IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 84/1999 & OA No. 86/1999

DATE OF DECISION 05.10.1999

1. Bhari Pani Pariyojana Karmachari Sangh (INTUC) & Another
2. Rajasthan Anushakti Karmachari Union (CITU) & Anr. ..... Petitioners

Mr Vijay Mehta & Mr. J.K. Kaushik ..... Advocate for the Petitioner(s)

Versus

Union of India & Others .. Respondents

Mr. Vinit Mathur ..... Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. ----

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter ~~or not~~ ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.

(A.K. MISRA)
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,JODHPUR

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Date of order : 05.10.1999.

1. O.A.NO. 84/1999

1. Bhari Pani Pariyojana Karamchari Sangh (INTUC), through its President Shri J.P.Ojha S/o Shri K.N.Ojha, aged about 54 years, R/o Block No. 64/409, Heavy Water Plant Colony, Rawatbhata, Distt. Chittorgarh.

2. Mahipal Singh S/o Shri Jai Singh, aged about 38 years, R/o Block No. 6/34, Heavy Water Plant Colony, Rawatbhata, Distt. Chittorgarh, at present employed on the post of Tradesman/D in Electrical Section of Heavy Water Plant (Kota), Rawatbhata, PO Anushakti, Distt. Chittorgarh.

2. O.A.NO. 86/1999

1. Rajasthan Anushakti Karamchari Union (CITU), through Harish Kumar S/o Shri Nathuram Aged 40 years, Scientific Assistant, Heavy Water Plant, Heavy Water Plant Colony, Anushakti District Chittorgarh.

2. Rohtash Kumar S/o Shri nand Lal Aged about 48 years, Tradesman, Heavy Water Plant (Kota), Rawatbhata, PO Anushakti, District Chittorgarh.

.....APPLICANTS.

VERSUS

1. Union of India through Secretary to Government of India, Department of Atomic Energy, CSM Marg, Anushakti Bhawan, Mumbai-400039.

2. General Manager, Government of India, Department of Atomic Energy, Heavy WAter Plant (Kota), Anushakti, District Chittorgarh (Raj).

.....RESPONDENTS.

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CORAM :

HON'BLE MR.A.K.MISRA,JUDICIAL MEMBER

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Mr.Vijay Mehta)_ Counsel for the applicants.
Mr.J.K.Kaushik)

Mr.Vineet Mathur - Counsel for the respondents.

BY THE COURT :

Both the aforementioned O.As involve common question for decision and in both these O.As the applicants have challenged the order of the respondents dated 15.3.1999 (Annex.A/1), therefore, both the O.As are disposed of by this common order.

2. The applicants have filed these O.As with the prayer that the impugned order dated 15.3.1999 (Annex.A/1) ordering withdrawal/modification of the project concessions sanctioned to the project based employees of DAE may be declared illegal and be quashed with all consequential benefits.

3. Notices of the O.As were given to the respondents who have more or less filed identical replies in both the O.As separately to which applicants have filed their rejoinder also in both the O.As.

4. I have heard the learned counsels for the parties at length and have gone through the record of both the cases. To debate on the bone of contentions, it would be useful to mention facts relating to the applicants claim in the O.A. It is alleged by the applicant that the Heavy Water Plant, Department of Atomic Energy, Anushakti near Rawatbhata District Chittorgarh is established in a remote rural place at a distance of 135 kms. from District Headquarters Chittorgarh and 65 kms. from nearest city i.e. Kota. Looking to the remote situation and difficult living conditions the employees of the plant were initially granted project allowance thereafter instead of project allowance a scheme for grant of project concessions was framed by which certain facilities were provided to the employees in order to solve some of their difficulties of living condition at a remote place i.e. the plant site. These concessions were provided to the employees ir

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the year 1974 which the respondents have ordered to be withdrawn by their order dated 30.11.1998 communicated and sought to be implemented vide impugned order dated 15.3.99. They have challenged the order on the ground that initially the project allowance and thereafter the project concessions were granted looking to the living conditions of the employees. Those facilities and concessions have been abruptly withdrawn without notice which amounts to civil consequences and is in violation of fundamental rights of the applicants. Moreover ordering recovery on the basis of these orders retrospectively is against the principles of natural justice and, therefore, deserves to be quashed. There is no nexus in fixing 1st November,1998 as the cut off date for purposes of withdrawing the facilities and project concessions. In view of all this, the applicants have prayed for the relief claimed.

5. To meet out the claim of the applicants the respondents have stated that living conditions which were prevailing at the project side in the year 1974 were quite premitive as compared to the present day living conditions which have been improved during all these 25 years. It is also alleged by the respondents that since 1974 the pay of the applicants have under gone three changes towards betterment i.e. first time in 1976, second time in 1986 and third time in 1996. By revision of pay structure at three different times, the employees have been placed in much better financial conditions as compared to 1974. The living style of the employees have also under-gone a vast change and living standard has gone up. The facilities enjoyed by the employees by availing sophisticated electric gadgets have added to the comfort of their life and have also increased their electric and water consumption considerably. Likewise, their moment by their individual means and frequency of their visit to meet-out their own desires and requirements have also under-gone a considerable change and keeping

all these things in view, the project concessions provided to them were restructured and some of them were allowed to continue whereas some of them were withdrawn. Before withdrawing few of the concessions it was not necessary for the respondents to give the employees a predecisional hearing neither the withdrawal of concession is violative of fundamental rights nor amounts to change in service conditions in view of the Government policy of gradually phasing-out all the facilities in view of the enhanced pay packet. Therefore, the O.A. of the applicants is devoid of merits and deserve to be dismissed.

6. It was contended by the learned counsel for the applicants that the project concessions which had been withdrawn are related to free electricity, license fee of the Government accommodation, CHSS contribution, water supply and service charges, excursion and market trips for employees and canteen cooperative stores and recreation club. The withdrawal affects the employees financially and, therefore, the order of withdrawal of the facility deserve to be quashed. I have examined Annex.A/1 withdrawing the facilities as enumerated above. As a matter of policy, the facilities granted by the employeer can be changed from time to time keeping in view the living conditions and circumstances then prevailing. In this respect I am supported by the rule propounded by Hon'ble Supreme Court and reported in 1998 SCC (L&S) 1021 - State of Punjab and Others Vs. Ram Lubhaya Bagga and Others. It was held in that case that "Policy matter-Wisdom of policy - Held, cannot be judicially scrutinised though the court can consider whether the policy is arbitrary or violative of law." In this case, the question of reimbursement of medical expenses was involved. It was held by Hon'ble Supreme Court that "Right to healty life is the obligation of the State but Government is justified in limiting the facilities to the extent permitted by its financial resources. Hence, the decision of the appellant State to restrict financial assistance to

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its employees for medical treatment, within the resources of the State, held not violative of Article 21." Keeping the above proposition of law in view it can be said that continuance of facilities granted by the employer to its employees can be reviewed from time to time and could be curtailed in view of the financial burden and resources of the employee.

7. In the year 1974, 30, 45, 60 and 75 Units of electricity were allowed free to the employees of various pay scales. In the corresponding new pay scales corresponding number of free units have been allowed but prevailing R.S.E.B. electricity rates have been ordered to be charged for excess consumption, which it is said, were being charged at a very nominal rate initially. While judging this factor one should not lose sight off that everything has become costlier every day. The earlier concession of nominal rate was as per then prevailing monetary value and present revision in this respect in charging prevailing rate of electricity is as per the prevailing monetary value and considerably much higher pay of the employees. Therefore, the imposition of condition of charging prevailing R.S.E.B. rate of the unit for electric consumption over and above the free units cannot be categorised as unjust.

8. In the year 1974, license fee for the Government accommodation was being charged at the rate of 7½% from the occupants as per their pay. Now, the accommodation has been categorised and license fee has been fixed as per the accommodation. Meaning thereby, the applicant whosoever is in occupation of that accommodation is to pay as per the flat rate fixed for the accommodation he occupies and not on the basis of percentage. When everything has undergone an upward change fixing of flat rate which has avoided mathamatical calculation every time cannot be said to be unjust. Needless to say that since 1974 the pay of the employees has now increased to

many folds, therefore, fixing of flat rate license fee cannot be termed as arbitrary.

9. Earlier CHHS contribution was on percentage basis subject to maximum of 15 rupees now it has been fixed in terms of rate as per the pay scale applicable for calculation. This also cannot be termed as arbitrary as the medicines have becomes much more costlier as compared to 1974. Likewise, paramedical and medical personnel are being paid at a higher rate as per the upward revision of their pay. Consequently, fixing of flat rate which appeared to be on the higher side cannot be termed as such.

10. The same argument can be advanced in respect of free water supply and service charges. In 1974 coolers and washing machines were very rarely installed and looking to facilities enjoyed now, these two gadgets are liberally used to the extent of extravagance. All this has resulted into much higher per capita water consumption than it was earlier. Therefore, withdrawal of free water supply facility cannot be termed as arbitrary and violative of any fundamental rules. Withdrawal of facilities relating to excursion and market trips and canteen facilities can also be attributed to the various circumstances mentioned above. It is a common experience that facilities and concessions which do not cost the consumer are recklessly enjoyed without consideration of rational. To inculcate the sense of economising the concessions and facilities. If consumers are made to pay for that, there is no un-reasonability in it.

11. It was argued by the learned counsel for the applicants that in the impugned orders dated 30.11.1998 and 15.3.1999 no reasons have been mentioned for revision and withdrawal of these facilities and whatever has been said in reply should not be taken to justify such curtailment. I have considered this aspect. No doubt, in the

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impugned orders, no reasons for withdrawal/curtailment of facilities have been mentioned but in my opinion, the same was also not required to be mentioned. So long it was feasible financially or otherwise for the employer to provide such concessions to its employees it was provided. When it was thought fit that they are no more required to be provided they have been withdrawn for which neither a speaking order was necessary nor a predecisional hearing was necessary. However, to satisfy me on this count I had directed the learned counsel for the respondents to show to me as to what necessitated the withdrawal and curtailment of various facilities. From the proceedings as were shown to me it appears that the matter of curtailment and revision of facility was under consideration of the higher authorities since many years. Ultimately, a decision was taken by a sub committee appointed by CAC and on the basis of recommendation of this sub committee, the matter was considered and orders issued. In their recommendation the sub committee had given reasons which are not required to be repeated at length here. All told and said the committee had stated in the report that in the changed financial, economical and day to day living conditions the revision of project concession and curtailment is necessary. I do not think that the revision and curtailment of project concessions is unreasonable, arbitrary or based on no cogent reasons.

12. It was argued by the learned counsel for the applicants that the order of implementation of the said policy relating to revision and curtailment of project concessions is being applied retrospectively i.e. from 1.11.1998 whereas Annex.A/1 has been passedon 15.3.1999 which is based on the communication of the Department of Atomic Energy dated dated 30.11.1998 in which the implementation of policy was required to be done from 1st of November,1999. It is argued that retrospective implementation of this policy which resulted into civil consequences cannot be done.

On the other hand, the learned counsel for the respondents has argued that in other units of the department of Atomic Energy the policy has been implemented w.e.f. 1.11.1998. Identifying any different date would resulted into great dis-contentment amongst the employees against whom this policy stands implemented since 1.11.1998, therefore, the policy and the date of its applicability should not be disturbed.

13. I have considered the rival arguments. In my opinion, a policy which affects the concerned person financially should not be implemented and cannot be implemented from an earlier date. In other words the decision was required to be implemented from a prospective date. Even in the original order which was passed on 30.11.1998, 1st November was identified for its implementation. What is the rational behind it is not available on record. In the instant case, respondent No. 2 has issued order Annex.A/1 dated 15.3.1999 and yet 1st November,1998 has been identified as the date from which the decision is required to be implemented. In my opinion, the date of communication of order should be the date for its implementation. If the decision of curtailment of project concessions was in principle taken then the same should have been ordered to be implemented from a future date so as to avoid any financial prejudices to its employees from a back date. The order was issued initially from Mumbai Headquarter of the department of Atomic Energy, therefore, the order could have been implemented in Mumbai immediately because time for communication was not needed. But for communicating the same to other places time was needed. In view of this, retrospective implementation of the scheme cannot be approved. No doubt, the same could be implemented from the date of order passed in the establishment of respondent No.2. In view of this, recovery of withdrawn project allowance in terms of money cannot be implemented from a date other than 15th March. The O.A.

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deserves to be accepted only to this limited extent.

14. In view of the above discussion the O.A. is partly accepted. The orders relating to withdrawal/curtailment of project concessions passed by respondent No. 1 dated 30.11.1998 and passed by respondent No. 2 dated 15.3.1999(Annex.A/1) are maintained. However, the date of implementation of this policy is made applicable to the applicants only from 15.3.1999. These orders so far as they relate to implementation of the policy w.e.f. 1.11.1998 ~~are~~ hereby quashed. The policy shall, however, be applicable in the instant case to the applicants w.e.f. 15.3.1999.

15. The parties are left to bear their own costs.

5/10/99

(A.K.MISRA)
Judicial Member

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