IN THE CENTRL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 3009/92 Date of decision 19-2-93.

S.K. Upadhyay & Ors. Applicants

L.R. Singh Counsel for the applicants

vs.

Union of India Respondents

N.S. Mehta Sr. Standing Counsel for the respondents

CORAM

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman(A).

The Hon'ble Mr. C.J. Roy, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether their Lordships wish to see the fair copy of the judgment? No

4. Whether it needs to be circulated to other Benches of the Tribunal? No

(Judgment of the Bench delivered by Hon'ble Mr. S.P. Mukerji, Vice-Chairman (A).)

JUDGMENT

The 29 petitioners before us had moved the Hon'ble Supreme Court of India under Article 32 of the Constitution through a writ petition which was transferred to this Tribunal by the order dated 3.11.92 with the following observations and directions:-

> "We are not inclined to entertain writ petitions under Article 32 of the Constitution of India. We transfer all these writ petitions to the Principle Bench, Central Administrative Tribunal, New Delhi, to be dealt with in accordance with law.
>
> These petitions have been pending in this Court for quite some time and as such we are of the view that these matters need expeditious disposal. We, therefore, direct the Principal Bench, Central Administrative Tribunal, New Delhi, to dispose of all these matters within three months from today. The Principal Bench may hear these matters itself or assign the same to any other Bench. The parties are at liberty to raise all objections available to them under law. The interim relief granted by this Court

shall continue till November 25, 1992. The Registry is directed to send the record of these petitions to the Central Administrative Tribunal within one week from today. The petitions are disposed of. No costs."

2. The 29 petitioners are Nepali nationals who had been employed in the Embassy of India, Kathmandu, Nepal, and have been working from 1957 onwards. They have sought the following reliefs:

"(a) issue an appropriate writ/writs, order/orders, direction/directions directing the Respondent Nos. 1 & 5 to give to the petitioners and the other locally recruited Nepalese employees working in the Indian Embassy, Kathmandu, Nepal the same pay and allowances and other benefits at the same exchange rate as are payable to them under the Indo-Nepal Friendship Treaty of 1950 and the subsequent notifications and orders passed by the Respondents in this regard;

(b) give to the petitioners and the others similarly situated the full benefits envisaged under Articles 14, 16 and 311 of the Constitution of India;

(c) quash the letter dated 2.12.86 contained in Annexure VI whereby the pay and allowance and other benefits available to the petitioners and other similarly situated have been arbitrarily and unilaterally withdrawn;

(d) quash the order of termination contained in Annexure-VII (colly) by this Writ Petition and also to quash the notice contained in Annexure-VIII purporting to terminate retrospectively the services of the petitioner Nos. 5 to 29 along with other Nepalese Nationals working in the Indian Embassy, Kathmandu; and

(e) pass any other order or orders which your Lordships may deem fit and proper on the facts and in the circumstances of the instant case and in the interest of justice."

3. In the petition they indicated that they were filing the writ petition not only on their own behalf but also on behalf of 93 other Class II, Class III and Class IV staff. When the petition was taken up for hearing, the learned counsel for the petitioners stated that, with liberty to claim relief at (a), (b) and (c), if so advised and in accordance with law, separately, he would press the petition only for relief (d) regarding termination of the services of the petitioners through Annexures VII and VIII and that he would withdraw the petition so far as the petition purports to represent 93 employees mentioned in para 4 of the petition. The prayers were granted and the petition was entertained and heard only in respect of relief (d) and only so far as the 29 petitioners are concerned with liberty to them to move the appropriate forum in accordance with law, if so advised, in so far as the other reliefs (a), (b) and (c) in the prayer portion of the petition are concerned.

4. The applicants have referred to the Treaty of Peace and Friendship signed between the Government of India and the Government of Nepal granting certain privileges in the matter of residence, ownership of property, participation in trade and commerce and movement on a reciprocal basis. The petitioners having been appointed more than 15 years ago, according to them, were placed on probation which they have completed. They have referred to certain orders of the Government of India extending to the locally recruited staff members in the Embassy of India, Kathamandu, the provision of the Revised Leave Rules, as amended from time to time, casual leave, revision of pay scales, as admissible to the employees of the corresponding categories in the Indian Cooperation Mission Highway Project, Nepal. It is also stated therein that they were entitled to DA, ADA, House Rent Allowance, but ~~considered~~ that these benefits would not give to them any India based status for absorption or make them entitled to Foreign Allowance and other emoluments that would be generally granted to India based staff. They were also given the benefit of the productivity linked bonus scheme applicable to Central Government employees and also interim relief as

if they were India based employees for payment of dearness allowance. Some of the supporting orders have been produced at Annexures I, II, III, IV, and IV-A. It appears that because of the devaluation of the Nepali rupee, the pay and allowances were not given to them at the new exchange rate and the employees were forced to refuse their pay due on 31.8.86. There was some agitation also and one Shri K.D. Sharma, ex-editor of Bharat Samachar, who is also a retired locally recruited staff of the Embassy, was forced to sit on a fast for 72 hours on 1.12.86. The employees demanded that the new revised pay scales on the basis of the 4th Pay Commission's Report should also be extended to them. There was a pen down strike by the employees in December 1986.

5. The applicants allege that as a result of the agitation, vide order dated 2.12.86 at Annexure VI, all the benefits extended to the locally recruited staff were withdrawn. Despite numerous representations, there was no response from the respondents. On the other hand, the respondents terminated the services of petitioner Nos.1, 2, 3 and 4 by the impugned orders at Annexure VII collectively in January 1987. They also published a notice in the local daily paper dated January 12, 1987, at Annexure VIII, terminating the services of the staff retrospectively from 1.1.87.

6. The applicants have argued that the Nepali employees of the Indian Embassy are the employees of the Union of India and that they have taken oath of allegiance to the Government of India and the Embassy being an extension of the land and territory of India, the laws applicable in India are applicable to them also. They have claimed protection of the fundamental rights guaranteed under the Constitution and under Article 311 of the Constitution. They have argued that the services of the petitioners have been arbitrarily terminated without giving them a show cause notice and also with retrospective effect in some cases vide notice at Annexure VIII.

7. In the reply affidavit, the respondents have argued that the petitioners were erstwhile employed in the Indian Embassy and

being Nepali citizens are aliens and the termination of their services cannot be called in question by the courts in India in respect of acts done by the State against the aliens outside the State. Further, employment of foreign personnel abroad involves questions of security and policy. They have also argued that the petitioners do not enjoy any fundamental rights under the Constitution, that Article 14 is excluded as the applicants are not within the territory of India and that Article 16 is excluded because the applicants are not Indian citizens. They have also argued that the petitioners were recruited by a contract executed between them and the Indian Embassy outside the territory of India and the Indian municipal laws and the Constitution have no application within the territory of Nepal. They have also argued that the obligations under the Treaty between India and Nepal cannot be got enforced by private citizens of the contracting States. They have also argued that since the petitioners did not hold any civil post under the Union, but were only contractual employees and they cannot invoke Article 311 of the Constitution nor are they entitled to the fundamental rights under Part III of the Constitution.

8. It has also been averred that Indian employees and locally recruited Nepali employees in the Indian Embassy at Kathmandu belong to two different and distinct categories and the classification between them is neither artificial nor unreasonable. They have also clarified that the oath of allegiance to the Constitution of India taken by them is subject to their allegiance to Nepal and the Nepali subjects cannot by the limited oath taken by them become entitled to the rights available to Indian citizens. The petitioners are governed by the contract between them and the Indian Ambassador and the Nepali local laws. To make the laws of India applicable to the Nepali nationals in Nepal would be an infringement of the sovereignty of Nepal and would be a violation of the international law. They have averred that in accordance with the terms of contract, the locally recruited employees were given one month's notice, and there was no requirement either to issue any show cause notice or to hold any inquiry before terminating their services in accord-

ance with the contract. They have indicated that the disciplinary control over the petitioners is exercised by the Embassy and not by the Ministry of External Affairs. They have also clarified that under the Central Civil Services (Pay) Rules, 1986, persons locally recruited for service in the diplomatic missions or in any other Indian establishment in foreign countries are excluded and the recommendations of the 4th Pay Commission were not applicable to them. They have argued that the Embassy is not an extension of the territory of India and as such, the laws applicable in India are not applicable to the Embassy of India and that the Constitution of India or the labour laws are not applicable to the petitioners. They have stated that the distinction between the locally recruited employees of the Embassy and the India based staff is a well recognised classification in international law and such a distinction is being followed by all the Embassies all over the world. According to the respondents, the laws laid down by the courts of India and the Indian municipal laws do not have any exterritorial application.

9. In his rejoinder, the 1st applicant has argued that the petitioners belong to a frinedly country and the citizens of Nepal are entitled to the national treatment. Under the Treaty, certain privileges have been given to the Nepalese citizens while in India. They are treated as India based employees for payment of pay and allowances. The fundamental rights, particularly under Articles 14 and 21 of the Constitution, are available to non-citizens and that the clause 'within the territory of India' would include Embassies and Consulates of India in other countries. These Embassies and Consulates are treated as extension of the territory to which they belong. Therefore, the employees working in the Embassy shall be deemed to be working in the territory of India. He has also argued that the petitioners' rights flow from their status as they are employees of the Government of India. He has stated that the question of security of the State in the matter of petitioners employment does not arise and a stigma has been caused in the order of termination. He has denied that the petitioners are contractual employees and has averred that the respondents have violated Article 14 of the Constitution. While admitting that the petitioners are Nepalese

citizens, he has stated that Petitioner Nos. 12, 13, 22, 25 and 28 are Indian citizens. Rights of life under Article 21 includes right to livelihood and the termination of the petitioners services is violative of Article 21 of the Constitution. A copy of the appointment letter in respect of the C.P.W.D. staff has also been produced alongwith Annexure R-1. The control of the respondents over the petitioners has been established by the restriction imposed on them on transfer.

10. We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. As regards the jurisdiction of the Principal Bench of the Tribunal to hear these petitions, as concerned, 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 Tribunals 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 wihin 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;
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> (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
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> (iii) leave of any kind;
>
> (iv) disciplinary matters; or
>
> (v)any 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 Government 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 Government of India". So long as, therefore, the authorities with whom the alleged cause of action has arisen are under the control of the Government of India, its location outside the territory of India does not make any difference so far as the purview of the municipal courts and this Tribunal is concerned. The petitioners have sought protection of the various provisions of the Constitution of India entitled Part III of the Constitution regarding fundamental rights and Article 311 of the Constitution. We accept the contention of the learned counsel for the petitioners that these provisions of the Constitution are not exclusively meant for the citizens of India. Some of the provisions like Article 14 are available under certain conditions to "any person" who may or may not be the citizen of India. In that light, the learned counsel for the petitioners said that those petitioners who are citizens of Nepal but employed in the Embassy of India in Kathmandu are entitled to the fundamental rights under Article 14 of the Constitution. Article 14 reads as follows:

> "Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws <u>within the territory of India.</u>"

The learned counsel for the petitioners has challenged the argument of the respondents that since the cause of action has arisen at Kathmandu, outside the territory of India, Article 14 is not applicable to the petitioners, specially those who are not citizens of India. It has been argued on behalf of the petitioners that since the cause of action has arisen within the Embassy of India and the Embassy is an extension of the territory of India, Article 14 applies to the petitioners also.

11. It will, therefore, be useful to consider the contention whether the Embassy of India can be deemed to be an extension

of the terrtitory of Inda within the boundaries of Nepal. The learned counsel for the petitioners drew our attention to the material available in the book entitled "A Diplomat's Hand Book of International Law & Practice" by Shri B. Sen published in The Hague, (1965 edition). On page 80 of that book, the doctrine of exterritoriality has been described as follows:

> "**Exterritoriality.** The first and oldest appears to be the doctrine of "exterritoriality", which implies that the premises of a mission in theory are outside the territory of the receiving state and represent a sort of extension of the territory of the sending state. Similarly, an ambassador who represents by fiction the actual person of his sovereign must be regarded by a further fiction as being outside the territory of the Power to which he is accredited. This doctrine which held the field for a considerable period both among text writers and in judicial decisions has come to be adversely criticised in recent years though it is still referred to in a somewhat restricted sense."

The above will show that the fiction of the premises of the Embassy representing extension of the territory of a state is being questioned on various grounds now. For one thing, if the premises of a mission had been the extension of the territory of the sending country, no law or authority of the host country would have been applicable within the premises, but this is not so. If a crime is committed within the primises of a mission, the law of the host country will also apply. Further, had the mission been a territory of the sending country, all persons irrespective of whether he is a diplomatic agent or a member of the administrative staff would have enjoyed complete immunity within the premises. This is not so. Non-diplomatic staff does not enjoy any immunity 'per se' within the premises of the mission. There is no absolute immunity so far as the premises under persons residing in the premises of a mission are concerned and it has been held that immunity flows not from the concept of extended sovereignty of the sending State, but the functional necessity of the duties and obligations of the Embassy in the host country. The following extracts from the aforesaid book throw some more light on this issue:

> "It is this concept of "functional necessity" which, it is said, casts an obligation on states to grant a certain minimum of immunities, and that minimum comprises such immunities and privileges as will permit the diplomatic envoy to carry out his functions without hindrance or avoidable difficulty. Nothing less will ensure compliance with the maxim 'ne impediatur legato.' It is on the basis of "functional necessity" that the International Law

> on the subject, and the Vienna Convention on Diplomatic Relations 1961 also appears to have proceeded on this footing for it is stated in the preamble to the convention that "the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states." ..... Whatever may be the theoretical basis for grant of diplomatic immunities, which form an exception to the rule that all persons and things within a sovereign state are subject to its jurisdiction, it is and has been an acknowledged rule of law that states are under an obligation to allow the diplomatic agent to enjoy full and unrestricted independence in the performance of his allotted duties, which necessarily implies immunity for jurisdiction in respect of his person, his acts, and the premises of the diplomatic mission..... It is therefore reasonable to assume that it would be open to a state party to the Vienna Convention 1961 to interpret the provisions relating to diplomatic immunities in a manner consistent with its own notions, and that it would be free to decide upon the extent of the immunities and privileges and the classes of persons entitled to them in accordance with its own practice."

It is true that the premises of a Mission under the residence of an envoy are protected by the principle of inviolability, and this may indicate to be "an attribute of the sending state", but cannot be held to be giving the premises the characteristic of the territory or sovereignty of the sending state. The degree of immunity or inviolability of the premises under the diplomatic staff depends on not only on the reciprocity between the sending and the host countries, but also on the functional necessity of the working of the Embassy. It is generally agreed that the immunity of the premises of the mission affords no justification for an envoy to give shelter to a criminal within the premises. The Pan American summit of 1928 provides that if a crime is committed within the country by an alien, the offender should be handed over to the local authorities. The following extracts from page 357 of Dr. Sen's book, referred to above, reinforces the contention that the Embassy premises cannot be regarded as an extension of the territory of the sending state:

> "The modern view regarding inviolability of diplomatic premises, as borne out by state practice and decisions of national courts, tends to show that such premises are regarded as part and parcel of the territory of the state in which they are situated and that these premises are inviolable merely for the purposes which are necessary for effective functioning of the diplomatic mission. The theory of exterritoriality of diplomatic premises does no longer find support. It is, therefore, asserted that the so-called right of diplomatic asylum has no basis in international law and as such cannot be recognised.

"This view appears to find support from the following observation in the judgement of the International Court of Justice in the Asylum case.

> It (diplomatic asylum) withdraws the offender from the jurisdiction of the territorial state and constitutes an intervention in matters which are exclusively within the competence of that state. Such derogation from territorial sovereignity cannot be recognised unless its legal basis is established in each particular case.

12. The "territory of India" for the purpose of the Constitution of India is defined in article 1(3) as follows:

> "a) territories of the States;
>
> b) the Union territories specified in the First Schedule; and
>
> c) such other territories as may be acquired"

13. The Hon'ble Supreme Court interpreted clause (c) above in Masthan Sahib versus Chief Commissioner Pondicherry and another, A I R 1963 S.C. 533 in following terms:

> "10. There might be little difficulty about locating the territories which are set out in cls.(a) and (b) but when one comes to (c) the question arises as to when a territory is acquired and what constitutes "acquisition". Having regard to the subject dealt with the expression "acquired" should be taken to be a reference to "acquisition" as understood in Public International Law. If there were any public notification, assertion or declaration by which the Government of this country had declared or treated a territory as part and parcel of the territory of India, the Courts would be bound to recognize an "acquisition" as having taken place, with the consequence that that territory would be part of the territory of Union within Art.1(3)(c). In the present case, we have this feature that the administration of the territoryis being conducted under the powers vested in the Government under the Foreign Jurisdiction Act".

14. It is thus clear that the concept of notional or fictional territory of India is not contemplated in the Constitution and the premises of the Indian Embassy much less premises of offices run under the administrative control of the Embassy, cannot be contemplated within the definition of "territory of India" under the Constitution.

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15. In the light of what has been discussed above, we are firmly of the view that the premises of the Embassy of India at Kathmandu cannot be considered to be an extension of the territory of India for the purpose of Article 14 of the Constitution and accordingly, the petitioners in this case cannot invoke Article 14 of the Constitution.

16. The next question which falls for consideration before us is whether persons who are not citizens of India and are employed outside India, on contractual terms, can invoke under certain conditions of the provisions of the Articles of the Constitution in regard to the termination of their employment in furtherance of the terms of the contract. While we accept that the citizens of India employed outside India by the Government or its agencies can invoke certain provisions of the Constitution, we have grave doubts that one who is not a citizen of India and does not owe unreserved allegiance to India can seek the benefits of our Constitution. This may also result in certain embarassing and absurd situations. A foreigner employed locally in a developed country on contractual basis indicating the rates of remuneration, in that case, can invoke Article 21 of the Constitution and claim it to be his fundamental right to have adequate means of livelihood commensurate with the standard of living of that country. Likewise, an alien employee engaged in an Indian Embassy in a developed country on a contractual basis adopting the local system of 'hire and fire' may invoke Article 311 of the Constitution when his services are dispensed with on administration grounds. We are therefore, of the view that the provisions of the Constitution would

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not necessarily apply to non-citizens employed outside the territory of India by our missions and their service conditions are to be governed by the specific terms of contract.

17 The learned counsel for the petitioners cited the judgement of the Supreme Court in the case of Maneka Gandhi vs. U.O.I. (AIR 1978 p. 6636) in para 70 of which it was observed that fundamental rights are guaranteed beyond the territory of India also, but in that case the question was in relation to a citizen of India and not to an alien. The other rulings cited by the learned counsel for the petitioners are all related to various provisions of the Constitution and in the light of the non-applicability of the provisions of the Constitution to the aliens outside the territory of India, we do not find it necessary to discuss those rulings.

18. Our task is made simpler now that the learned counsel for the petitioners has withdrawn the reliefs at (a), (b) and (c) so far as this petition is concerned and is pressing only for the relief at (d) regarding termination of the services through Annexures VII and VIII. It will be useful to quote from the impugned orders of termination. So far as the order of termination of the 1st petitioner is concerned, the same reads as follows:

> "The services of Shri Shyam Krishna Upadhyaya, Lower Division Clerk, in this Embassy are being terminated with effect from the afternoon of 31st December, 1986.
>
> In pursuance of this Embassy's Chancery Order No. KAT/ADM/579/1/72 (No. 10 of 1972) dated 15.2.1972 and No. KAT/CHY/579/10/66 (No. 19 of 1974) dated 23.5.1974 Shri Upadhyaya, LDC, is granted one month's salary in lieu of notice."

The services of the 2nd petitioner were terminated by order dated 1st January, 1987 which reads as follows:

> "The services of Shri R.N. Chaudhary, Translator, in this Embassy are terminated with effect from the forenoon of 1st January, 1987.
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> In pursuance of this Embassy's Chancery Order No. KAT/CHY/579/5/67 (No. 11 of 1967) dated 31st January, 1967, Shri Chaudhary, Translater, is granted one month's salary in lieu of notice."

The services of the 3rd petitioner were terminated by order dated

the 7th January, 1987 which reads as follows:

> "Your services have been terminated with effect from 2nd January, 1987 on disciplinary grounds.
>
> 2. Please acknowledge receipt of this letter."

The services of the 4th petitioner were terminated by order dated 1st January, 1987 which reads as follows:

> "The services of Shri Ishwar Bahadur, Driver, in this Embassy are being terminated with effect from the forenoon of 1st January, 1987.
>
> Shri Ishwar Bahadur, Driver, is granted one month's salary in lieu of notice."

The services of the remaining petitioners were terminated by an omnibus notice dated January 12, 1987 which reads as follows:

> "It is hereby notified that the services of those employees of the Indian Embassy who have been absent from their duties without proper authorisation since 1st January, 1987 stand terminated with effect from that date."

It will also be useful to quote the orders of appointment of the petitioners as typified by the order of appointment of the 1st petitioner dated5th February, 1972, which reads as follows:

> " Shri Shyam Krishna Upadhyaya has been appointed as a Library Attendant in the Nepal Bharat Sanskritik Kendra, Kathmandu, with effect from the forenoon of 15th Feb 1972 in the scale of Nepali Rs. 375-15-570 in a purely temporary capacity.
>
> Shri Upadhyaya will be on probation for three months, during which period his services can be terminated by the Embassy without any notice or assigning any reasons. Thereafter, his services can be terminated by giving one month's notice on either side. His other terms and conditions of service will be the same as applicable to other locally-recruted staff of the Embassy."

19. We feel that so far as the termination of the services of the 1st, 2nd and 4th petitioners is concerned, since no stigma has been cast on them and the orders are termination simpliciter and are in accordance with the terms of the appointment, these orders cannot be faulted. In P.L. Dhingra vs. Union of India (AIR 1958 S.C. p. 36), the Hon'ble Supreme Court observed as follows:

> "(28)....It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducting factor which influences the Government

to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India (N) (supra) wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carried with it no evil consequences and so art. 311 is not attracted."

In State of U.P. v. Ram Chandra (AIR 1976 S.C. p. 2547), under a similar situation the Hon'ble Supreme Court held the order of termination valid as per the following observations:

"23. Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is ex facie simpliciter. It does not cast any stigma on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the Court to go into the motive behind the order and claim the protection of Article 311 (2) of the Constitution."

20. As regards Article 21 of the Constitution, even if the same is construed to apply to the petitioners, though they were not Indian citizens, and have been employed outside the territory of India, we feel that such a right cannot be invoked in relation of termination of contract service outside the territory of India. In the case of **Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi, & Ors. (1992 (4) S.C.C. p.99)**, the Hon'ble Supreme Court made the following observations:

"20. There is no doubt that broadly interpreted and as a necessary logical corollary, right to life would include the right to livelihood and, therefore, right to work. It is for this reason that this Court in **Olga Tellis v. Bombay Municipal Corporation (1985 (3) S.C.C. 545: AIR 1986 SC 180)** while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood inasmuch as the pavement dwellers were employed in the vicinity of their dwellings. The Court had, therefore, emphasised that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was, however, in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter on Directive Principles,

Article 41 of which enjoins upon the State to make effective provision for securing the same "within the limits of its economic capacity and development". Thus even while giving the direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it".

21. The fundamental right to life and liberty contemplated in article 21 of the Constitution can be extrapolated to the right of livelihood only if article 21 per se is applicable to foreigners in foreign territories. It will be unrealistic if not ~~perceible~~ conceivable to assume that merely because a foreigner is employed under contractual terms by Indian authorities outside the territories of India, those foreigners get the fundamental right to claim life, liberty and livelihood for the Indian authorities abroad. For one thing, these authorities in foreign countries are in no position political or juristic to give or take life or liberty to foreigners in foreign countries. This will militate against the soveriegnity of those countries. Even Hon'ble Supree Court in Masthan Sahib versus Chief Commissioner A.I.R. 1963 S.C. 533 found that while powers under article 32 of the Constitution are not circumscribed by any territorial limitation in regard to authorities under the control of Government of India the enforceability of powers under article 142 of the Constitution outside India is not above doubt. The following extract from the judgement in that case will be relevant:

> "It would be seen that Art.142 brings in a limitation as regards the territory in which the orders or directions of this Court could be enforced. It is manifest that there is an anomaly or a discordance between the power of this Court under Art. 142. It is possible that this has apparently arisen because the last words of Article 12 extending the jurisdiction of this Court to authorities 'under the control of the Government of India' were added at a late stage of the Constitution-making, while Arts. 142 and 144, the latter reading"

(under Art.32 read with Art.12 and the executability or enforceability of the orders)

22. In the above light also we feel that it will be overstretching the intendments in the Constitution and beyond the realm of ~~realisation~~ realism to allow foreigners in foreign countries to claim the benefits of fundamental rights outside the territories of India. This however will not prevent the Indian authorities in foreign countries to allow within their administrative discretion or under judicial fiat,

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such benefits as ex-gratia or contractually as are deemed proper under the canons of humane and civilised relations between employer and employee.

In Ram Gopal v.State of Madhya Pradesh (AIR 1970 SC.158), the Hon'ble Supreme Court held the termination of the services of a temporary Civil Judge as valid on grounds of unsuitability. In Satish Chandra vs. U.O.I. (AIR 1953 SC.250), the Supreme Court held as follows:

> "(7) Taking Art. 14 first, it must be shown that the petitioner has been discriminated against in the exercise or enjoyment of some legal right which is opened to others who are similarly situated. The rights which he says have been infringed or those conferred by Art.311. He says he has either been dismissed or removed from service without the safeguards which that Article confers. In our opinion, Art.311 has no application because this is neither a dismissal nor a removal from a service nor a reduction in rank. It is an ordinary case of a contract being terminated by notice under one of its clause".

23. In the light of the above reasons and the facts and circumstances of the case, the impugned orders of termination in respect of the 1st, 2nd and the 4th petitioners cannot be faulted.

24. We have, however, grave reservations about the legality of the orders terminating the orders of the 3rd and 5th to 29th petitioners. The orders show that in the case of the 3rd petitioner, his services are being terminated on disciplinary grounds while in the case of the 5th to 29th petitioners, for unauthorised absence. These orders cast a definite stigma on these petitioners and there is nothing to show that before these orders were passed they were given any opportunity to advance their defence or explain their conduct. They are also not speaking orders. In that light, these orders violate the principles of natural rights which have been recognised to sanctify human relations irrespective of whether one belongs to a particular country or is subject to any terms of contract providing for such peremtory termination. We have noticed that Art.311 of the Constitution which enshrines the principles of natural justice unlike Articles 14 and 16 of the Constitution does not restrict its purview geographically within the territory of India or politically/ to the citizens

of India.

25. The learned cousel for the petitioners brought to our notice the fact that the Nepalese citizens are still being inducted in the Indian Army and are eligible to be recruited to the top-notch Class I Central Services except the IAS and IPS. This shows that the Nepali citizens occupy a special place in the civil and military services of India as compared to the citizens of other countries. Nepalese having been recruited to the Indian Foreign Service or any other Class I service and posted outside India can claim the protection of Article 311 of the Constitution as it stands today. There is, therefore, no reason why a Nepali recruited in our Embassy in Nepal which office is under the administrative control of the Embassy of India in Nepal cannot seek the protection of Article 311 of the Constitution merely because he was recruited in Nepal. In **Jagdish Mitter vs. Union of India (AIR 1964 SC P. 448)**, it was held that

> "every order terminating the services of a public servant who is either a temporary servant, or as a probationer, will not amount to dismissal or removal from service within the meaning of Art. 311. It is only when the termination of the public servant's services can be shown to have been ordered by way of punishment that it can be characterised either as dismissal or removal from service. It is also now settled that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers and so, if a temporary public servant or a probationer is served with an order by which his services are terminated and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art. 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Art. 311 (2) have not been complied with.

It was further held that

> "when the order referred to the fact that the servant was found undesirable to be retained in government service, it expressly cast a stigma on the servant and in that sense, must be held to be an order of dismissal and not a mere order of discharge. To say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant while in the second case, termination of service is due to the consideration that a temporary servant need not be continued, and inthat sense, no stigma attaches to him. Anyone who reads the order in a reasonable way, would naturally conclude that the servant was found to be undesirable and that must necesssarily import an element of punishment which was the basis of the order and was its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the tempo-

rary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge."

26. In the light of what has been discussed above, the impugned ordersof termination of services of the 3rd and 5th to 29th petitioners cannot be upheld. Considering, however, the fact that about six years have passed since their services were terminated and there may not be any hope whether they can be reinstated, we feel that in the interest of justice and equity, it will be sufficient if they are given a compensation of six months' pay in Nepalese currency as they were getting on the date of the termination of their services.

27 In the light of what has been discussed above, this petition which is confined only to the relief regarding termination of services of all the petitioners, the same is disposed of on the following lines:

(a) the termination of the services of the petitioners 1, 2 and 4 is upheld;

(b) the termination of services of the 3rd and 5th to 29th petitioners is set aside with a direction that a compensation in lieu of their reinstatement should be given to them to the tune of six months pay to each one of them reckoned on the basis of the pay they were getting on the date of the termination of their services in Nepalese currency;

(c) the petitioners will be at liberty to move appropriate legal forum, if so advised, and in accordance with law in so far as the reliefs at (a), (b) and (c) prayed for in the petition are concerned.

There will be no order as to costs.

19.2.93

(C.J. ROY)
MEMBER (J)

(S.P. MUKERJI)
VICE-CHAIRMAN (A)