

PETITIONER:
CHANDRESHWAR NARAIN DUBEY AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT: 14/08/1998

BENCH:
SUJATA V. MANOHAR, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS. 4570-4571/96 & 4572/1996
J U D G M E N T

Rajendra Babu, J.

These three sets of appeals arise out of the orders made by the Central Administrative Tribunal (Principal Bench). The appellants herein are/were employed in the pension paying offices attached to the respective Ministries in the Embassy of India at Nepal. Writ petitions had been preferred before this Court under Article 32 of the Constitution and on the establishment of the Central Administrative Tribunal, this Court transferred these petitions for its consideration by an order made on 3rd November, 1992 in W.P. No. 591 of 1987, 903 of 1988, 620 of 1991 and 181 of 1987.

In Civil Appeal No. 4569 of 1996, there are three appellants and they were recruited by the Ministry of Defence, Government of India in Nepal and posted in the Pension Pay Office at Pokhran. While the first appellant was appointed as a lower division clerk on 24.7.1972, appellant No. 2 was appointed on 21.10.1964 and appellant No. 3 on 2.9.1985. Thus at the time of filing of these appeals, appellant No. 1 had put in 20 years service, appellant No. 2, 29 years and appellant No. 3, 8 years of service in their respective offices. They claim for confirmation in their posts and for parity in emoluments, paid to their counterparts designated as India Based Employees inasmuch as both of them were performing identical works and employed in the same establishment.

In Civil Appeal No. 4570 of 1996, there are 28 appellants and they are Nepali nationals recruited in Nepal on different dates. They also seek for identical reliefs as in Civil as in Civil Appeal Nos. 4569 of 1996, 4571/1996.

In Civil Appeal No. 4571 of 1996, there are 29 appellants, while appellants 24, 26 and 27 are Indian citizens rest of them are nepali nationals. Appellant No. 28 though a Nepali national is recruited in India and posted in Nepal. A claim is made on behalf of 32 others whose details are mentioned in Annexure I but they were not impleaded as parties. On transfer of the proceedings to the Tribunal, the

Tribunal did not choose to treat them as party to the proceedings before it. These 32 persons have not challenged the said orders made by the Tribunal although such an order had been made adverse to them. Hence we do not propose to consider their cases. The rest of the appellants apart from claiming the benefit as has been done by the appellants in C.A. No. 4569 and 4570 of 1996, also claim that their termination is illegal and that they deserve to be reinstated in service.

C.A. No. 4569 and 4571/1996

We shall first take up for consideration the claim made by the appellants in this appeal for parity of pay and other benefits. A contention had been raised before the Tribunal that the appellants cannot claim equality as provided under Article 14 of the Constitution inasmuch as the appellants are all posted outside the country and there cannot be enforcement of the Constitution inasmuch as the appellants are all posted outside the country and there cannot be enforcement of the Constitution outside India. The tribunal took the view that the Pension paying office at Nepal cannot be treated to be an extension of the territory of India for the purpose of Article 14 of the Constitution and, therefore, the appellants cannot invoke the same. However, we do not propose to examine the correctness of this view in these proceedings as we propose to examine the merits of the matter and decide the same.

The Tribunal based its decision on the enunciation of law made by this Court in *Air India vs. Nergesh Meerza* AIR 1981 SC 1829, which is as follows: -

- " a) the nature, the mode and the manner of recruitment of a particular category from the very start.
- b) the classifications of the particular category.
- c) the terms and conditions of service of the members of the category.
- d) the nature and character of the posts and promotional avenues.
- e) the special attributes that the particular category possess which are not to be found in other classes, and the like. "

On the basis of these tests, the Tribunal examined the cases of appellants and held that the appellants who are locally recruited in Nepal cannot claim as a matter of right parity of pay-scale with their counter-parts in India. Classification between locally recruited employees in Nepal and India Based employees in Pension paying Offices is a valid classification. However, the Tribunal allowed the claim to the extent of declaring that those of the appellants who had been confirmed in various posts pursuant to order dated 20th March, 1972, shall be demand to be confirmed employees and shall be entitled to benefits flowing from there as are admissible to locally recruited employees who are confirmed.

Civil Appeal No. 4572 of 1996

In this appeal, apart from the claims regarding paying of pay-scales and other monetary benefits, the appellants claim for quashing the respective orders made in respect of the appellants terminating their services while the Tribunal reiterated its view on the claim regarding the parity of pay

and other emoluments. It held that termination of services of appellants Nos.1, 2 and 4 was justified while termination of services of 3rd, 5th and 29th appellants was set aside with the direction that in lieu of their reinstatement, should be given to the tune of six months pay to each one of them on the basis of pay they were getting on the date of termination and their services in nepali currency. At the time of consideration of the matter, the appellants did not press their claim regarding the relief for similar pay and other benefits and gave up their claim and the Tribunal reserved that part of the case to be agitated in appropriate forum. The Tribunal found that the appellants had all been appointed to temporary posts and their services could be terminated at any time. While in the case of respondents Nos. 1,2 and 4, it was noticed that the orders of termination merely stated that their services had been terminated with effect from 31.12.1986 or 1.1.1987. In case of others wherein it was indicated that their services had been terminated on disciplinary grounds, but without holding an enquiry, it was held that the same was not permissible as such orders would cast a stigma on the career of the appellants. Therefore, their services could not have been terminated in that manner and thus, set aside the directions with a compensation as stated above.

The Tribunal has examined the conditions of services applicable to the appellants right from the inception and has found that the locally recruited candidates in Nepal and those that were recruited in India and sent on deputation stood in two different classes. The Tribunal also found on facts that there were good reasons to treat them differently considering the exigencies of service and the circumstances in which the appellants in these cases had been recruited. The appointments were purely temporary to serve a temporary purpose to off set the extra load of work in their respective offices and in their very nature could not claim to become permanent. Apart from this fact, it was also noticed that the said posts are not transferable while those recruited in India and deputed in different Ministries in Nepal were liable to be transferred anywhere in the country. The conditions in similar employment prevalent in India were not the conditions in Nepal, and therefore, the terms upon which they were appointed were found to be reasonable. In these circumstances, if the Tribunal found that the tests laid down in Nergesh Meerza's case to which we have adverted to earlier are satisfied in these cases, we do not think there is any merit in these appeals so far as the claim for parity in pay and pension is concerned.

As regards the order made by the Tribunal in respect of termination of services of the appellants is concerned, again we may state that the Tribunal had noticed that the appellants had not been recruited on a permanent basis, but are purely employees whose services could be terminated at any time, but in doing so bore in mind the circumstances available to each one of the appellants under which their services were terminated. While in the case of some, where the order was termination simpliciter, the Tribunal held the same as valid and in case of others, grounds such as disciplinary or others reasons were set out the same was held to attach stigma to such persons and therefore, set aside the termination, but in lieu thereof granted compensation. The Tribunal has adopted a rational basis in dealing with the matter. We do not think there is any reason to interfere with the order made by the Tribunal.

In the result, these appeals stand dismissed. There shall be no order as to costs.

JUDIS