

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A.No.778/90

New Delhi, this the 19th day of August, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER(J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri Til Bahadar Khattri
s/o Late Shri Tul Bahadar Khattri
resident of Negal.

Delhi address c/o

Shri Sant Lal Advocate,
C-21(B), New Multan Nagar, Delhi.

..Applicant

(By Advocate Shri Sant Lal)

Vs-

1. The Union of India, through:
the Secretary to Govt.of India,
Ministry of Defence,
Kendriya Sainik Board,
West Block-4, RK Puram, New Delhi.

2. The Ambassador,
Indian Embassy Nepal,
Kathmandu.

..Respondents.

(By Shri MK Gupta, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Applicant was enrolled in the Indian army in April, 1957 and retired as JCO in April, 1985. The applicant was later appointed as Administrative JCO in Indian Embassy, Pension Paying Office, Pokhara in Nepal with effect from 1-8-1985. On 31-10-1988 he was served with a termination notice alongwith payment of one month's pay. This was followed by a further order reiterating the termination. This order is dated 10-11-1988. His representation against termination was turned down vide letter dated 7-11-1989. This O.A. has been filed for setting aside these three orders dated 31-10-1988, 10-11-1988 and 7-11-1989 quoted supra and for a direction to respondents to reinstate the applicant alongwith consequential benefits.

2. The jurisdiction of this Tribunal to entertain the O.A. has been disputed by the respondents. It

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is submitted that the applicant is not a citizen of India but a Nepali citizen who was locally recruited and the cause of action has occurred outside Indian territory. The specific issue regarding jurisdiction in such matters has been gone into by this Bench of the Tribunal in O.A. No.3010/92 decided on 19-2-1993 and in T.A.No.43/86 decided on 20-4-1988. It would be appropriate to quote the relevant paragraphs from the above orders. Para 6 in the order passed in O.A.No.3010/92 is, as under:-

"...The question of jurisdiction of the Principal Bench of the Tribunal to hear this petition should not detain us long. Apart from the fact that these petitions filed in the Hon'ble Supreme Court have been remitted to this Bench for disposal, in accordance with law, the Scheme of the Central Administrative Tribunal visualized in the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'), comprehends grievances not only against the authorities within the territory of India, but also outside it. The objection raised by the learned counsel for the respondents that since the cause of action had arisen in Kathmandu, outside India, prima facie the petition does not lie with the Tribunal, does not impress us. In the definition, Section 3(p) of the Act, it has been indicated that "Service" means service within or outside India. Further clause (q) of the same section defines "service matters" as follows:-

"Service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation or society owned or controlled by the Government, as respects -

- i) Remuneration (including allowances), pension and other retirement benefits;
- ii) tenure including confirmation,

seniority, promotion, reversion, premature retirement and superannuation;

- iii) leave of any kind;
- iv) disciplinary matters; or
- v) other matter whatsoever.

The above definitions make it clear that service rendered outside India and service matters even though outside the territory of India, but under the control of the Govt. of India, would fall within the jurisdiction of this Tribunal. Article 12 of the Constitution of India also defines the "State" to include, inter alia, "all local or other authorities within the territory of India or under the control of the Govt. of India". So long as, therefore, the authorities with whom the alleged cause of action has arisen are under the control of the Govt. of India, its location outside the territory of India does not make any difference so far as the purview of the municipal courts and the Tribunal is concerned."

We note that of the 40 petitioners in SA No.3010/92, 3 are Indians and 37 are Nepalis.

Para 5 in the order passed in T.A.No.43/86 decided on 20-4-88 reads as under:-

"The first objection relates to the jurisdiction of the courts at Delhi. This is raised on the precise that the applicant was appointed at Nepal and the termination of his services also took place at Nepal. Counsel for the applicant met this objection by placing reliance on Section 20 of the Code of Civil Procedure wherein it is laid down that every suit shall be instituted in a court within the local limits of whose jurisdiction, the defendant resides or carries on business. It was submitted that as the respondents are the Union of India and the Secretary in the Ministry of External Affairs, New Delhi, the institution of the action at Delhi is in order. We accept this submission."

3. We have also noted that T.A.43/86 was challenged by Union of India & Anr. vide Civil Appeal No.2385/1988 before the Hon'ble Supreme Court wherein the Civil Appeal was dismissed in the facts and circumstances of the case.

4. We agree with the reasons made out in the two orders and accordingly we propose to entertain this petition.

5. A number of contentions were raised by the learned counsel for the applicant and we propose to examine them one by one. The first contention was that the order of termination dated 31-10-1988 was issued by the Lt.Col. who was the officer incharge in the Indian Embassy. This order was later confirmed by another order dated 10-11-1988 issued with the approval of Military & Air Attache. The order of 10-11-1988 reads as under:-

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"1. Services of Shri Til Bahadur Khatri, Adm JCO, Indian Embassy Nepal, Pension Paying Office, Pokhara (Nepal) have been terminated with effect from 01 Nov 1988.

2. This issues with the approval of Military & Air Attache under powers delegated to him by the Ambassador of India in Nepal."

6. While ~~we are~~ not questioning authority of the Military & Air Attache for issuing the termination orders, the argument of the learned counsel for the applicant ^{is} that retrospective operation of the order dated 10-11-1988 is irregular.

7. In the context we perused the original appointment order dated 19-9-85. The relevant portions are reproduced:-

"The Ambassador of India in Nepal hereby appoints the following locally as administrative staff at Indian Embassy, Pension Paying Office, Pokhara wef 01 Aug 85 (FN) on the terms and conditions of services given in the succeeding paragraphs:-

Administrative JCO -1

Ex JC-79477 Sub Til Bahadur Khattri, 9GR in the scale of pay as admissible to the locally recruited Administrative Supervisor serving in Indian Embassy, Nepal."

x x x x

"2....The appointments are purely temporary subject to verification of character and antecedents.

3. They will be on probation for three months in the first instance, during which period, their services are liable to termination without notice or assigning any reasons.

4. Subject to their services being found satisfactory during the probationary period, they will continue in a temporary capacity. During this period their services are liable to termination on one month's notice on either side.

5. In case of their services being terminated on disciplinary grounds, they will not be entitled to any notice. This is local appointment and the job is not transferable outside Nepal-

Authy :- Govt. of India, Ministry of Defence, New Delhi
letter No. 8/48283/AG/PS10/
8/S/US/D(Res) dated 17 April 1985".

8. Thus we find that the order of termination is

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purely in pursuance of the conditions stipulated in the appointment letter and the termination order is not an order of punishment. Even the first letter of termination dated 31-10-1988 has been endorsed to the Military & Air Attache. In the circumstances, we do not hold that the later order of 10-11-1988 confirming the earlier position as on 31-10-1988 is an illegal order.

9. It was then argued that the appeal submitted by the applicant to the higher authorities was disposed of by the Military & Air Attache who had himself approved the order of termination. To this effect the disposal of appeal by letter dated 7-11-1989 (An.A3 to OA) was referred. However, on perusal of letter dated 7-11-1989, we note that the Military & Air Attache had mentioned that he had been directed by the Ambassador to reply to the representation of the applicant.

10. In the letter dated 7-11-1989 it was mentioned that the applicant's appointment was purely temporary. After obtaining the approval of the Ambassador and based on a policy decision that those who had served for more than three years had been given termination notices. Similarly the applicant's services were terminated on 31-10-1988 after the applicant had served for three years and three months and instead of one month's notice being issued for termination of services, applicant was given one month's salary in lieu as per the rules. The learned counsel for the applicant challenged the policy decision to terminate all those who had served for more than three years.

11. Respondents' counsel referred to the relevant paragraphs of the reply and explained that in view

of the sensitivity of the situation and to ensure efficient functioning of the re-employed persons a policy decision was taken to change over the supervisory staff who were ex-servicemen after every three years. This policy ensures some re-employment opportunities for recently retiring ex-servicemen in Nepal and this policy is neither vindictive nor arbitrary. Too long a stay may lead to leakage of information and malpractices. It was also stressed that Missions abroad cannot be equated in all respects with working in India. Security of the nation is involved and so long as the applicant is not treated in a way different from others similarly situated, there can be no cause for complaint. We agree with the arguments of the respondents and in the special circumstances, a policy so long ^{it} is uniformly adopted without discrimination cannot be questioned.

12. The applicant has questioned retention of some other employees. But this has been rebutted by the respondents who have averred that some group 'D' staff has been retained for long periods and the policy of change over after three years applies to all supervisory staff like the applicant.

13. Regarding the payment of Rs.2110.87 as one month's pay in lieu of notice, it was argued that the appointment offer did not contain any provisions for payment in lieu of notice. Also the actual payment made was a little less than what should have been paid. We are not satisfied with these arguments since no prejudice is caused if payment is made in lieu of notice. Regarding the short payment, the respondents have admitted that due to some mistake the increment due to the individual was not taken into account while computing the one month's salary and the shortage was being made up in a supplementary

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pay bill.

14. We have also noted that in the order passed by this Bench in O.A.No.3010/92 it has been held that the premises of the pension pay office in Nepal cannot be considered to be an extension of territory of India for the purpose of invoking article 14 of the Constitution.

15. In the circumstances, the O.A. is dismissed.
No costs.

P. J. Thiruvengadam

(P.T.THIRUVENGADAM)
Member(A)

'M'

J. P. Sharma

(J.P.SHARMA)
Member(J)