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In the Central Administrative Tribunal

Principal Bench: New Delhi

CCP No.57 of 1992 in
OA No. 356 of 1989

Date of decision: 29.07.1992.

H.J. Irani & Others

...Petitioners

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the Petitioners

Shri D.C. Vohra, Counsel.

For the Respondents

Shri P.P. Khurana, Counsel
with Shri J.C. Madan, Counsel.

Judgement (Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The complaint in this case is that the interim directions issued by the Tribunal on 24.07.91 in OA 356/89 have not been fully complied with so far as petitioner Shri Harish Basotra is concerned. The interim directions have now merged and become part of the final directions, the O.A. itself having been disposed of by judgement dated 6.3.1992. Hence, in substance we are examining the complaint of non-compliance with the directions in the main judgement as well.

2. In order to appreciate the controversy between the parties we would like to advert briefly to the background.

The petitioner and several others similarly situate were employees of the Akbar Hotel. That was closed down some time in April, 1986. Some of the former employees of the hotel approached the Supreme Court in Writ Petition No.468

✓ of 1986. That petition came to be dismissed on 28.1.1988.

The Supreme Court has, however, recorded the statement made on behalf of the Union of India before them, which has been extracted in the order of the Tribunal and reads:-

"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."

It is thus clear that though the employees who approached the Supreme Court for relief were not able to secure any order in their favour in the matter of enforcement of their rights, they acquired certain rights and privileges in the light of the statement made by the Union of India before the Supreme Court, extracted above. Thus the source of their rights which have been examined by the Tribunal at the interlocutory stage as well as the final stage is the statement recorded of the counsel for Union of India, as recorded by the Supreme Court. The broad parameters of the said statement clearly indicate that an attempt was made to give alternate service to the employees of the Hotel and to take steps in regard to their being adjusted in the service of the Government of India. Pending finalisation of these steps it was stated that the pay drawn before the Hotel was closed down shall be paid and wherever necessary the difference would be treated as personal pay until appropriate pay scale is made available. Therefore, two

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obligations flow from the statement made by the Union of India. The primary statement is that they would be absorbed and given appropriate scales of pay in the service of the Government of India. Until a decision is taken in this behalf, as an interim measure to pay to these employees the last pay drawn by them before the Hotel was closed down. In other words, whatever the pay each of the employee was drawing when the Hotel was closed down was required to be paid by the Government of India until a decision was taken in regard to their adjustment in the Central Service and fixing them in a suitable scale of pay. The Government of India has not yet decided about the appropriate scale of pay to be given to the employees of the Hotel on their absorption. Their stand is that they have appointed an Expert Committee for this purpose and that they are awaiting its report. After the Expert Committee gives its opinion the final decision would be taken in regard to proper absorption and according of pay scale and fixing of pay. The present petition is one related to the intermediary stage of enforcing the assurance given on behalf of the Union of India in the matter of paying salary and emoluments to the former employees of the Akbar Hotel. This is the broad parameter which stands fixed by the statement made on behalf of the Union of India before the Supreme Court.

3. When such is the position, some of the former employees of the Hotel who have been provided alternate service in the

✓ Government of India approached the Tribunal in OA No.356/89.

On 24.7.1991 an interim direction was issued which is incorporated under paragraph-7 of the interim order. The Original Application which itself was disposed of on 6.3.92 makes a reference to the said order in paragraph 14 of the final judgement in the Original Application. When O.A. 365/89 was argued, a grievance was made on behalf of the petitioners about the manner in which the pay has been fixed as an interim measure. It was contended on behalf of the petitioners that their pay has been fixed in such a manner as to give rise to distortions and anomalies in some respects. This was refuted by the learned counsel for the respondents. What those distortions and anomalies were is not adverted to in the judgement. After adverting to the controversy in regard to the implementation of the interim orders, the Tribunal has proceeded to issue final directions. The Tribunal has directed that in the light of the recommendations that may be made by the Expert Committee the respondents should take steps to create suitable posts as expeditiously as possible and preferably within six months from the date of communication of the order. The period fixed has not expired so far as far as compliance with this direction is concerned. As regards the salary the petitioner should receive until a final decision is taken the Tribunal has reiterated the directions which it had earlier given as an interim measure. We shall advert to the directions in this behalf as the controversy in this petition bears on the question of complying with these

directions as follows:-

"Till the regular posts are 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...."

So far as the fixation of the pay of the petitioner in accordance with these directions is concerned, the stand taken by the respondents is that they have fixed the pay at Rs.1440/- plus Rs.250 as H.R.A., Rs.45 as C.C.A., Rs.25 as personal pay as on 4.5.1986. It is their case that the pay has been fixed in the scale of pay of Rs.1350-2200, one of the pay scales recommended by the Fourth Pay Commission. For this purpose, it is stated that it was ascertained that the basic pay of the petitioner was Rs.810/- and that the consolidated amount which he was receiving, including all allowances was Rs.1332.85. The respondents' counsel relied

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upon the statement adverted to in the judgement of the Tribunal as Annexure 'A', wherein the figure has been given. Taking into consideration the total amount which the petitioner was receiving, his basic pay was fixed in the pre-revised scale of Rs.425-600 at Rs.425/- and the consolidated amount including allowances at Rs.1334.40. This has been taken into account for further working out his pay in the Fourth Pay Commission scale of pay of Rs.1350-2200. Shri Vohra, learned counsel for the petitioner does not dispute that if the premise adopted by the respondents is correct, subsequent steps taken by them would also be correct. But the contention of the learned counsel for the petitioner is that the basic premise of the respondents is wrong which has resulted in the lower fixation of the emoluments of the petitioner. Shri Vohra contends that the total emoluments which required to be protected as per the directions in the judgement was Rs.1642.60/- and not Rs.1332.85, as assumed by the respondents. If Shri Vohra is right in this contention he would also be right in saying that fixation of pay by the respondents would not be consistent with the directions given in the judgement. So the only question that really requires examination is as to whether the respondents are right in proceeding on the basis of the total emoluments at Rs.1332.85 as contended by the petitioner.

5. We must bear in mind that what is required to be taken into account as per the directions of the judgement is the

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emoluments which the petitioner was drawing on the date on which the Akbar Hotel came to be closed down. That according to the respondents was Rs.1332.85. Shri Vohra, learned counsel for the petitioner, submitted that Annexure 'A' to the judgement gives the figure of Rs.1642.60 against the name of the petitioner at srl. No.32 under the heading proposed designation. Our attention was drawn to clarify this position to the Annexure 'D', order of the Govt. of India, Ministry of External Affaris dated 13.8.90. The relevant columns which need our attention are columns 4 and 5. Column 4 relates to rate of wages fixed under O.O. dated 25.6.86 and column 5 relates to rate of wages refixed now from the date of joining. So far as the petitioner is concerned, his name is at serial No.34 and under column 4 his wages are shown at Rs.1642.60 and under column No.5 at Rs.1742.60. What is important to notice is the preamble to the notice which is as follows:-


"In compliance with the judicial directive issued by the Hon'ble Central Administrative Tribunal on 25.5.1989 in case No.OA/356/89, the consolidated wages of the Ex-ITDC employees, who are on temporary employment in the Ministry of External Affairs, are refixed as below with effect from their respective dates of joining this Ministry, including the interim relief granted to them by the ITDC in their Office Order No.20/WRC/K/83 PHQ, dated 25.9.1987. This interim relief is to be adjusted suitably when these employees are offered regular pay scales. "

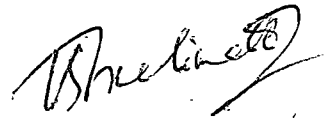
From columns 4 and 5 and the preamble it is clear that the amounts noted under these columns are not consolidated amounts which the petitioner was drawing as on the date on which the Akbar Hotel was closed down. What is relevant is the actual emoluments which the petitioner was drawing on the date on which the Akbar Hotel was closed down in May, 1986 and not the amounts subsequently fixed in pursuance of the interim directions given by the Tribunal. We, therefore have no hesitation in agreeing with the contention of the respondents that the total emolument that was required to be taken into account was Rs.1332.85 and not Rs.1642.60.

6. At this stage of the dictation of the judgement Shri Vohra, learned counsel for the petitioner interrupted and submitted that he would like to withdraw this Petition and prayed that the Petition be dismissed, as withdrawn. Shri P.P. Khurana, learned counsel for the respondents submitted that having spent so much time of the Court and the judgement having been partly dictated, we should not permit him to withdraw this Petition. The petitioner who was also present in the Court also requested us to dismiss the petition as withdrawn. As the petition has been filed invoking the Contempt of Courts Act for enforcing the order of the Tribunal and though normally we would not have accepted this request in the midst of the judgement, by way of indulgence we grant permission to withdraw this Petition.

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The Petition is, accordingly, dismissed, as withdrawn and the notice of contempt issued to the respondents is discharged. No costs.


(I.K. Rasgotra)
Member(A)


(V.S. Malimath)
Chairman

July 29, 1992.

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