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In the Central Administrative Tribunal
Principal Bench, New Delhi

Nos. 1. OA-1804/90
2. OA-1805/90 and
3. OA-1814/90.

Date: 5.10.1990

1. Shri Prem Kumar Hans } ... Applicants
2. Shri O.P. Gandhi }
3. Shri Somendra Yamdagni }

Versus

Union of India & Others ... Respondents

For the Applicants ... Shri Vijay Mehta, Counsel

For the Respondents ... Smt. Raj Kumari Chopra, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
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

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

These applications have been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the validity of the Memorandum dated 31.6.1990 issued by the High Commission of India in London, whereby the deputation of the applicants has been sought to be terminated w.e.f. 30.9.1990. As common questions of law have been raised, it is proposed to deal with these applications in a common judgement.

2. There is no dispute as regards the facts of these cases. The applicant in OA-1804/90 is working as Attaché (Coord.), the applicant in OA-1805/90, as S.A.S. Accountant, and the applicant in OA-1814/90, as Director of Purchase, in the Supply Wing of the High Commission of India in London. The Government of India decided to wind up the Supply Wing

of the High Commission of India in London and to abolish the existing posts (both India-based and Local) in a phased manner by the end of September, 1990 and December, 1990. Referring to the said decision, the impugned memorandum dated 21.8.1990 states that it has been decided to relieve the present incumbents of the posts as listed in Annexures 'A' and 'B' to the memorandum. The names of the applicants figure in Annexure-A, dealing with the list of persons who should relinquish charge on 30.9.1990. Annexure-B is the list of persons who should relinquish charge on 31.12.1990.

3. There are, altogether, 14 India-based persons who are to be repatriated to India on premature termination of their deputation.

4. These applications were filed in the Tribunal on 3.9.1990. The Tribunal has passed an interim order on 7.9.1990 to the effect that the respondents shall not give effect to the impugned order dated 21.8.1990. After hearing the learned counsel for both the parties, the Tribunal reserved the orders on 28.9.1990 and the interim orders have been continued till the final orders are passed on these applications.

5. The case of the applicants, in short, is that their periods of deputation were for a fixed term of three years, and that they would not be granted the benefit of the 'Next Below Rule' while employed in the High Commission, nor would they be transferred to India before they completed the normal tenure of three years in London for such consideration. Promotion to higher posts while stationed in London, shall not be allowed. The applicants accepted

(3)

the terms and conditions of their appointment on deputation. The applicants have submitted representations to the High Commissioner of the High Commission of India in London against their premature repatriation to India. The points raised in these representations may be summed up as follows:-

(a) The applicant in OA-1804/90 has contended that he accepted the offer of appointment on deputation in the belief that the period of deputation would be three years and that it would not be abridged. According to him, any abrupt curtailment of the tenure of three years, would be unjust and unfair and also in contravention of the terms and conditions of appointment. He has also mentioned the personal difficulties, such as the medical treatment undergone by his son and wife in London, the financial hardships caused to him as he had to sell off his household effects at throw-away prices before he left for London, and that it would be impossible for him to recoup the losses if he is transferred prematurely. His wife, who was working in the Indian Newspaper Society, New Delhi, since 1978, had to resign her job on his posting to London. Had he known that the period of deputation was subject to curtailment, she would not have resigned her job. He has alleged that the premature termination of deputation would cause disruption of the education of his child. He has referred to the precedents existing in the

High Commission where persons were allowed to complete their tenure even though their posts had been declared surplus. He has requested that he may be adjusted in the High Commission in any other post in any Wing.

(b) The applicant in OA-1805/90 has contended that he would not have accepted the offer of appointment had he known that the period of deputation was liable to be curtailed. His premature reversion to India would affect his children's education. He has also stated that he had to dispose of his household effects at throw-away prices and that he had to purchase similar articles afresh in London. Further, he had to surrender his Government accommodation at Delhi and he may not get Government accommodation immediately on his reversion to Delhi. He has also referred to the precedents of persons who were allowed to complete their tenure even though their posts had been declared surplus. He has also requested for adjustment in the High Commission in any other post in any Wing.

(c) The applicant in OA-1814/90 has stated that he had made his plans based on his tenure being three years and his premature reversion will cause serious personal and financial hardships ^{from the State Bank of India, London} to him. He had taken a loan of £5,700/ for purchase of a car in May, 1989. The loan is ^{along with interest} to be repaid ¹ in 24 monthly instalments. The repayment itself will be completed by June, 1990 only. He has stated that he has raised substantial amount of loan to repay at present, for ^{On}

which he will be forced to dispose of the car at a cheaper price. He has also referred to the disposal of his household items in India and purchase of similar items at London, and disruption of his son's education. He has also expressed his willingness to work in the Supply Wing or any other Wing of the High Commission.

6. We have gone through the records of the case and have considered the rival contentions. The decision of the Government to abolish certain posts in the High Commission of India in London and to wind up the Supply Wing, is with a view to effecting economy and in public interest. All the posts manned by India-based personnel in the Supply Wing, have been sought to be abolished. In view of this, the impugned memorandum dated 21.8.1990, cannot be said to be arbitrary, illegal or unconstitutional.

7. A person who has been appointed on deputation basis, can be reverted to his parent cadre at any time (vide Rati Lal B. Soni & Others Vs. State of Gujarat & Others, 1990 (1) SCALE, 228; see also R.N. Misra Vs. Delhi Admn., 1985 (1) SLR 753; and Shambu Nath Lal Srivastava Vs. the State of U.P., 1984 (2) SLJ 34).

8. The applicants have not alleged any mala fides or ulterior motives on the part of the respondents while issuing the impugned memorandum dated 21.8.1990. It is for the respondents to consider the difficulties and hardships that may be caused to the applicants by their premature repatriation to India. These are matters on which it will not be appropriate for the Tribunal to interfere on the ground that matters of good administration are for the Government and not for the Court to decide.

9. We are, however, of the opinion that in the interest of justice and equity, the applicants should be given reasonable time to wind up their affairs in London, as they had bona fide believed that they would be allowed to continue on deputation during the normal period of three years and arranged their affairs accordingly. It is noticed that out of the 14 India-based employees of the Supply Wing, 7, including the applicants, have been asked to relinquish charge on 30.9.1990, while the similarly situated 7 others have been given time upto 31.12.1990. While we uphold the validity of the decision of the Govt., pursuant to which the impugned memorandum dated 21.8.1990 was issued, we order and direct that the applicants shall be given time to wind up their affairs at London at least upto 31.12.1990, and that the impugned order shall not be enforced against the applicants till 31.12.1990.

10. The application is disposed of at the admission stage itself on the above lines. The parties will bear their own costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

5/10/90

P. K. Kartha
5/10/90
(P. K. Kartha)
Vice-Chairman (Judl.)