

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 270/93

Friday, this the 3rd day of June, 1994

HON'BLE SHRI N. DHARMADAN (J)
HON'BLE SHRI S.KASIPANDIAN (A)

K. K. Sadasivan Pillai,
TC 21/1088, TWINKLE, Nedungadu,
Karamana, Trivandrum District. .. Applicant

By Advocate Shri B. Gopakumar.

V/s

1. Union of India, rep. by the Secretary (Establishment), Min. of External Affairs, South Block, DHQ PO, New Delhi-11.
2. Embassy of India, rep. by First Secretary & HOC, PO Box 4090, Abu Dhabi, United Arab Emirates. .. Respondents

By Advocate Shri C.N.Radhakrishnan, ACGSC.

ORDER

N. DHARMADAN (J)

An important question as to validity of an order of termination, Annexure-A1, passed by the Embassy of India, Abu Dhabi, arises for consideration in this case.

2. Applicant is at present residing within the jurisdiction of this Tribunal. His services as Clerk-cum-Typist in the Embassy of India, Abu Dhabi, ever since 24.9.1977 were terminated as per Annexure-A1 order, w.e.f. 16.2.91. He is aggrieved by the same. The impugned order reads as follows:-

" The services of Shri K.K.Sadasivan Pillai, Clerk/Typist in this Embassy, have been terminated with effect from the forenoon of 16th February, 1991."

3. Against the impugned order, applicant filed representation which was also disposed of by another order, Annexure-A8, dated 23.12.92. It is extracted below:-

" I am writing this in continuation of this Ministry's letter of even number on the above subject and to say that your services were terminated by the Embassy of India, Abu Dhabi, according to rules governing such employment of a purely temporary nature."

Applicant, not satisfied with the same, again filed representations. He has also moved the Government of India. The facts relevant for the disposal of this case are as follows: Applicant joined service in the Indian Embassy at Abu Dhabi on 24.9.1977 through proper channel. He was granted emergency leave from 1.2.91 to 15.2.91 to visit his native place in Kerala due to the illness of his mother. He could not join back on duty on 16.2.91 for he met with an accident on 15.2.91 at Vempayam while driving a motor car and he had been charge sheeted by the Kerala Police under Sections 279 and 337 of I.P.C. Accordingly, he filed an application for extension of the leave. But, without considering his request, as per order Annexure-A1 dated 24.2.91 his services were terminated w.e.f. 16.2.91, the date on which he had to join duty.

4. The main grievance of the applicant is that he has not been given a fair treatment nor has he been heard before passing the order of termination. In other words, the gist of the contention raised by Shri B. Gopakumar, the learned counsel for the applicant, is that the order is null and void because of the failure of the respondents to give notice and opportunity of being heard or on account of the unfairness. In fact the respondents have violated the

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rules of natural justice making the order void and unsustainable. He further submitted that the representations filed by him were not enquired into and if the files are called for, they will disclose that he is innocent.

5. Respondents have filed reply denying all the allegations in the O.A. They have also submitted that the Indian Embassy at Abu Dhabi is not amenable to the jurisdiction of the Tribunal, the O.A. is to be dismissed. According to Shri C.N.Radhakrishnan, learned counsel for the respondents, the continuance of the service of the applicant in the Indian Embassy is detrimental to the interest of the Indian Government and hence the 2nd respondent decided to terminate his services and that the applicant is not entitled to any relief. He also submitted that there is a complaint against the wife of the applicant, that she collected rent of two flats amounting to DHS 67,000/- (equivalent to Indian Rupees 3.39 lakhs) and left Abu Dhabi on 31.1.91 without depositing the same with the company in which she was working. The company is searching the applicant and the wife and if they are produced in Abu Dhabi in connection with the disposal of the case against the applicant by following the principles of natural justice, he will be arrested by the Foreign Government and the Indian Mission cannot take a chance of security hazard or ill reputation to the Indian community settled there.

6. At the time when the case came up for final hearing on 21.1.94, we have heard the learned counsel on both sides and satisfied that the impugned orders are unsustainable due to failure to give notice and opportunity of being heard to the applicant. They are violative of the

principles of natural justice. But, we wanted to probe the matter further in view of the fact that his representation, Annexure-A3, filed after the termination order has not been considered by the competent authority. Accordingly, we passed the following order:-

" After hearing the counsel for considerable time, we are of the view that the service file pertaining to the applicant and the file relating to Annexure-A8 passed on 23.12.92 and any other document regarding the character and conduct of the applicant received in the Embassy is necessary for deciding the case. Learned counsel for respondents is directed to produce the aforesaid files for further hearing of the O.A. to satisfy us that the case of the applicant does not deserve any relief.

Post after six weeks on 8.3.94. "

The learned counsel for respondents was fair enough to produce before us the entire files dealing with termination of the applicant and his representations filed thereafter. The files disclose that after the termination, the applicant approached the Minister of State for Industries, Government of India and at his instance the matter was again considered by the embassy and found that the Mission before passing the termination order did not care to ascertain whether the complaints raised against the applicant's wife was true or false. There is also failure on the part of the Mission to inform the ground of termination of the service of the applicant to him before actually passing the order and effecting the termination of the services. It was also noted in the files that since the Mission failed to follow the procedures in these respect, it will be difficult to support the order. It was further indicated that the Mission should examine the scope of informing the gist of the charges to the applicant and give him opportunity to explain the position and also see whether "it is possible to reinstate him in service".

Notwithstanding the above notes, the Mission, ~~failed to~~ reconsider the matter particularly when the Government of India requested for a reconsideration and the representation, Annexure-A3, was pending against the orders challenged in this case.

7. Learned counsel for respondents vehemently submitted that this Tribunal has no jurisdiction to deal with the matter; but he did not place before us any ~~statutory~~ or other material to support his contention. The learned counsel brought to our notice para 3 of the additional statement and two other decisions of other Tribunals. Para 3 reads as follows:-

" The applicant was appointed as a locally recruited Clerk-Typist in the Embassy. For filling up the local posts, the Missions follow certain procedures like inviting applications by advertisement, conducting tests and interviews, etc. This does not mean that the candidates so selected are governed by Central Civil Service Rules. The person selected for a local post need not necessarily be an Indian national; he/she may be a citizen of the host country or a citizen of a third country."

8. Two decisions of the Tribunal reported in Deo Kumar Thakur vs. Union of India & Others, OA 382/88 and Shri Gulam Mohammed vs. Union of India and another, OA 3376/92, were cited to support the contention that equality of opportunity applies only between equals and that the applicant being a person locally recruited in Indian Embassy is not on par with employees recruited in India and he is not holding a civil post and Articles 14, 16 and 311 do not apply to him. Full text of the judgments was not produced for our perusal. However, the contention raised by the learned counsel has no relevance to the point urged by the learned counsel for the applicant. He submitted that the order is null and void on account of violation of

principles of natural justice. The above decisions do not deal with that issue. Hence, according to us, they are irrelevant and not helpful to decide the issue arising for consideration in this case.

9. Prof. Wade in his latest book on 'Judicial Review of Administrative Law' had stated that "The concept of natural justice has existed for many centuries and it has crystallised into two rules : that no man should be judge of his own cause; and that no man should suffer without first being given a fair hearing. They (courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure to be obeyed by authorities of all kind". This principle applies to all situations and to all cases whether the employees working in the Embassy or other places or whether the employees were recruited locally or otherwise and also whether they are civil servants or servants of Indian Embassy recruited locally. This elementary principle has not been followed in this case. Every action would be void on account of failure of this procedure. See Management of M/s. M.S. Nally Bharat Engg. Co. Ltd. vs. State of Bihar and others, /^{JT} (1990) 2 SCC 48, Karnataka Public Service Commission & Others vs. B.M. Vijaya Shankar & Others, JT (1992) 4 SC 348, and Shri Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Others, JT (1993) 3 SC 487.

10. Even in regard to the doctrine of sovereign immunity under the international law, Lord Denning M.R. said in Trendtex Trading Corp. vs. Central Bank of Nigeria, (1977) QB 529 "the international law.... Like all rules of international law, this rule is said to arise out of the consensus of the civilized nations of the world". The Privy Council in Philippine Admiral vs. Wallem Shipping Ltd,

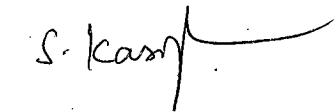
(1976) 2 W.L.R. 214, abandoned the absolute theory of sovereign immunity and accepted a restrictive theory and held "in those actions too, the restrictive theory is consonant with justice". A foreign department of a state does not lose its rights and obligations simply because of some of its activities ^{are carried out} by means of a separate legal entity. It is bound by procedures and law to do justice to the parties. D.J. Harris in his book 'Cases and Materials on International Law', Third Edition, Page 259, said "Under the doctrine of incorporation, when the rules of international law change, our English law changes with them. But, under the doctrine of transformation, the English law does not change. It is bound by precedent." In the light of these observations and settled position, according to us, the Mission is bound by the procedural law of India and it should follow the principles of natural justice.

11. For the limited purpose of applying the principles of natural justice, the Embassy of India at Abu Dhabi can be treated as part of the Indian State and this Tribunal's jurisdiction extends to the same. This is a service matter of an Indian citizen, who, having been appointed in the Indian Embassy at Abu Dhabi, is governed by the procedures and law of this country and, accordingly, we hold that this Tribunal has alone the jurisdiction to deal with the matter.

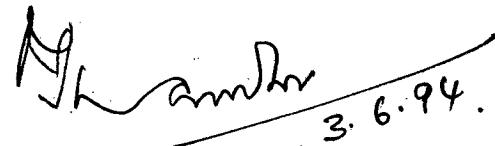
12. The impugned orders are admittedly passed without giving any notice or opportunity of being heard to the applicant to show cause and defend his stand. It appears that the matter was re-examined and there is sufficient reason to believe that the impugned orders ^{were} passed without following the proper procedures as indicated in the notes. Accordingly, the impugned orders ^{are} violative of the natural justice.

13. In this view of the matter, we are satisfied that the orders are unsustainable. Accordingly, we quash the same.

14. The application is allowed. There shall be no order as to costs.



(S. KASIPANDIAN)
MEMBER (A)



3. 6. 94.

(N. DHARMADAN)
MEMBER (J)

v/-