

In the Central Administrative Tribunal
Principal Bench, New Delhi

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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 Yandagni }

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 Tribunal Act, 1985, challenging the
validity of the Memorandum dated 31.8.1990 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 Attache
(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

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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 or 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 respective 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

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 problems existing in the

High Commission where persons were allowed

to complete their tenure even though their

had been declared surplus. He has

may be adjusted in the

in any other post in any

in any other post in any

(b) The applicant in OA-1805/90 has contended that

he would have accepted the offer of appoint-

that the period of deputation

His premature

to affect his children's

He has also stated that he had to

his household effects at throw-away

that he had to purchase similar

Further, he had

Government accommodation at

Government accommodation

reversion to Delhi. He has

the precedents of persons who

were allowed to complete their tenure even though

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 25,700 for

purchase of a car in May, 1989. The loan is

along with interest

to be repaid in 24 monthly instalments. The

repayment itself will be completed by June, 1990

only. He has stated that he has raised substan-

tial amount of loan to repay at present, for

which he will be forced to... the
 can at a cheaper price. He has also referred,
 to the disposal of his household items in
 of similar items at London,
 and 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 of India. We have gone through the records of the case and
 have considered the relevant contentions. The decision of
 the Government to appoint certain posts in the High
 Commission of India in India and to wind up the Supply
 Wing, is within the scope of a saving economy and in public
 interest. All the posts manned by India-based personnel
 in the Supply Wing have sought to be abolished. In
 this regard, the Government's memorandum dated 21.8.1990, cannot be
 said to be arbitrary, illegal or unconstitutional.
 The persons appointed on deputation basis,
 cannot be recruited as permanent cadre at any time (vide
Nati Lal D. Soni & Others Vs. State of Gujarat & Others,
 AIR 1990 SC 228; also *R.N. Miera Vs. Delhi Adm.*,
 AIR 1985 (1) SCR 753; and *Shambu Nath Lal Srivastava Vs. the*
State of U.P., 1984 (2) SLJ 34).

The applicants have not alleged any mala fide
 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.

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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.

(O.K. Chakraverty)
Administrative Member
5/10/90

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