly, the applicant who is a staff artist, is entitled to move the Tribunal under Section 14 of the Act. The fact that he is admittedly a foreign national- he is an Afghan- does not make any difference. Section 14 of the Act vests jurisdiction in this Tribunal to entertain the grievances of every person holding a civil post under the Union in respect of every service matter. The right to move the Tribunal given under Section 19 of the Act for redressal of grievance does not make any further distinction among persons holding civil posts under the Union on the ground that they are citizens of India or foreign national. Even a foreign national, if he is holding a civil post under the Union, is entitled to invoke the jurisdiction of this Tribunal under Section 19 of the Act for the redressal of his grievance in respect of a service matter provided he is holding a civil post under the Union. Claim for payment of overseas allowance is certainly a service matter as defined under Section 3(k) read with Sections 14 and 19 of the Act.

4. All that we have, therefore, to see whether the staff artist employed under an agreement, holds a civil post under the Union.

5. In Union of India & others vs. Shri M.A. Chaudhary(1) a Division Bench of the Allahabad High Court dealing with the case of a staff artist of All India Radio held that:-

"the Government had control over his work as well as manner and method of doing his work, which was supervised by the higher authorities. In our opinion, the relationship between the respondent and the appellants was clearly of a master and a servant. In this view, the respondent was holding a civil

post within the meaning of Article 311(1) of the Constitution".

6. When the Union of India went in appeal to the Supreme Court by way of Civil Appeal No.384/77 against this judgement, the Supreme Court vide its order dated 7.5.1987 (Union of India Vs. M.A. Chaudhary) held that the Staff Artists hold civil posts under the Government and Article 311 of the Constitution applies to them.

7. The same view was taken by the Supreme Court in the case of State of U.P. Vs. Audh Narain Singh and another(2).

8. We have, therefore, no doubt that the applicant/who is a staff artist of the All India Radio holds a "civil post" under the Union and is, therefore, entitled to move this Tribunal under Section 19 of the Act for the redressal of his grievance.

9. It is next contended that the applicant having been appointed under a contract for a specific period of 5 years is not entitled to invoke the jurisdiction of the Tribunal. The fact that the applicant is appointed for a limited period does not alter the status of the applicant. He was and continues to be a staff artist for 5 years. A civil post under the Union need not be a permanent post. It may be a temporary post. A person may be appointed even to a permanent post temporarily or for a specific period. The period for which a person is appointed by itself will not render the post of the staff artist other than a civil post under the Union, nor is the status of such an artist altered. For the entire period of contract, the applicant and the Respondents are bound by the terms of the contract and the applicant has to obey the orders of the Respondents in accordance with that contract. His status is that of an employee of the Government of India for that limited period. For the stipulated period of five years, the applicant would be holding a civil

post under the Union.

10. Clause 5 of the agreement entered into between the applicant and the President of India on 25.2.1984 provides as under:-

"5. The said Staff Artist shall from the date of commencement of this agreement be granted a basic fee of Rs.700/- (Seven hundred only per mensum in the fee scale of Rs.700-40-900-EB-40-1100-50-1300. The fee from time to time payable to him under these presents shall be paid for such time as he shall render service under this agreement and actually renders the services required of him commencing from the aforesaid date and ceasing on the date of his quitting the engagement or on the date of his/her discharge therefrom or on the day of his death if he shall die during the continuance of this agreement.

(i) The said Staff Artist Translator-cum-Announcer (Baluchi) shall be entitled to increments in the above scale in accordance with the rules prescribed therefor.

(ii) The said staff Artist Translator-cum-Announcer shall be entitled to such allowances as may be made applicable to Staff Artists from time to time".

11. The allowances admissible to staff artist Translator-cum-Announcer are specified in letter No.45011/10/81-B(A) issued by the Government of India, Ministry of Information and Broadcasting dated 28.7.82 which inter alia provides for payment of Overseas Allowance, the relevant portion of which reads as under:-

" (i) The Staff Artist (Foreign Nationals) recruited from abroad and also those recruited in India whose stay in India at the time of recruitment was/is not more than three years and who are holders of foreign passports will be entitled to an Overseas Allowance at a uniform rate of



Rs.1500/- (Rupees One thousand five hundred only).

(ii)

12. Under the terms of the agreement between the applicant and the President of India, the applicant would, therefore, be undoubtedly entitled to payment of overseas allowance at a uniform rate of Rs.1500/- provided he fulfills the conditions laid down in the letter dated 28.7.82 extracted above. The essential pre-condition for the payment of this allowance is that he should be a staff artist and should have been either "recruited from abroad" or if recruited in India his "stay in India at the time of recruitment was/is not more than three years". The applicant was admittedly not recruited from abroad. He was recruited in India and was offered appointment on 10.2.84. The applicant accepted this appointment and joined duty on 22.2.1984. The agreement was actually executed a few days later on 25.2.1984. Presumably for that reason the agreement specifically stated that it was for the period commencing from 22.2.1984 and ending with 21.2.1989.

13. It is however, argued by Mrs. Raj Kumari Chopra, learned counsel for the Respondents that the offer of appointment was made much earlier on 30.5.1983 when the applicant was in India and that he had also accepted the offer on 1.6.83 while he was in India. Both by the date of the offer of appointment as well as the date of acceptance, he had been staying in India for more than three years. Thus he was recruited in India when he was staying ^{in India} for more than three years and was, therefore, not entitled to payment of overseas allowance. It is true that the applicant came to India in 1978 and left India on 1.11.83 and returned to India on 23.1.84. Thus by the date, the present offer of appointment was made and accepted, he was residing in India for more than three years. But what



- 6 -

the agreement between the applicant and the Government of India stipulates is that he should have been staying in India " at the time of " recruitment for not more than three years. From the record it is established that the offer of appointment dated 25/30.5.1983 which was accepted by the applicant on 1.6.83 was revoked by the Government itself. The offer made was cancelled by letter dated 23.1.1984. The earlier offer was not revived. A fresh offer was made on the terms and conditions mentioned in the present agreement. That offer which was revoked could not have been accepted. There was obviously some change in the terms of the original offer. It was this later offer that was accepted and the agreement executed on 25.2.1984 incorporates the same. When this offer was accepted and the agreement was executed, the applicant/admittedly not staying in India for more than three years. After his earlier stay in India for/three years, he had left India for Afghanistan. It cannot, therefore, be said that at the time of the present recruitment the applicant's stay in India was for three years or more. Being a foreign national recruited as staff artist in India and not being in India for more than three years at the time of recruitment, the applicant is entitled to overseas allowance at a uniform rate of Rs.1500/-.

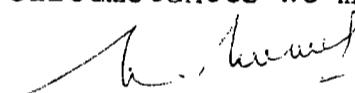
Further obviously, it was under that belief he accepted the offer. It would be wholly unfair to deny the overseas allowance to him now.

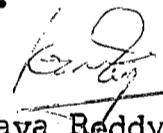
14. It is not disputed that a staff artist(foreign national) recruited with the All India Radio would be entitled to payment of overseas allowance at a uniform rate of Rs.1500/-per mensem if he satisfies the terms and conditions stipulated in the letter dated 28.7.82. It is also not in dispute that the applicant who was appointed with effect from 22.2.1984 was not paid this allowance only on the grounds which have/ been rejected above.

S. G.
 100

15. It would appear from the counter that the applicant was initially paid Rs.500/- by way of overseas allowance but that was recovered. As per standing instructions a staff artist (foreign national) is either entitled to payment of overseas allowance at a uniform rate of Rs.1500/- or not at all. There appears to be no basis for paying only Rs.500/- as overseas allowance and for recovering even that amount. Be that as it may, in the view we have taken above, the applicant is entitled to payment of overseas allowance at a uniform rate of Rs.1500/- with effect from 22.2.1984 until he continues as staff artist under the agreement. The Respondents shall calculate and pay the amount due to him within a period of two months from the date of the receipt of this order.

16. The application is accordingly allowed but in the circumstances we make no order as to costs.


(Kaushal Kumar)
Member
3.9.1987


(K. Madhava Reddy)
Chairman
3.9.1987