

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 3012/92

Date of decision 19.2.93.

J.N. Gupta

Applicant

Shri Pankaj Kalra ^{with}
Shri N.M. Popli ⁱⁿ

Counsel for the applicant

vs.

Union of India

Respondents

Shri M.L. Verma

Counsel for the respondents

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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 Shri Mr. S.P. Mukerji, Vice-Chairman (A).)

JUDGMENT

The petitioner who was working in the Pension Paying Office at Dharan in Nepal under the Chief Controller of Defence Accounts, Ministry of Defence, but under the administrative control of the Indian Embassy in Nepal, moved the Hon'ble Supreme Court with a petition under Article 32 of the Constitution pray for the following reliefs:

"(a) declaring that the petitioner is a regular and permanent employee of the Central Government;

(b) declaring that treating petitioner as a temporary employee even after 16 years of service is illegal and unconstitutional;

(c) directing the respondents to give to the petitioner all the allowances to which other Class-III employees of

the Government of India are entitled from the date of his appointment;

(d) declaring that the petitioner would be entitled to pension and other material benefits to which his counterparts are entitled;

(e) declaring that the order dated 29.4.91 is illegal and unconstitutional;

(f) declaring that the order dated 9.2.87 of respondents is illegal and unconstitutional to the extent it denies the petitioner allowances such as D.A., A.D.A., H.R.A., Interim Relief;

(g) directing the respondents to grant the consequential relief and the arrears within a specified duration;

(h) award the cost to the petitioner;

(i) pass any order or orders as may be deemed necessary in the interest of justice."

By the order dated 3.11.92, the Hon'ble Supreme Court, transferred the petition with the following directions:

"We are not inclined to entertain these writ petitions under Article 32 of the Constitution of India. We transfer all these writ petitions to the Principal 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 case 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."

are

2. The brief facts of the case/as follows:

The petitioner though recruited in Nepal is a citizen of India working in the Pension Paying Office at Dharan in Nepal.

The Pension Paying Office was established on a full time basis in 1960. The petitioner was appointed as L.D.C. in the Indian Embassy Pension Paying Office at Pokhara by the order dated 3.1.75 (Annexre VII) on a purely temporary basis. In accordance with the offer of appointment, at Annexure VII, he was to be on probation

for three months "during which period, his services may be terminated without notice or assigning any cause". It was also mentioned in the offer of appointment that after completion of satisfactory probationary period, he will continue in a temporary capacity, but "his services will be liable to termination on one month's notice on either side without assigning any reasons or pay in lieu thereof". His first grievance is that in spite of the existence of various Class III and Class IV posts in the Pension Paying Office, he was not regularised as an L.D.C., and even though he was the seniormost L.D.C. in the Pension Paying Office in Nepal and was due for promotion, he was continued in a temporary capacity even after 15 years of service and instead of regularising and confirming him, as an LDC, on 22nd April, 1991 (Annex. XII), he was given a show cause notice why his services should not be terminated for unsatisfactory services. He replied to the show cause notice on 24th April, 1991 (Annexure XIV) indicating that he was not given any adverse remarks in writing or orally and assuring the respondents that he would discharge his duties ^{his explanation to} with the entire satisfaction of his superiors. In response to the show cause notice, his services were terminated by the order dated 29.4.91 (Annex. XV) with effect from 1st June 1991, as per the terms and conditions of the appointment. He has argued that he was allowed to cross the efficiency bar in 1983 (Annex. IX) and the sudden termination of his services is illegal. He has also prayed that he should be allowed the same pay and allowance as given to the corresponding categories of officers working in the ICM Highway Project in Nepal. The Project employees on the basis of a court order were given the same pay and allowance as were allowed to India-based employees. His grievance is that after giving these allowances to him, the respondents withdrew the DA, ADA, Interim Relief, HRA etc. on revision of pay scales vide their order dated 9.2.87 (Annex. XX). Not only were the DA, HRA, Interim Relief, etc. withdrawn by that order, the other allowances like medical reimbursement, children education allowance, city compensatory allowance, etc. had never been given to him. The retirement benefits also were not given. He has challenged this as hostile discrimination in violation

of Article 14 of the Constitution. His termination also has been challenged as in violation of Article 311 of the Constitution as it casts a stigma on him. He has also argued that the staff in the PPO in Nepal working under the Government of India and PPOs being extension of sovereign territory are entitled to the same benefits as their Indian counterparts in the main land.

3. In the counter affidavit, the respondents have stated that the applicant was holding a temporary post in accordance with the stated terms and conditions of service and he has no right to be confirmed or regularised in the post. They have indicated that he was found to be extremely lax and inefficient in his performance ~~is~~ as evidenced from the adverse reports in his entries from 1984 onwards. In spite of verbal counselling and warnings, he failed to show improvement. Accordingly, he was served with a termination notice on 29.4.91, after giving him a show cause notice. They have stated that he is not entitled to any pensionary benefits and parity of pay scales with other staff working in Nepal. They have stated that the applicant has protested against the terms and conditions of his service only after his services were terminated. Conceding that certain posts have been made permanent, they have argued that the applicant had no right to be confirmed against any one of them. It has been stated that he was allowed to cross the efficiency bar in 1983, but his performance deteriorated inspite of warnings. A summary of the adverse reports has been given at Annex IV to the counter. They have stated that the impugned order of termination does not cast any stigma on him. His reply to the show cause was perused and his last performance was assessed based on the ACRs available and that his services were terminated after enquiry as per the terms of his appointment. They have explained that allowances were withdrawn on revision of the pay scales when the allowances merged with the pay and an option was also obtained from all the employees, including the applicant. His pay increased from Rs. 1874.70 (Nepalese currency) to Rs. 2420 (Nepalese currency)

and, therefore, he cannot be said to have suffered financially. They have denied that the Pension Paying Office in Nepal is an extension of the sovereign territory of India and have stated that that is a full part of the sovereign territory of Nepal.

4. In the rejoinder, the applicant has reiterated that no adverse entry was ever communicated to him in his whole service of 16 years and that he could not have been dismissed without holding an inquiry. The Pension Paying Office and the authorities in the Indian Embassy are under the executive and legislative control of the Union of India and, therefore, they are under the judicial control of this Tribunal also. He has averred that he is an employee of the Pension Paying Office which comes under the Ministry of Defence.

5. We have heard the learned counsel for both the parties and gone through the documents. [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;

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- (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 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 the Tribunal is concerned.

6. As regards parity of the pay scales and allowances, claimed by the petitioner, at par with his opposite number in India, or in the ICM Highway Project in Nepal, we do not find that there is much force in the claim based on Article 14 of the Constitution. In *Kishori v. U.O.I.* (AIR 1962 SC 1139), the Hon'ble Supreme Court held as under:

"The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. Article 14, therefore, cannot be said to be violated where the pay scales of Class I and Class II Income-tax Officers are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer's service."

Further, in *Harbans Lal vs. State of Himachal Pradesh* (1989 (11) ATC 869), the Hon'ble Supreme Court held that the "principle of "equal pay for equal work" is not one of the fundamental rights expressly guaranteed by the Constitution of India even though in Randhir Singh's case, the Supreme Court held that the said principle was to be read into Articles 14 and 16 of the Constitution.

There are inbuilt restrictions in that principle, as pointed out in various decisions of the Supreme Court. The Supreme Court further held that "a claim for equal pay can be sustained only if the impugned discrimination is within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management or even in establishments of different geographical locations, though owned by the same master. Hence, the petitioners who are employees of the Himachal Pradesh State Handicraft Corporation, a company incorporated under the Companies Act, 1965 cannot claim wages payable to their counterparts in government service." It was further held in the same judgment that mere nomenclature of a post is not decisive of the equality of posts.

7. In a recent judgment, in the case of **Secretary, Finance Department & Ors. vs. West Bengal Registration Service Association & Ors.** (ATR 1992 (2) S.C. 617) held that the determination of pay scales and equation of posts is a matter which is primarily the function of the executive and not the judiciary. The courts can interfere only when employees have been unjustly treated by the arbitrary State action or inaction. Since in the present case, no such arbitrariness is discernible, there is no case for judicial intervention.

8. Further, even if the principle of "equal pay for equal work" is brought within the purview of Art. 14 of the Constitution, ^{and outside the Embassy premises} since the matter did not arise within the territory of India, that Article cannot strictly be invoked in the present case.

9. In the above light, we do not, therefore, see any justification for interfering in the matter of pay scales in this application.]

10. As regards the termination of the applicant's services, it is admitted that the applicant was holding a temporary post and had never been confirmed. His services were terminated after repeated warnings on the basis of unsatisfactory performance. Since the order of termination dated 29.4.91 at Annex IV does not cast any stigma on the applicant, the same cannot be faulted. A three Judge

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Bench of the Hon'ble Supreme Court in *Indra Kumar Chopra vs. Pradeshik Cooperative Dairy Federation Ltd. & ors* (1992 (21) ATC 368) held that ^{as} the order of termination of a temporary servant did not cause any stigma, the termination ^{was} valid. In the case before us according to the terms of the applicant's appointment such termination was permissible. In the present case, the applicant was given a number of warnings and finally a show cause notice was served on him before his services were terminated for unsatisfactory work.

The orders of termination, therefore, cannot be faulted.

11. In *P.L.Dhingra vs. Union of India* (AIR 1958 SC 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 inducing factor which influences the Government to take action under the terms of the contract of employment of the specific service rules, nevertheless if a right exists, under the contract of 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. vs. Ramchandra* (AIR 1976 SC 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 respondents 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 cause any stigma on the respondents nor does it visit him with evil consequences nor is it founded on misconduct. In the circumstances, the respondents could not invite the Court to go into the motive behind the order and claim the protection of Art.311 (2) of the Constitution".

12. 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 had 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 and 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 have pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood in as much as the pavement dwellers were employed in the vicinity of their dwellings. The court had, therefore, emphasized that the problem of eviction of the pavement dwellers had to be viewed also in that context. This was however, in the context of Art. 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 rights 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 the Directive Principles, Art. 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 direction to the State to ensure the right to work, the Constitution makers thought it prudent not to do so without qualifying it".

13. The fundamental right to life and liberty contemplated in Art. 21 of the Constitution can be extrapolated to the right of livelihood only if Art. 21 per se is applicable to foreigners in foreign territories. It will be unrealistic if not ~~possible~~ to assume that merely because a foreigner is employed under ~~any~~ contractual terms by Indian authorities outside the territories of India, those foreigners get the fundamental right to claim life, liberty and livelihood ~~from~~ ^{in relation} 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 sovereignty of those countries. Even Hon'ble Supreme Court in Masthan Sahib vs. Chief Commissioner (AIR 1963 SC 533) found that while powers under Art. 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 extracts from the judgement in that case will be relevant:

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

"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 later reading".

14. In the above light also we feel that it will be overstretching the intentions in the Constitution and beyond the realm of 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, 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 article 311. He says he has either been dismissed or removed from service without the safeguards which that Article confers. In our opinion, Article 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 clauses".

15. In the light of the above reasons and the facts and circumstances of the case, the impugned orders of termination ~~xxx except~~

cannot be faulted.

16. Having not been confirmed, the applicant as a temporary employee, cannot claim pensionary benefits also. Further, in accordance with rule 2(f) of this Central Civil Services (Pension) Rules 1972 persons locally recruited for service in diplomatic Consular or other Indian establishments in foreign countries, are excluded from the benefits of Pension Rules. Since the applicant admittedly is a locally recruited person, recruited in Nepal for working in the Pension Payment Office in Nepal ~~and~~ ^{he} is not entitled to pensionary benefits.

17. In the conspectus of facts and circumstances we see no force in the petition and dismiss the same without any order as to costs.

W.M.R.
(C.J.ROY)
MEMBER(J)

S.P.M.
19-2-93
(S.P.MUKERJI)
VICE CHAIRMAN(A)