

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO.232/93

DATE OF JUDGEMENT: 10-12-1993

Between

1. E.B. Sugavanam
2. Zamir Ashraf
3. P.C. Khanna
4. R.C.Gathania
5. B. Sharma
6. Maiti .R .. Applicants

and

1. The Director (Training)  
Department of Personnel, and Training (Trg.Dvn)  
Ministry of Personnel, Public Grievances  
and Pension,  
Block II, 2nd Floor, CGO Complex,  
Lodi Road, New Delhi-110 003.
2. The Director General,  
Geological Survey of India  
27 JL Nehru Road,  
Calcutta.
3. The Pay and Accounts Officer,  
Pay & Accounts Office,  
Geological Survey of India  
Hyderabad .. Respondents

Counsel for the Applicants :: Mr Syed Shareef Ahmed

Counsel for the Respondents :: Mr NV Ramana, Addl.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

..2..

*SPG*

..2..

JUDGEMENT

As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J)I

This is an application filed under Section 19 of the Administrative Tribunals Act, to declare that the order dated 9.7.92 in proceedings No.12017/2/86-Trg issued by the 1st respondent is illegal and arbitrary and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief, are as follows:

3. Applicants ONE to SIX in this OA are working as Faculty Members in the Geological Survey of India Training Institute situated in Hyderabad, since June, 1992. The period of deputation of the applicants is for two years. The Department of Personnel and Training (Training Division) in the Ministry of Personnel, Public Grievances and Pension had issued proceedings No.12017/2/86-Trg(TNG) dated 7.2.1986, wherein, an incentive scheme had been formulated in respect of the Faculty Members, who joined the Training Institute on deputation by raising their emoluments to 30% of the total emoluments which they would be getting in their cadre while posted in the field. Another OM dated 31.3.1987 was issued by the respondents incorporating the conditions and in supersession of the previous OM wherein, it was provided that 30% of the basic pay shall be paid as training allowance to the persons working as faculty members in the Geological Survey of India Training Institute situated in Hyderabad. At the time the applicants joined the Training Institute of Geological Survey of India in the month of June, 1992, they were governed by the said OM dated 31.3.1987 issued by the Department of Personnel and Training (Training Division) in the Min. of Personnel, Public Grievances and Pension.

T. C. R. P.

B

4. While so, the Department of Personnel and Training (Training Division) in the Min. of Personnel Public Grievances and Pension had ~~xxxx~~ issued the impugned proceedings dated 9.7.1992, wherein the training allowance had been reduced from 30% to 15%. According to the applicants, the said proceedings dated 9.7.1992 reducing their training allowance from 30% to 15% is illegal and arbitrary, and, that, they are entitled to be paid Training allowance at the rate of 30% as per the earlier OMs dated 7.2.86 and 31.3.87 till the completion of their full tenure period of two years. Aggrieved by the action of the respondents vide the impugned proceedings dated 9.7.1992 by reducing the training allowance of the applicants from 30% to 15%, the applicants have filed the present OA for the relief as already indicated above.

5. Counter is filed by the respondents opposing this OA.

6. In the counter filed by the respondents, it is maintained on behalf of the respondents, that the respondents have a right to modify terms and conditions with regard to the post held by the applicants on deputation and that in this case, the applicants had the option to continue on deputation subject to the modified conditions or seek reversion to their parent cadre and that the applicants did not have a right to be paid training allowance at the rate of 30% of their basic pay and so this OA is liable to be dismissed.

T - C - R - P

2000

W.D

7. We have heard Mr Syed Shareef Ahmed learned counsel for the applicant and Mr NV Ramana, Standing Counsel for the respondents.

8. It is the contention of the learned counsel for the applicants that by virtue of the OM dated 31.3.1987 referred to above, that 30% of the basic pay shall be paid as training allowance to those working as Faculty Members in the Training Institute of Geological Survey of India, that the right to receive training allowance at the rate of 30% of their basic pay had accrued to the applicants, and the said right cannot be taken away by the respondents by issuing subsequent OM dated 9.7.1992, and hence, the impugned OM dated 9.7.1992 is liable to be set aside as not valid. It is also the contention of the learned counsel for the applicants that, without affording any opportunity to the applicants, and, without hearing them that the impugned proceedings dated 9.7.1992 had been issued by the respondents and in view of this position that the impugned proceedings dated 9.7.1992 is also liable to be set aside, as not valid.

9. This is not a case where the condition of service of the applicants had been retrospectively altered to the prejudice of the applicants. It is further contended, before withdrawing the earlier OMs dated 7.2.1986 and 31.3.1987, as the applicants were not heard, that the principles of natural justice are violated. It seems to us that this view may not be justified. The deprivation of such → benefits → due → to → the applicants was → not → by → way → of → penalty imposed

T - r. n. f.

W. D. S.

on them. It was the result of a policy decision - right or wrong-taken by the Government, not to extend the benefit of the earlier OMs dated 7.2.86 and 31.3. 1987 and to reduce the training allowance from 30% to 15%. It is well accepted principle that the conditions of service of Govt. servants may be altered without their consent. In this context, we may refer to a decision of the five Judges Bench of the Supreme Court reported in AIR 1967 SC 1889 <sup>Bench of</sup> Roshan Lal Tandon Vs Union of India respondents wherein at Page 1894, <sup>in paras 6 & 7</sup> it is held as follows:

".....

.....It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to this 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 document of the government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by government without the consent of the employee. It is true that Art.311 imposes Constitutional restrictions upon the power of removal granted to the President and the Governor under Art.310. But it is obvious that the relationship between the government and its servants is not like an ordinary contract of service between a master and a servant. The

T - C - 2 - 1

D8

legal relationship is <sup>something</sup> entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily ~~entered~~ 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 Solomond and Williams on contracts as follows:

'So we may find both ~~the~~ contractual and status - obligation 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 ~~in~~ 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 <sup>attach</sup> ~~make~~ to this relation compulsory incidents, such as liability to pay compensation ~~for~~ for accidents. The extent to which the law is content to leave matters within 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.' (Solomond and Williams on Contracts- 2nd Edition p-12).

(7) We are therefore of the opinion that the petitioner has no vested ~~right~~ contractual right in regard to the terms of his service and that counsel for the petitioner has been unable to make good his submission on this aspect of the case.\*

T - C - M - T

6th PG

..7..

10. So, as seen, the principle in the said case is that the service conditions, including the emoluments are governed by statutory rules and legal position of government is more ~~than~~ <sup>servants</sup> one of status than of contract. The rights and duties of government servants are imposed by public law and not mere agreement by the parties. Therefore, the consent of the applicants is not necessary for altering such law. Nor the principle of natural justice need ~~be~~ be observed. So, in view of the above said Supreme Court decision, it has got to be held that the respondents ~~at~~ had the power to alter the service conditions of its employees subject, of course to their other legitimate rights. So, the contention of the learned counsel that the Government had no power to alter the rate of training allowance from ~~is~~ 30% to 15% by issuing memo dated 9.7.1992, can not at all be accepted. Moreover the applicants have also choice to opt for the revised conditions of service or to seek reversion to their parent cadre before implementation of the orders dated 9.7.1992. So, as the applicants have choice to leave the institution if ~~they were~~ they were dis-satisfied with the revised rate of ~~15%~~ <sup>viewing</sup> it is rather difficult to say in the facts and circumstances of the case that the action of the respondents in reducing the training allowance of the applicants from 30% to 15% as per revised memo dated 9.7.1992 is either arbitrary or not valid.

11. The learned counsel for the applicants contended that at the time, the applicants consent had been obtained for taking them as Faculty Members on deputation, they were never informed that their service conditions, during their deputation period would be altered to their dis-advantage and so their training allowance cannot be reduced by the respondents from 30% to 15% as per the impugned memo dated 9.7.1992.

(60)

12. As already pointed out, there was no compulsion on the part of the applicants to continue on deputation accepting the reduced rate of training allowance, as they had already been given an option either to continue as Faculty Members accepting the revised condition of service or to seek reversion to their parent cadre, by giving three months' notice, from the date of issue of the OM dated 9.7.1992. From Annexure A-IV to the OA which are the proceedings dated 28.11.1986 issued by the Government of India on the subject, "Improvement in service conditions of Faculty Members of GSI Training Institute" from Clause Four, it is quite evident that the Faculty Members of Geological Survey of India Training Institute were bound by the consequent modifications with regard to the service conditions. So, it cannot be said that the applicants by the OM dated 9.7.1992 were taken by surprise in reduction of their training allowance from 30% to 15%.

13. Nevertheless, as already indicated, the respondents have got every power to alter the service conditions of its employees subject, ofcourse, to their other legitimate rights. So, it is clear even if the applicants had not been informed at the time of obtaining their consent for deputation that their service conditions during their deputation period would be altered, the respondents had every right to reduce the training allowance of the applicants from 30 to 15% as per the impugned proceedings dated 9.7.1992.

T. C. H.

...9

SCC  
X

(S)

14. The learned counsel for the applicants in support of his contentions/that the accrued and vested rights/benefits of an employee cannot be taken away without hearing the employee and the Government had no power to alter or modify the conditions of service of a Government servant to the prejudice of a government servant, relied on the following decisions.

(i) AIR 1989 SC 568 HL Tehran Vs Union of India (Supreme court Judgement of the bench of two judges)

(ii) 1990(5) SLR 753 State of West Bengal Vs Ashok Chakraborty and others (Calcutta High Court Judgement)

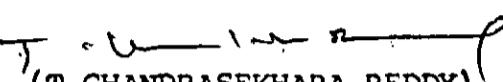
(iii) 1989(1) SLR 979 Dhrub Kumar Mohabatra and others Vs State of Orissa (Orissa Administrative Tribunal Judgement)

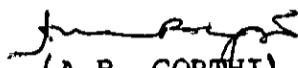
We have gone through the above three Judgements. As a matter of fact, those judgements support fully the dictum laid down in AIR 1967 SC 1889 Reshal Lal Tandon Vs Union of India to which a reference has already been made in this Judgement. So, the above said decisions have absolutely no application to the facts of this case. Hence, the validity and legality of the order dated 9.7.1992 in proceedings No.12017/2/86-Trg issued by the first respondent is liable to be upheld and the OA filed by the applicants, as a consequence, is liable to be dismissed.

15. The impugned proceedings as already pointed out, had been issued on 9.7.1992. The applicants in this OA have joined service in the month of June 1992. So upto 8.7.1992, the applicants had a right to be paid training allowance by the respondents at the rate of 30% as per the earlier OM dated 31.3.1987. The respondents have got every right to recover the training allowance if any paid in excess of 15% to the applicants w.e.f. 9.7.1992.

T. C. M.

and the applicants are also liable to refund the excess amount of training allowance if any received by them after 9.7.1992. So, as already pointed out, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

  
(T.CHANDRASEKHARA REDDY)  
Member (Judl.)

  
(A.B. GORTHI)  
Member (Admn)

Dated: 18-12-1993

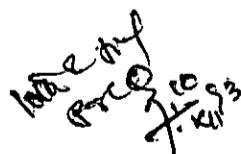
mv1

  
Deputy Registrar (J)

To

1. The Director (Training) Dept. of Personnel, and Training (Trg. Dvn.) Ministry of Personnel, Public Grievances and Pension, Block II, 2nd Floor, CGO Complex, Lodi Road, New Delhi-3.
2. The Director General, Geological Survey of India, 27 JL Nehru Road, Calcutta.
3. The Pay and Accounts Officer, Pay & Accounts Office, Geological Survey of India, Hyderabad.
4. One copy to Mr. Syed Shareef Ahmed, Advocate, 3-6-725 St. No. 11, Himayatnagar, Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

pvm

  
Date of  
10.12.93  
J. K.

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO  
VICE-CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY  
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 10 - 12-1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in

O.A.No. 232/93

T.A.No. ( W.P. )

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions 15 DEC 1993

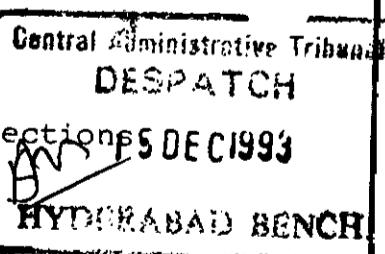
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.



Spare copy  
not received  
10-12-1993

10-12-1993

pvm