

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-286/92

Date:

13.8.92

Shri B.L. Deshwar

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... Shri N.S. Verma, Advocate

For the Respondents

.... Shri P.H. Ramchandani, Advocate

CORAM: Hon'ble Mr. J.P. Sharma, Member (Judl.)

1. To be referred to the Reporters or not?

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Single Bench Judgement

(By Hon'ble Mr. J.P. Sharma, Member)

The applicant is serving as Accounts Officer in the Office of C.D.A., Western Command, Chandigarh. He was selected for posting to the High Commission for India in Colombo (Sri Lanka) as A.O. in the Defence Accounts Department, Finance and Accounts Cell for the Indian Peace Keeping Force (IPKF) explained vide letter dated 14.9.1988. He was informed that he would be governed by the terms and conditions laid down in Para II, Office Order No.367 dated 12.10.1988 (Annexure A-3). The applicant accepted these terms and conditions which lay down that the amount of allowance payable to the applicant would be Rs.3,605/- per month. He joined at Colombo on 14.10.1988.

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He remained posted at Colombo till 1.9.1989 and returned to India. However, he also remained on duty at Delhi, where he joined on his return from Colombo on 25.3.1989, till 18.4.1989. The grievance of the applicant is that he should have been paid daily allowance instead of foreign allowance in terms of ^{note} para.29 of the instructions reproduced in Appendix-VI to Swamy's Compilation of F.R.S.R. (Para.I, General Rules) subject to deduction of pay, allowance, etc., drawn by him in respect of the period of posting from 14.10.1988 to 1.9.1989. He has prayed for the grant of the said relief in this application under Section 19 of the Administrative Tribunals Act, 1985. The applicant made a representation on 10.4.1990 to CGDA, New Delhi, in which he requested that daily cash allowance be granted to him from the date of entry in Colombo to the date of return to India on abolition of the post of A.O. The respondents rejected this representation that his request had ~~not~~ ^{duly} been considered by CGDA ^{under Reg. 29} letter dated 14.9.1988 ^{and it was conveyed to him} as his posting was made as per the terms and conditions laid down in the Government of India, Ministry of Defence (Finance), New Delhi letter dated 23rd June, 1988. The applicant preferred an appeal to the Financial Adviser (Defence Services), Ministry of Defence on 6.8.1990 also praying

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to revise the provisions of letter dated 6.10.1988.

The applicant has not been conveyed any decision and hence, the present application has been filed.

2. The respondents contested the application. They have taken the plea of the application being barred by limitation as the relief sought by the applicant is for the period from 14.10.1988 to 1.9.1989 while the representation was rejected on 30th July, 1990. The subsequent representation made by him on 6.8.1990 will not count for extension of period of limitation as the present application had been filed in February, 1992. The other objection taken by the respondents is that the applicant has accepted the terms and conditions for his appointment to Sri Lanka, where he was expressly told that he would be getting the foreign allowance and not the cash allowance/daily allowance. The respondents have filed, along with the reply, letter dated 11.8.1988 (Annexure R-1) that the pay and allowances will be admissible as in India and TA/DA for tour within Sri Lanka will be regulated in terms of the Ministry of External Affairs O.M. dated 10.11.1987 (Annexure R-2) in terms of the Ministry of External Affairs letter dated 15.7.1987 (Annexure R-3).

3. I have heard the learned counsel for the parties at length and perused the records. There is a force in the contention of the learned counsel for the respondents that

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the claim preferred by the applicant is barred by limitation. In fact, the applicant has claimed the foreign allowance for the period from 14.10.1988 to September, 1989 in this application filed in February, 1992. Though he returned to India in 1989 itself, yet he chose to make the representation only in April, 1990. In fact, the applicant, as alleged by him, remained on temporary duty in India from 25.3.1989 to 18.4.1989. It goes to show that the applicant on the first spell remained in Sri Lanka from 14.10.1988 till 24.3.1989 and he willingly accepted the foreign allowance without any protest and never submitted his claim for cash allowance/daily allowance. In fact, he again went to Sri Lanka some time in April, 1989 and again returned to India on abolition of the post of A.O. in September, 1989. The terms and conditions clearly go to show that the applicant was entitled only to the foreign allowance. There is no right of appeal against that order of rejection of his representation which was totally non-statutory. His subsequent representation on 6.8.1990 to the Financial Adviser (Defence Services), Ministry of Defence, cannot be termed as appeal in view of Section 23 of the C.C.S. (CCA) Rules, 1965. In fact, in his second representation, he has not requested that the order of rejection of his

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representation dated 30.7.1990 is, in any way, to be set aside or quashed. In his second representation dated 6.8.1990, the applicant has prayed to the Financial Adviser to revise the provisions of letter dated 6.10.88 which are the terms and conditions of the posting of the applicant to Sri Lanka. In this representation, the applicant has made a claim of daily cash allowance at the rate of dollars 30 per day upto 31st January, 1989 and at the rate of dollars 34.50 per day from 1.2.1989 to 1.9.1989. Thus, the present application is barred by limitation.

4. Repeated representations do not add to the period of limitation, as held by the Hon'ble Supreme Court in the case of S. S. Rathore Vs. State of M.P., AIR 1990 S.C. 10.

5. I have heard the case on merits. In view of this, ⁵ we have considered the claim of the applicant on merit also. The first contention of the learned counsel is that Defence personnel/officers attached with the High Commission, Colombo in connection with IPKS duties were treated on temporary duty and as such, the applicant also be treated on his posting to Sri Lanka on temporary duty. However, it is not so. The applicant was given a clear posting at Sri Lanka on the terms and conditions enclosed with the letter of posting in which there was a specific

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mention of the foreign allowance admissible to the applicant at the rate of Rs.3605/- per month. Moreover, the contention of the learned counsel that the applicant was not allowed to take his ~~xxxxxx~~ family, or that his stay in Colombo in each spell was less than six months, would not alter the terms and conditions of posting. The contention of the learned counsel for the applicant that the applicant was transferred from Colombo because the services of A.C. were no more required in D.A.D. Cell, Colombo, would not make the applicant entitled to the daily allowance. The emphasis of the learned counsel has been that his posting in Sri Lanka was counted as a posting in Delhi for the purpose of station seniority at Delhi, would not make the case covered to similarly situated officers attached to the High Commission of Colombo either civilians or Defence personnel. When once the applicant has accepted the terms and conditions of his posting to Sri Lanka, that order of posting itself has to be assailed either violative of Article 14 or 16, or discriminatory. That is not the case here. The applicant has directly put forward his claim for daily/ cash allowance which cannot be allowed in view of the acceptance of the terms and conditions by the applicant of foreign posting. The reference to para.29 of the consolidated instructions in Appendix VI to Swamy's

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Compilation of F.R.S.R. are not relevant in the case of the applicant. The case of the applicant is to be governed by the C.G.D.A. letter dated 6.10.1988.

6. In view of the above facts and circumstances, we find no merit in this application and the same is dismissed, leaving the parties to bear their own costs.

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(J.P. Sharma) 13/8/93
Member(J)