

On

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2875/2004

New Delhi, this the 1 day of June, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K.Misra, Member (A)**

C.P. Abdul Rahoof
S/o late C.P.Mohammed
Chekidappurath House
P.O. Downhil Malappuram
Mylappuram, Dist. Malappuram
Kerala Pin 676 519. ... Applicant

(By Advocate: Ms. Nasreen Alam)

Versus

1. Union of India and Others
Through its Secretary
Ministry of External Affairs
South Block
New Delhi – 110 001.
2. Director (ADP) LC Section
Ministry of External Affairs
Akbar Bhawan
New Delhi.
3. The Consul General
Consulate General of India
Jeddah, Saudi Arabia
Through the Ministry of External Affairs
South Block
New Delhi – 110 001.
4. Vice-Consul (AD)
Consulate General of India
Jeddah, Saudi Arabia
Through the Ministry of External Affairs
South Block
New Delhi – 110 001. ... Respondents

**(Shri R.D.Yadav, Section Officer, MEA, Departmental
Representative)**

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-2-
O R D E R

By Mr. Justice V.S. Aggarwal:

Applicant (C.P. Abdul Rahoof) joined the Consulate General of India as a Cleaner-Messenger in July 1987. His services were regularized on the post of a Locally Recruited Cleaner on 3.9.1994. By virtue of the present application, the applicant seeks quashing of the orders of 10.6.2003 and 14.6.2003 and direction to the respondents for his reinstatement into service with payment of arrears and that he should be paid remuneration when he was made to perform extra-work at the residence of Respondent No.3.

2. Some of the other facts are that the applicant had been ordered to do all the household chores, except cooking, at the official residence of Respondent No.3 at Jeddah. The applicant applied for annual leave of 21 days in March, 2003. He had been working continuously for three years and wanted to visit his family in India. It is contended that the applicant was not paid remuneration for the extra-work. During the period of leave, the applicant suffered from back-ache. He was advised six weeks rest. He reached Jeddah on 6.6.2003. He reported for duty at Jeddah in the Consulate General of India on 7.6.2003 and submitted his passport for renewal of his Residential Permit. He conveyed his inability to work at the residence of Respondent No.3 due to back-ache. He was not allowed to resume the work and was made to wait at the lobby. Respondent 4, on 10.6.2003 handed to him a memo. that it was for regularizing his leave. He was asked to sign certain papers. He was told that he would be called back after

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two months for the next intake. This is stated to have been done by misrepresentation. Thereafter, he was again made to wait at the lobby and was asked to abstain from service. He was directed to come to the Consulate General of India only when called. On 10.7.2003, he was placed out of service without assigning any reason. He had to leave Jeddah. It is on these broad facts that his resignation had been obtained by misrepresentation. Hence, the present application has been filed.

3. The application has been contested.
4. It has been asserted, in the first instance, that this Tribunal does not have jurisdiction to deal with the matter. Local recruits are not Government servants and, therefore, provisions of the Administrative Tribunals Act, 1985 do not apply to them.
5. On merits of the matter, it is denied that signatures of the applicant had been obtained under some misrepresentation or that in fact he had not resigned.
6. We have heard the parties' counsel and seen the relevant record.
7. At this stage, it would be appropriate to refer to some of the other basic facts. The applicant was appointed on 23.11.1994 as locally recruited Cleaner in the Consulate General of India at Jeddah. The relevant provisions pertaining to the appointment are:

"In exercise of the powers delegated to Head of Post, Mr. Abdul Rahoof C.P., son of Mr. Mohammed C.P., is hereby appointed as locally recruited Cleaner in the Consulate General of India, Jeddah with effect from 03.09.1994 (FN).



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The terms and conditions of his service are as under:-

1. Mr. Abdul Rahoof C.P. will be on probation for a period of six months, during which period his services will be liable to termination any time without notice. No additional payment except the normal pay for the period he worked till termination of his service is payable. On successful completion of probation period, his services may be terminated on one month's notice either side or on payment of one month's pay thereof.
2. During his employment with this post, Mr. Abdul Rahoof C.P. will be governed by the rules and regulations as prescribed by competent authorities from time to time.
3. He will be looking after work as allotted to him from time to time.
4. Pay of Mr. Abdul Rahoof C.P. has been fixed at Rs.850/- only per month in the pay scale of Rs.850-30-1150-40-1950. Annual increment may be granted subject to satisfactory service during the preceding period of 12 months. Besides this monthly pay, no other allowances, such as compensatory allowance, dearness allowance, house rent allowance or rent free accommodation in lieu, conveyance allowance etc. are admissible to him.
5. Normal working hours will be from 0900 hours to 1700 hours. Working hour is subject to change from time to time. Thursdays/Fridays will remain closed as weekend off. In exigencies, Mr. Abdul Rahoof C.P. may be required to work beyond office hours and/on holidays. No extra allowance or remuneration for such work is admissible.
6. The Consulate General of India, Jeddah would in no way be responsible for any medical expenditure whatsoever that Mr. Abdul Rahoof C.P. may incur during his service with this Post."

18 Aug

8. On 10.6.2003, the applicant is stated to have resigned and a copy of the letter reads:

“Consulate General of India
Jeddah

Due to some personal matters, I am hereby submitting my resignation from the office of the Consulate General of India, Jeddah with immediate effect.

Sd/-
(C.P.Abdul Rahoof)
Messenger
10.06.03.

VC (Admn.)”

9. In pursuance thereto, on 14.6.2003, he was relieved from his duties and order reads:

“Consulate General of India
Jeddah

No.Jed/E/579/4/94 June 14, 2003

OFFICE ORDER

Consequent upon acceptance of his resignation by the Competent Authority, Shri C.P. Abdul Rahoof, Messenger is relieved of his duties in this Consulate General of India w.e.f. 14.06.2003 (AN).

Sd/-
(R.D.S.Sroha)
Vice Consul (Admn.)

Copy to:

1. The Chief Controller of Accounts, MEA, New Delhi.
2. LC Section, MEA, New Delhi.
3. Accounts Section, CGI, Jeddah
4. Shri C.P.Abdul Rahoof, (Formerly Messenger, CGI, Jeddah).
5. CGO – for information.”

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10. The first and foremost question that comes up for consideration is as to whether this Tribunal has the jurisdiction to entertain the application or not? Reliance has been placed on CCS (CCA) Rules, 1965 but the said contention must be rejected for the reason that the provisions of CCS (CCA) Rules would only be applicable when action has to be taken under those Rules. Presently, we are governed by the Administrative Tribunals Act, 1985 and, therefore, the first plea in this regard must fail.

11. Respondents urged that even under the Administrative Tribunals Act, 1985, this Tribunal does not have jurisdiction to deal with local recruits at Jeddah because they are not Government servants and are not holding any post. To appreciate the controversy, reference can well be made to certain provisions of the Administrative Tribunals Act, 1985. Section 2 of the Act prescribes as to whom the provisions do not apply and reads as under:

"2. Act not to apply to certain persons.-

The provisions of this Act shall not apply to-

- (a) any member of the naval, military or air forces or of any other armed forces of the Union;
- (b) [omitted]
- (c) any officer or servant of the Supreme Court or of any High Court [or courts subordinate thereto];
- (d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a house thereof or, in the case of a Union Territory having a Legislature, of that Legislature."

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12. In terms of Section 2, the provisions of the Act do not apply to any member of the naval, military or air forces or of any other armed forces of the Union; any officer or servant of the Supreme Court or of any High Court or Courts subordinate thereto, beside any person appointed to the secretarial staff of either House of Parliament or to the secretariat staff of any State Legislature. The applicant does not fall in any of those categories.

13. Section 3 (q) defines service matters and unfolds itself as under:

"(q) "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) any other matter whatsoever;"

14. This clearly shows that this Tribunal has jurisdiction to deal with the service matters in relation to a person pertaining to his conditions of service in connection with the affairs of the Union.

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15. So far as the question that the applicant was posted at Jeddah is concerned, the matter had been considered by this Tribunal in the case of **SHRI SADIQ HUSSAIN v. UNION OF INDIA & OTHERS**, OA No.2974/1997, decided on 14.8.1998. This Tribunal held that the Chancery at Jeddah of the Embassy at Saudi Arabia is under law an extension of the territory of India so far as the Indian citizens working there are concerned. The local courts cannot hear their matters and this Tribunal itself have jurisdiction. We find ourselves in agreement with the said view.

16. As regards the question as to if the Government servant is a holder of any post, we have already referred to above the contract that was entered into. The applicant was working as local recruit on a particular post.

17. The provisions of Section 14 of the Act were considered by the Supreme Court in the case of **UNION OF INDIA & OTHERS v. DEEP CHAND PANDEY AND ANOTHER**, [AIR 1993 SC 382], wherein, it had been observed:

"[2] In pursuance of Article 323A of Constitution of India, the Administrative Tribunals Act, 1985, was passed and the Central Administrative Tribunal, established under Section 4(1) thereof was available to the respondents in the present case. By clause (2)(d) of Article 323A the Parliament was authorized to exclude the jurisdiction of all courts except the jurisdiction of these Court under Article 136 with respect of the dispute and complaints referred to in clause (1) and accordingly by Section 14 of the Act, all the jurisdiction, powers and authority exerciseable by all Courts except the Supreme Court have been vested in the Central Administrative tribunal. The question, therefore, is whether the

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Central Administrative Tribunal could entertain the claim of the respondents who were before, termination of their employment, engaged as casual servants of the Union of India.

(3) The expression 'all Courts' mentioned in Section 14 (1) is comprehensive enough to include the High Court. If the subject matter of the claim of the respondents is held to be covered by Section 14, it must follow that the High Court is not left with any jurisdiction to deal with the same. The contention of the learned counsel for the respondents, however, is that since the respondents were not holding any civil post under the Union of India and were engaged only on casual basis, the provisions of the Central Administrative Act were not attracted. Alternatively, it was suggested that after the termination of their service the relationship of master and servant ceased to exist, and they, therefore, are not covered by the Act. The respondents, in the circumstances, rightly knocked the doors of the High Court. We do not find any merit in this stand taken on behalf of the respondents.

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(6) The present respondents are claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary status and it is, therefore, idle to suggest that such a claim is not covered by the Act. The necessary conclusion, therefore, is, that the remedy of the respondents was before the Tribunal and not the High Court. We accordingly, hold that the respondents. Consequently the impugned judgment is set-aside, the writ petition before the High Court is dismissed and these appeals are allowed, but without costs."

18. The Full Bench of this Tribunal (Patna Bench) in the case of **YOGENDRA MAHTO AND ORS. v. UNION OF INDIA AND ORS.**, OA No.537/92, decided on 8.10.2001 was concerned with certain casual labourers. It was held that this Tribunal had

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jurisdiction to consider the cases of casual labourers relating to termination/retrenchment of their service, grant of temporary status and subsequent regularization. Identical would be the position in the present case before us and resultantly, we have no hesitation in concluding that this Tribunal has the jurisdiction to deal with the controversy raised by the applicant.

19. The only other question that requires consideration was as to if the applicant has resigned voluntarily or not. The applicant is an illiterate person but the basic question that requires to be decided is as to if there was misrepresentation effected or not.

20. Immediately after he was repatriated to India, he had taken up the matter and he represented on 2.9.2003, copy of which is at Annexure-A10. It is obvious from the facts that the applicant had come on leave to India for three weeks. He stayed for an extra period and thereafter went back to Jeddah in June 2003. His alleged letter of resignation is dated 10.6.2003. If the applicant was to resign, there was no point of his going back to Jeddah. One would not certainly undergo unnecessarily for huge expenses only to resign because if the applicant wanted to resign, he could send his resignation either through Fax, by post or such like communication. This important fact weighs heavily in favour of the applicant and make us to conclude that the applicant had not voluntarily submitted his resignation. Thereafter, in the following month, he was repatriated. Thus, it rules out the possibility of the applicant having secured any other employment

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that might have prompted otherwise. Resultantly, we are of the considered opinion that the resignation had not been submitted voluntarily.

21. At this stage, we cannot restrain ourselves but to observe that the applicant himself had carelessly signed the letter. Therefore, for the period he was out of job, he is not entitled to any arrears.

22. For these reasons, we pass the following order:

- a) The impugned orders are quashed.
- b) The applicant should be taken back in service against the post to which he was recruited at Jeddah.
- c) He will not be entitled to any arrears from the date he resigned till date.


(M.K. Misra)
Member (A)


(V.S. Aggarwal)
Chairman

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