

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2957/2003

This the 22nd day of July, 2004

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HON'BLE SH. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Ms. Vijay Chhibber,
w/o Sh. Raghunath Kumar,
aged 53 years
Ex-Junior Clerk/Typist in the
Embassy of India, Washington D.C.
R/o 101, North Wayne Street Apt.3,
Arlington V.A.22201-1558.

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India through Secretary
Ministry of External Affairs,
South Block,
New Delhi.
2. Embassy of India
through its Ambassador,
2107, Massachusetts,
AVE NW
Washington D.C., U.S.A.
20008.

(By Advocate: Sh. M.K.Bhardwaj proxy for
Sh. A.K.Bhardwaj)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant through this OA assailed orders dated 13.11.2001 and 4.9.2003. Vide order dated 13.11.2001 the services of the applicant had been terminated and the reason for termination of service is stated to be negligence and dereliction of duty which the applicant was performing under the Embassy of India in USA. Applicant after the termination order has also served a legal notice which had been replied vide letter dated 4.9.2003 wherein applicant was informed that the decision to terminate the services of the applicant was arrived at after the due process of enquiry and without any



prejudice on the part of the Mission. Applicant was not satisfied with the reply to her legal notice therefore filed the present OA.

2. Facts as alleged by the applicant in brief aree that the applicant was a locally recruited clerk employed by Embassy of India, Washington D.C. Applicant was appointed on 24.7.1978. Thereafter she was also regularised. Applicant alleges that in the order of appointment there was a clause which provided that the services of the applicant could be terminated at one month's notice on either side or on one month's pay in lieu thereof without assignment of reasons. However, the said clause is stated to be unconstitutional and cannot be acted upon.

3. It is further stated that show cause notice dated 1.11.2001 was served upon the applicant vide Annexure-3 and the applicant was called upon to explain with regard to misplacement of mail which is stated to contain 15 packets and the same are stated to have lost on account of the negligence of applicant which contained some passports and visas documents etc. of Indians and foreigners. Applicant submits that she had given a satisfactory explanation but the same was not found acceptable and the services of the applicant were terminated even the post-retiral dues have not been given to the applicant.

4. In order to challenge the termination the applicant pointed out that the action of the respondents is contrary to the principles of natural justice as the applicant was not given a hearing and the principles of audi alterm partem were

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violated. Applicant claims that the services of the applicant could not be terminated without any enquiry as Article 311 of the Constitution mandates the same and the same has been violated. It is stated that the decision to terminate the services of the applicant as contended by the respondents was arrived at after the due process of enquiry is incorrect. If the respondents were not satisfied with the reply of the applicant then they should have conducted an enquiry framed a chargesheet as per CCS CCA Rules. Hence it is stated the impugned orders be quashed and the applicant be reinstated in service.

5. Respondents are contesting the OA. Respondents in their reply pleaded that the applicant is a US National, so she is not entitled to the relief claimed for. Besides that it is stated that services of locally recruited employees in Indian Mission are based on contractual basis. At the time of initial appointment local employees have to enter into contract subject to conditions of service and all local recruits irrespective of their nationality are the parties to the employment contract. It is further submitted that the reply submitted by the applicant in response to show cause notice was not satisfactory and the authorities of the Mission observed that there were security lapses on the part of the applicant which had occurred despite clear warning in the wake of threat to the security of the Mission, so with the approval of the competent authorities her services were terminated. This was done so after a due process of enquiry and without any prejudice on the part of the Mission. It is further stated that since the services of the applicant have been terminated on disciplinary grounds so applicant is not entitled to gratuity etc. also.

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6. We have heard the learned counsel for the parties and gone through the record. The short question which arises for determination is whether the services of the applicant have been dispensed with in violation of principles of natural justice and in violation of service conditions as embodied in the contract of employment. Learned counsel appearing for the respondents pointed out that as regards the application of Article 311 and rules framed thereunder and CCS CCA Rules are concerned, the same are not applicable to the locally recruited employees and in support of his contention he referred to Swamy's Disciplinary Proceedings, extracts of which have been placed on record at Annexure R-2 which expressly exempts the Ministry of External Affairs to extend the benefits of CCS CCA Rules to locally recruited staff in Missions abroad.

7. Counsel for respondents then further submitted that Ministry of External Affairs has issued a publication as Guide to Selected Administration/Establishment Rules & Procedures which deals with the foreign mission of local employees in Indian Mission/posts abroad. The Rules governing the termination of locally recruited employees in Mission abroad is reproduced herein below:-

"The grounds for termination of the contract from the Embassy will be (a) inadequate performance, (b) wilful misconduct, disobedience or neglect of duties, (c) breach of security, (d) discourtesy, misbehaviour with colleagues or superiors, (e) frequent lack of punctuality without due justification to the satisfaction of the HOC. In keeping with laws of natural justice, the Mission should take care to avoid unilateral/arbitrary action. The Mission is required to serve a show cause notice on the employee before termination except in case of breach of security. In all

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cases where the services of local employees are terminated, full facts indicating the reasons for termination of their service should be reported to the Ministry immediately. The procedure laid down above will not apply to the local employees in our Missions/Posts abroad where it is found that this procedure runs counter to contractual bilateral agreements or local rules of the host country. (Emphasis supplied)."

8. The perusal of the above extract and/or the guidelines issued by the Ministry of External Affairs would show that even a show cause notice is not required in case the department wants to terminate the services of locally recruited employees in case of breach of security. Counsel for respondents contended that the mail which was misplaced by the applicant contained various passports and visas documents of foreigners also and the same had happened immediately after the 9/11 September event of a terrorist attack on the Twin Towers of America. So the authorities were of opinion that there was a slackness in observing the security by the applicant and that is why the department arrived at a conclusion that there was a dereliction and negligence of the duty on the part of the applicant, so her services have been terminated.

9. Learned counsel for respondents further submitted that despite this a show cause notice was given, explanation was obtained from the applicant. Though the counsel for respondents was emphatic that the enquiry was also held, however, no documents had been placed on record to show that any enquiry was conducted.

10. Counsel for applicant submitted that it has been held by this Ernakulam Bench of this Tribunal in case of K.K.Sadasivan Pillai vs. Union of India and another wherein the applicants

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services were terminated without giving any notice of opportunity of being heard, so Court had allowed the OA being violative of principles of natural justice. Applicant also referred to a judgment in case of Chandreshwar Narain Dubey vs. Union of India and others reported in AIR 1998 SC 2671 wherein question of appointment of local recruited candidates which was purely on temporary basis had been terminated and the Tribunal had observed that termination is bad and in lieu of reinstatement some compensation was awarded.

11. Relying upon those two judgments counsel for applicant submits that in this case also, since the services of the applicant has been terminated without giving show cause notice and without following principles of natural justice of affording an opportunity of hearing to the applicant so the termination of the services of the applicant are bad and the OA should be allowed.

12. We have considered the rival contentions. However, as per the guideliness as quoted above, we find that ordinarily the foreign missions are not required to follow any procedure for termination of the services, if it is a simplicitor termination so they can terminate the services on paymeent of one month salary in lieu of the notice. However, on the grounds for termination of the contract from the Embassy if it is inadquate performance, wilful misconduct, disobedience or neglect of duties, breach of security, discourtesy, misbehaviour with colleagues or superiors, frequent lack of punctuality withing the Mission is supposed to take care to avoid unilateral/arbitrary action and Mission is required only to serve a show cause notice on the employee before termination of the services. However, an exception has been


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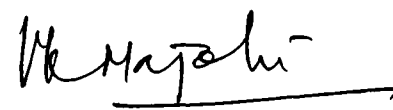
made to the extent that in case of breach of security show cause notice can be dispensed with. In all other cases where the services of local employees are terminated the Mission is required to give full facts indicating the reasons for termination of their service even the procedure contained in para-H of these guidelines is also not required to be followed in case the bilateral contract of employment runs contrary to this procedure.

13. In this case we find that there is no clause in the bilateral agreement vide which the applicant was employed in the service for following any procedure of enquiry etc. in case of her termination of service and as per guidelines since the alleged misconduct pertained to misplacement of valuable travel documents which had the repercussions of breach of security so even a show cause notice was not required but still in this case show cause notice has been served and explanation has been obtained from the employees and when the explanation was not found satisfactory only thereafter the services of the applicant have been terminated. So we find there is no violation of any principles of natural justice governing the contract of employment of the applicant with the respondents.

14. Applicant is also not entitled to any compensation by way of damages for breach of contract as the same have not been pleaded. *Neither any relief to this effect has been asked for by her*

15. In view of discussion above, OA is devoid of any merit and the same is hereby dismissed. No costs.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA) 22.7.04
Vice Chairman (A)