CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(6)

REGN.NOS. DATE OF DECISION: 22.9.1992

MP 1927/92 in
OA 1126/91

Nuclear Fuel Complex Employees Association. ... Petitioner.

Versus

Union of India. ... Respondent.

MP 1925/92 in
OA 1986/91

Heavy Water Project Manuguru Emp. Assn. ... Petitioner.

Versus

Union of India. ... Respondent.

MP 1926/92 in
OA 2298/91

Atomic Energy Employees Association. ... Petitioner.

Versus

Union of India. ... Respondent.

OA 2299/91

Atomic Energy Employees Association. ... Petitioner.

Versus

Union of India. ... Respondent.

OA 1125/91

Bhari Pani Pariyojna Karamchari Union. ... Petitioner.

Versus

Union of India. ... Respondent.

OA 1236/92

Rajasthan Anushakti Karamchari Union. ... Petitioner.

Versus

Union of India. ... Respondent.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the petitioners. ... Shri H.S. Gururaja Rao, Sr. Counsel with Shri T.V. Ratnam, Ashok Aggarwal, Counsel.

For the Respondents. ... Shri P.P. Khurana, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners in these cases have challenged the

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Telex Message dt.29.10.1990 sent by the Deputy Secretary, Department of Atomic Energy, by which, order dated 21.3.1989 increasing the washing allowance to common categories of Groups 'C' and groups 'D' from Rs.15 to Rs.50 was withdrawn with immediate effect and further directing that status quo be maintained restricting the washing allowance to Rs.15 per month in terms of Department of Personnel and Training order dated 17.1.1986. The telex message further states that no recovery shall be made for the over-payment already made. Our attention was also drawn to the order dated 5.11.1990 issued by the Manager, Personnel and Administration of the Department of Atomic Energy, Hyderabad about giving effect to the Telex message. The relevant facts necessary for understanding the controversy between the parties may briefly be stated as follows.

2. The petitioners' case is that group 'C' and group 'D' employees working in the several establishments of the Department of Atomic Energy were being paid washing allowance at the rate of Rs.15 per month on the strength of the order of the Ministry of Personnel bearing No.3/44/85-JCA dated 17.1.1986. Group 'C' and 'D' employees were agitating for enhancement of the washing allowance. Their demand was recommended by the Departmental council of the JCM at its meeting held on 20.3.1989. According to the petitioner, the Department of

Atomic Energy, finding that the demand is just and proper, enhanced the washing allowance from Rs.15 to Rs.50 per month by order No.5/13/87-ADM-II/201 dated 21.3.1989. When large number of employees belonging to the Group 'C' and 'D' categories were enjoying benefits of enhanced washing allowance at the rate of Rs.50/- per month in accordance with the order dated 21.3.1989, on the direction of the Ministry of Personnel, the benefit of the washing allowance at the rate of Rs.50/- was withdrawn by the impugned telex message dated 29.10.1990. The petitioners, have challenged this action of depriving them of the benefit of higher washing allowance at the rate of Rs.50/- per month in these cases on several grounds. The respondents have justified the withdrawal on the ground that the Department of Atomic Energy could not have enhanced the washing allowance which was fixed by the Department of Personnel for all similarly situate Group 'C' and 'D' employees of the Government of India.

3. The first contention of Shri H.S. Gururaja Rao, Senior counsel for the petitioner is that the Department of Atomic Energy enjoys certain amount of autonomy and that it was, well within its rights in fixing the washing allowance for its Group 'C' and 'D' employees at the rate of Rs.50 per month. It was submitted that the Department of Personnel could not

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have interfered with the legitimate right of the Department of Atomic Energy in regard to fixation of washing allowance for its own Group 'C' and 'D' employees. In other words, it was contended that there was an illegal encroachment by the Department of Personnel on the power and autonomy of the Department of Atomic Energy. As the withdrawal was not made by the Department of Atomic Energy on its own volition but under the direction of the Department of Personnel, it was submitted that the impugned order is liable to be quashed. In the affidavit filed by the respondents, it is stated that what has been done by the impugned telex message is to correct the mistake that was committed in the matter of granting enhanced washing allowance in favour of Group 'C' and Group 'D' employees of the Department of Atomic Energy. The stand taken is that Department of Atomic Energy had no competence without the concurrence of the Department of Personnel, to enhance the washing allowance to Rs.50 per month. We shall, therefore, examine as to whether the Department of Atomic Energy had the necessary competence to enhance the washing allowance from Rs.15 to Rs.50 per month.

4. It is not disputed that washing allowance was being paid to Group 'C' and Group 'D' employees of the Department of Atomic Energy on the strength of the order dated 17.1.1986. That order, a copy of which has been produced in this case, was issued by the Ministry of

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Personnel, Public Grievances and Pensions. The subject dealt with by the said order is washing allowance admissible to common categories of Central Government employees who are provided with uniforms under instructions of the Department of Personnel and Training. The order is general in nature applicable to all departments. The substantive portion of the order dated 17.1.1986 is, for the sake of convenience extracted as follows:-

> "The undersigned is directed to say that as per decision in the National Council (JCM) at its meeting held on 14th/15th January, 1986, it has been decided to revise with immediate effect, the existing rate of washing allowance from Rs.4/- to Rs.15/- per month to all common categories of Group 'C'/'D' employees viz. Staff Car Drivers, Despatch Riders, Gestetner Operators, Jamadars, Daftries, Peons, Messengers, Record Sorters, Chowkidars, Farashes & Sweepers in the Central Secretariat and its attached/subordinate offices."

Thus, it becomes clear that the source of the right of the Group 'C' and 'D' employees of the Deaprtment of Atomic Energy is the above general order dated 17.1.1986 applicable to all the departments, issued by the Department of Personnel. What is important to note is that it was not issued by the Department of Atomic Energy. This is also clear from the subsequent order made by the Department

of Atomic Energy dated 21.3.1989 by which the washing allowance was increased to Rs.50 per month. For the sake of convenience the same is extracted as follows:-

"Sub : Washing allowance to common categories of Group C & D employees - Enhancement of

The common categories of employees of the Department and its Constituent Units, in Group 'C' and 'D' who are issued with uniforms are at present in receipt of washing allowance @ Rs.15/- per month in terms of the Department of Personnel and Training OM No.3/44/65-JCA dated 17.1.1986.

2. The question of enhancement of washing allowance has been under the consideration of the Department for sometime and it has been decided in the Department that Group 'C' and 'D' employees who have been issued with uniforms and are in receipt of washing allowance @ Rs.15/- per month at present, will be paid washing allowance @ Rs.50/- (Rupees fifty only) per month with effect from April 1, 1989".

The learned counsel for the petitioner wants us to understand this order as an independent order made by the Department of Atomic Energy unconnected with the order dt. 17.1.86. We find, on reading of the entire order, that it is an order which purports to enhance the washing allowance fixed by the order of the Department of Personnel

and Training dated 17.1.1986 from Rs.15/- to to Rs.50/-. The expression 'enhancement' used in paragraph 2 and the subject dealt with make it clear that what is purported to be done by the Department of Atomic Energy is to increase the washing allowance fixed by the order dated 17.1.1986 to Rs.50/- per month. This is not a case of increasing the washing allowance fixed by the department of atomic energy itself by an earlier order. What is purported to be done by order dated 21.3.1989 is to increase the washing allowance fixed by the Department of Personnel and Training by order dated 17.1.1986. As the author of the order which sanctioned the washing allowance at the rate of Rs.15/- per month was the Department of Personnel, it stands to reason that it is that authority which could have amended or modified the said order and not any other authority like the Department of Atomic Energy. We are inclined to hold that the Department of Atomic Energy was not competent to modify the order passed by the Department of Personnel and Training.

5. Irrespective of the language of the order dated 21.3.1989, it was urged that if the Department of Atomic Energy had the necessary power to fix the washing allowance for Group 'C' and 'D' employees of its department, that there is an order of the Department of Personnel and Training dated 17.1.1986 on the subject would not render its order invalied. This takes us to the question as to whether under the scheme of allocation of powers to

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different departments of the Government of India, the Department of Atomic Energy has the power to fix or enhance the washing allowance for Group 'C' and 'D' employees of its department. The stand taken by the respondents is that power in this behalf has been allocated to the Department of Personnel and not to the Department of Atomic Energy. Our attention was drawn to the Allocation of Business Rules, 1961 (as amended upto 30.6.1989) made under Art. 77 of the Constitution (Government of India Publication of the Cabinet Secretariat). From page 49 of this Publication are the rules governing the allocation of business in favour of the Deaprtment of Personnel and Training. Item No.29 which is relevant for our purpose reads:

> "Uniforms for Class IV and other Government servants in the Central Secretariat, and its attached offices."

This clause makes it clear that it is the Department of Personnel and Training that has been allocated the power relating to uniforms to Class IV and other Government servants in the Central Secretariat and its attached offices. It is no doubt true that what is expressly contemplated is 'uniforms' and not any washing allowance in respect of the uniforms provided. In the absence of any specific item regulating the washing allowance, there is no good reason why we should not construe this clause as including within its ambit the incidental

matters relating to provision of uniforms such as the providing of washing allowance. We are, inclined to take the view that the Department of Personnel and Training is the nodal department in the matter of providing (uniforms) to class IV employees of the Central Government and incidental matters like provision of washing allowance. This inference of ours receives support from the allocation of business made in favour of the Department of Atomic Energy. The enumeration of business of this department is to be found in pages 68 and 69. We do not find any specific entry in regard to the provision of uniforms to Class IV or Group 'C' and Group 'D' employees or in the matter of washing allowance. As there is no entry so far as the Department of Atomic Energy is concerned, whereas there is a positive entry regarding uniforms for group C & D employees, so far as the Ministry of Personnel and Training, is concerned, it is clear that in the Allocation of Business in the Government of India it is the Department of Personnel and Training that is the nodal Department in regard to all matters pertaining to uniforms for Group 'C' and 'D' employees of all the departments of the Government of India. Hence, it follows that the Department of Atomic Energy had no competence to make any order in regard to the enhancement of the washing allowance fixed by the earlier order of the 17th of January, 1986 passed by the Department of Personnel. In the reply, it is now stated that the

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department of Atomic Energy enhanced the washing allowance under the mistaken impression that it had the power to do so. The mistake was realised on its attention being invited by the Department of Personnel. Immediately steps were taken to set the matter right by withdrawing the order made by the Department of Atomic Energy dated 21st March, 1989. Hence the impugned telex message is not liable to be interfered with. On this short ground, these petitions are liable to be dismissed. But as some other contentions were also urged we shall deal with them also.

6. It was argued that once the benefit of enhancement of washing allowance was accorded to Group 'C' and 'D' employees by an order dated 21.3.1989, the same could not have been withdrawn and that too without complying with the principles of the natural justice. This argument is advanced on the assumption that the Department of Atomic Energy had the competence to enhance the washing allowance by the order dated 21.3.1989. Assuming for the sake of arguments that they had the power, it follows that they had also the competence to rescind that order. But then, it was contended that a right aquired by the Group C and D employees cannot be taken away retrospectively.

It is necessary to point out that no vested right of the Group 'C' and 'D' employees has been sought to be taken away by the impugned telex message dated 29.10.1990. The order makes it clear that so far as the washing allowance already received by the employees is concerned, they shall not be required to refund the same. The said order is to have future effect of discontinuing the benefit of enhanced washing allowance @ Rs.50/- per month. They would continue to recive washing allowance at the lower rate fixed by the earlier order dated 17.1.1986. If as contended by the petitioners washing allowance is a condition of service, they can be unilaterally altered. It is well settled by the decision of the Supreme Court reported in AIR 1967 SC P-1889 between Roshan Lal Vs. U.O.I. that the conditions of service of the Government servants can be unilaterally altered. It has been held in the said judgement as follows:

> "We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification

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issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

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"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status".

This view of the Supreme Court has been reaffirmed in a subsequent judgement of the Supreme Court in AIR 1974 SC 1 between The State of Jammu & Kashmir Vs. Triloki Nath Khosa and others, in which their Lordships have observed in paragraph 22 as follows:

"An argument which found favour with Mufti Bahauddin J, one of the learned Judges of the Letters Patent Bench of the High Court, and which was repeated before us is that the "retrospective" application of the impugned rules is violative of Articles 14 and 16 of the Constitution. It is difficult to appreciate this argument and impossible to accept it. It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for premotional purposes undoubtedly operates on those who entered service before the

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framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The impugned rules do not recall a promotion already made or reduce a pay-scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retro-activity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding".

It is, therefore, now well settled that so far as the conditions of Government servant are concerned, they can be unilaterally altered. Hence, the question of not complying with the principles of natural justice does not

arise. It is not possible to accede to the contention of the learned counsel for the petitioners that a different note has been struck in the decisions reported in 1980 (3)SCC 403,AIR 1972 SC 628, AIR 1984 SC 1291, 1985(1) SCC 523.

7. It is also not possible to accept the contention of the learned counsel for the petitioner that the action of the respondents in withdrawing the enhanced washing allowance is arbitrary. Firstly, it is necessary to point out that the order enhancing the washing allowance was rescinded for the reason that the Department of Atomic Energy had no competence to enhance the same and the powers vested in the nodal authority, the Department of Personnel. As steps were taken to rectify the mistake committed, the action cannot be regarded as arbitrary. The Department of Personnel which is the nodal authority has the responsibility to ensure some amount of uniformity in regard to such common conditions of service governing employees of all departments. In the reply the respondents have stated that it is necessary to examine the issue in a comprehensible manner before permiting such enhancement in all or some of the departments. The respondents have pleaded that they have not closed the issue and that the entire matter is being examined in consultation with the JCM at the national level. That being the position, it is not possible to take the view that the order withdrawing

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the enhancement of the washing allowance for Group 'C' and 'D' employees of the Department of Atomic Energy is arbitrary.

8. Before concluding we may advert to the fact that the IV Central Pay Commission has in its report dealt with this matter under paragraph VII. (Uniforms and allowances) as follows :

> "We recognise that the design and scale of uniform has to be determined by the concerned ministries/departments keeping in view their specific requirements. Government may issue suitable guidelines with regard to the quality of material, stitching, timely supply of uniform and other related matters. Departments may, however, have the freedom in the matter of procurement of cloth and other items of uniform as well as arrangement for stitching through organisations approved by government for this purpose. We are not in favour of payment of stitching charges to individual employee in view of its implications. As regards washing allowance, it has been increased from Rs.4/- to Rs.15/- per month for all common categories of groups C and D in January 1986 and does not call for any further change at this stage."

It is, therefore, clear that an expert body has clearly expressed its view against further increase of the washing allowance, the same having been increased from Rs.4/- to Rs.15/- in January, 1986. If in this background the

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Department of Atomic Energy rescinded its own order accepting the suggestion of the Department of Personnel , it is not possible to hold that the action taken by the respondents is illegal or arbitrary.

9. For the reasons stated above, we see no good ground to interfere with the impugned order rescinding the order of the Department of Atomic Energy dated 20.3.1989 enhancing the washing allowance from Rs.15/- to Rs.50/- per month. All these petitions are accordingly dismissed. It is needless to say that consequent upon the disposal of these cases, interim orders which held the field only in some of the cases stand automatically vacated. No costs.

Sd/-
(I.K. RASGOTRA)
MEMBER (A)

Sd/-
(V.S. MALIMATH)
CHAIRMAN

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Attested

Anil Srivastava
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