
(2000) 03 DEL CK 0032

In the Delhi High Court

Case No : CW. No. 2296, 2297, 2298 of 1995

Dr. Ranjit Sinha and Others

APPELLANT

Vs

Indian Railway Constn., Company Limited

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Citation : (2000) 5 AD 101 : (2000) 54 DRJ 514

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. O.P. Khadaria and Mr. Deepak Khadaria, for the Appellant; Mr. A.K. Singhla and Ms. Rachna Rao, for the Respondent

Judgement

K.Ramamoorthy, J.—The petitioner in CW. 2296/95 had prayed for the following reliefs in the amended writ petition:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to:-

(i) to issue a writ of certiorari or any other writ or writs quashing the impugned Memorandum dated 7th June, 1985, with a direction to the respondent to adhere to the policy of seniority vis-a-vis contractual/ad-hoc re-employed staff;

(ii) to issue a writ of mandamus directing the respondent to release the withheld salary in foreign emoluments US\$ 1450, instead of US\$ 1300 per month, with statutory interest of 2% per month;

(iii) to issue a writ of mandamus or any other appropriate writ directing the respondent to place the petitioner in the pay-scale of Rs. 2200-4000 from the pay scale of Rs.2000-3500 which is the revised scale to the pre-revised scale of Rs.650-1200."

2. CM.3624/98 was filed by the LRs of the deceased petitioner, Dr.Ranjit Singh, to bring themselves on record, and the widow and the minor daughter of the deceased petitioner were brought on record by order dated 17.8.1998.

3. The respondent is a public sector organisation. On the 3rd of March, 1982, the Board of Directors of the respondent/company had resolved to take up the construction of 23 kilometres long metre gauge railway line to serve a cement plant near Saida in Algeria. The petitioner was appointed on adhoc basis in the respondent/company on the 5th of May, 1982. On the 20th of September, 1982, a letter of appointment was issued to the petitioner. On the 14th of June, 1983, the petitioner was appointed on temporary basis on the scale of Rs.700-1200 on initial pay of Rs.1,000 p.m. w.e.f. 21.9.1982. On the 25th of July, 1983, the petitioner, who was employed as French Interpreter, executed the bond on his being given assignment to work in Algeria. The bond was for a sum of Rs.20,000/-. On the 16th of August, 1983, an agreement was entered into between the petitioner and the respondent with reference to assignment in Algeria. His total emoluments were fixed at 550 US\$ and 2620 AD per month. The agreement also states that the petitioner would be paid an amount equivalent to 130 US\$ p.m. of his service in Algeria, on certification of faithful and satisfactory performance of duty from Managing Director of the Company. On the 11th of September, 1983, the petitioner took up the assignment in Algeria.

4. On the 27th of March, 1984, the petitioner met with an accident in Algeria and was hospitalised till 9.6.1984. He had to come to India and he was in hospital till 22.8.1984. In or about March, 1984, the petitioner and other employees who had been sent to Algeria, made a request to the respondent/Company for refixing their emoluments in Algeria.

5. On the 31st of May, 1984, the Director (Works) of the respondent/Company issued the following order:-

"Orders for your repatriation to India received vide telex No.A1418 dated 23.3.84 from Corporate Office were conveyed to you on 22.3.84 and you were asked to apply for sortie-definitive visa for the purpose. Unfortunately, you met with an accident on 27.3.84 before you could apply for sortie-definitive visa.

You are now on way to recovery and have been discharged from the Hospital on 27.5.84. The Doctors attending on you have also certified that you are fit to travel to India. They have also advised that you should be taken to India for better therapist orthopedic treatment which is not available here. It would, Therefore, be in your interest to move to India at the earliest in accordance with the Doctor's advice.

You are on sick list from 27.3.84. All the leave including sick leave earned by you in Algeria has also been exhausted. Necessary arrangement for your shifting from Algeria to India are being made Sortie-definitive visa forms have also been given to you on 23.5.84. You are advised sign these forms and submit them to office along with your passport and one copy of your photograph on/or before 2.6.84 for arranging sortie-definitive visa, for your going to India early."

6. On the 23rd of August, 1984, the petitioner joined duty. On the 25th of August, 1984, the Deputy Manager (Estt) of the respondent/company issued the

following officer order:-

"Consequent upon his having been released by Project Director, Algeria , on repatriation on 10.6.1984 Shri Ranjit Sinha, French Translator in scale Rs.700-1200/- is posted in the Corporate Office w.e.f.23.8.1984."

The pay slip was issued showing the pay of the petitioner as .1,000/-.

7. On the 12th of January, 1988, the post of French Translator was redesignated and the office order issued on that date reads as under:-

"With immediate effect, the following French Translators will be re-designated as under:-

S.No. Name Revised Designation 1. Dr. Ranjit Sinha Asstt.Manager (Languages) 2. Ms. Poonam Shownick Asstt. Manager (Languages) 3. Sh. R.R. Kapoor Asstt. Manager (Languages) 4. Sh. Ashit Shah Asstt. Manager (Languages) 5. Sh.Rameshwar Dayal Asstt.Manager (Languages)

8. On the 16th of February, 1988, the petitioner was promoted as Deputy Manager(Language). The petitioner was given additional assignment to look after the library as its in charge in the Corporate Office w.e.f.29.3.1989. On the 1st of December, 1990, a seniority list was issued with reference to the post of Deputy Manager (Language). On the 24th of December, 1993, the petitioner along with Mr. Rakesh Ratti Kapoor, petitioner in CWP.2297/95, and Mr.Rameshwar Dayal, petitioner in CWP.2298/95, made a representation seeking further promotion.

9. It is stated in the writ petition that the petitioner met the General Manager (Personnel) of the respondent/Company on the 3rd of February, 1994 and also met the Managing Director of the respondent/Company on the 9th of February, 1994. The petitioner had filed, what is called, memo with reference to the discussion, the petitioner is alleged to have had with the Company. On the 29th of July, 1994, the respondent/Company issued an amendment to the IRCON Conduct, Discipline and Appeal Rules, 1981 enabling the Company to dispense with the services of an employee on the post in which he is working is abolished.

10. It is asserted in the writ petition that the petitioner was confirmed as regular employee w.e.f.21.9.1992. On the 7th of June, 1985, a memo was issued seeking to terminate the services of the petitioner. The memo reads as under:-

"Sub: Reduction in Establishment in French Language Cell."

You were recruited as French Translator in the Company when the Company was executing Projects in French speaking countries abroad. You are aware that these projects have now come to end. With the changed scenario, it has not been possible for us to gainfully utilise your services in the Company in the area of your specialisation for which you were recruited. Therefore, you re advised to be on the lock-out for the jobs outside IRCON where you can utilise your expertise in a better way. You can also avoid the frustration of having to continue in the Company without adequate work. The Company on its part also does not like you

to remain idle and the Management is willing to extend all help in your endeavor to seek jobs outside Organisation like forwarding of your applications etc.

It is hoped that you will understand the realities and act immediately."

11. On the 20th of June, 1995, the writ petition was presented in this Court. On the 4th of July, 1995 when the writ petition came up for admission before a Division Bench of this Court, the Division Bench directed the petitioner to make a representation to the respondent and directed the respondent to dispose of the representation.

12. On the 6th of July, 1995, a representation was made by the petitioner to the respondent. In paragraph 2 of the representation, it is stated:

"At the outset, I may humbly submit that I have got hardly 2 years and nine months to retire from the service. I have been agitating ever since my joining the present office after having a long experience and acquired the maximum qualifications as Doctorate in French Language. The basic pay offered to me was Rs.1,000/- by the competent Selection Board, whereas the stage in the pay scale was Rs.1,020/-, and as such, my pay should have been fixed at Rs.1,020/-, instead of Rs.980. Further, when I was posted in September, 1983, in Algeria. I was given only US\$ 1,300 per month; whereas officers including Shri Satih Kumar Chaudhary and Shri S.N.Sachdeva, who were junior to me, were given US\$ 1,450/- per month. I made the very first representation in March, 1984, pointing out the above anomaly, along with Shri S.N.Sachdeva; whereby Shri S.N.Sachdeva was released US\$ 1,450/- per month, but my case was ignored, without any reply whatsoever."

This was with reference to the emoluments payable to the petitioner in Algeria.

13. Challenging the memo issued, it is stated in representation:

"That ever since my posting in India I have been gainfully employed for the last over 11 years in various capacities, namely, overall-incharge of the Translation Cell, in charge of Library, Deputy Manager, scanning of trade journals, etc. etc. Even as on today I am looking after all the work, except the Library work, which has been given to Shri K.S.Sethi, an ex-Army Man, Chief Manager (Admn.). For the last 11 years, my job was found to be satisfactory and I never found myself under-employed by your office and all of a sudden when I am at a threshold of my retirement. I have been served with the above said Memorandum dated 7.6.95."

14. On the 21st of August, 1995, the respondent/Corporation had issued an order disposing of the representation of the petition. Dealing with the representation, in paragraph 1 the respondent had said:

"The appointment offered by the Company in the year 1982 as a French Interpreter was on contract basis in the scale of Rs.750-1000. The post of French Interpreter was created in the Company in the scale of Rs.750-1000 for availing

services of a French Interpreter in connection with a project company was handling at Algeria. The terms and conditions of your appointment were stated in Company's letter dated 21.4.82. In acknowledgement and by accepting the terms and conditions stated in said appointment letter you joined the Company as a French Interpreter on 15th May, 1982 on contract basis in the scale of Rs.750-1000. In view of your having accepted appointment under terms and conditions stated in their letter dated 21.4.82, grievance against any of the terms and conditions stated therein is not permissible to be raised by you and as such not eligible to fresh consideration. After having joined the Company on 15.5.1982 on terms and conditions stated in Company's letter dated 21.4.82, you were given temporary appointment as French Translator in the scale of Rs.700-1200 on basic pay of Rs.1000/- p.m. as stated in Company's office order No.95/83 dated 14.6.83. Having accepted the terms and conditions of appointment stated in aforesaid office order dated 14.6.83 no grievance against the same is eligible to be raised by you. In any event the terms and conditions stated in office order dated 14.6.83 are self descriptive and illustrative."

Dealing with the grievance of the petitioner against the memo dated 7.6.1995, in paragraph 5 of the order dated 21.8.95 respondent said:

"Re-employment of retired staff is resorted to by the Company in accordance with the guidelines issued by the Department of Public Enterprises. Your field of specialisation is only as French Translator, no re-employment can be envisaged under such guidelines. However, since you have stated that you have only two years nine months to go for retirement, your name will be kept on panel and if during the aforesaid period in case requirement of French Translator is found envisaged, you will be considered for appointment."

15. On the 28th of August, 1995, a rejoinder was sent by the petitioner to the order passed by the respondent on the 21st of August, 1995.

16. On the 29th of August, 1995, an additional affidavit was filed by the petitioner in this Court. On the 14th of February, 1996, an application for amendment of the writ petition was filed. The petitioner has filed the statement showing the difference in salary for the period in which the petitioner was in Algeria, which the petitioner was entitled to.

17. On the 5th of August, 1996, the counter-affidavit to the writ petition was filed by the respondent. On the 13th of September, 1996, the petitioner filed rejoinder.

18. The main grievance of the petitioner was that while fixing his remuneration in US dollar payable in Algeria, his scale of pay in the post he was holding on that date was not considered and employees who were on the same scale of pay or lesser scale were paid larger amounts than the petitioner. The petitioner had further stated that the services of the petitioner cannot be dispensed with when the petitioner has served the organisation for more than ten years. The petitioner would state that the action of the respondent in attempting to dispense with the

services is arbitrary and illegal and unreasonable.

CW.No.2297 of 1995

19. The petitioner in CWP.2297/95, Rakesh Ratti Kapur, has come forward with the same case as that of petitioner in CW.2296/95, and in the amended writ petition, the writ petitioner in CW.2297/95 has prayed for the following reliefs:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to:-

(i) to issue a writ or writs quashing the impugned Memorandum dated 7th June, 1985, with a direction to the respondent to adhere to the policy of seniority vis-a-vis contractual/ad-hoc re-employed staff;

(ii) to issue a writ of mandamus directing the respondent to release the withheld salary in foreign emoluments US\$ 1450, instead of US\$ 880 per month, with statutory interest;

(iii) to issue a writ of mandamus or any other appropriate writ directing the respondent to place the petitioner in the pay-scale of Rs.2200-4000 from the pay scale of Rs.2000-3500 which is the revised scale to the pre-revised scale of Rs.650-1200."

20. On the 23rd of March, 1996, the petitioner resigned from service. But the question whether the petitioner would be entitled to emoluments as claimed by him, as in the case of the petitioner in CWP.2296/95, survives for consideration.

CW.No.2298 of 1995

21. In CWP.2298/98, the petitioner, Rameshwar Dayal, had prayed for the following reliefs in the amended writ petition:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to:-

(i) to issue a writ of certiorari or any other writ or writs quashing the impugned Memorandum dated 7th June, 1985, with a direction to the respondent to adhere to the policy of seniority is-a-vis contractual/ad-hoc re-employed staff;

(ii) to issue a writ of mandamus directing the respondent No.1 to release the withheld salary in foreign emoluments US\$ 1450, instead of US\$ 880 per month, with statutory interest.

(iii) to issue a writ of mandamus or any other appropriate writ directing the respondent No.1 to compensate the petitioner for not allowing him free air passage from Algeria to India and back from the years 1989 to 1992, i.e. four air passages, due to exigencies to work and the same compensation was given to Sh. M.K. Seth who was posted in Zambia under similar circumstances;

(iv) to issue a writ of mandamus or any other appropriate writ directing the

respondents to consider the case of the petitioner for promotion and to give retrospective effect to the same so as to mitigate the hardships already caused to the petitioner."

22. This petitioner belongs to a Scheduled Caste community. The petitioner is also employed as French Translator as in the case of other two petitioners. This petitioner also would claim emoluments at a higher rate than fixed in the agreement between the parties. This petitioner is still in service, and, according to the petitioner, he being from a Scheduled Caste community, his services cannot be dispensed with, and, according to the petitioner, the respondent/Corporation has acted in an arbitrary fashion in issuing memo dated 7.6.1995. At page 79 of the paper book, the petitioner has given a list of SC/ST employees working in the Corporate Office. This petitioner also would claim that the respondent/Corporation had acted arbitrarily in fixing the emoluments of the petitioner. According to the petitioner, the emoluments were fixed by the respondent/Corporation reckoning the scale of pay drawn by employees, who were to be sent to Algeria on assignment.

23. The three petitioners were French Translators sent to Algeria. It is not disputed by the petitioners that they were paid emoluments as mentioned in the agreement entered into between the petitioners and the respondent/Corporation. The grievance of the petitioners is that the respondent/Corporation had decided on the 10th of January, 1983 to pay officers/staff deputed in Algeria on the basis of the rank and the scale of pay, and the petitioners' remunerations in US dollars were not paid in accordance with the decision, but in the agreement lesser amounts were mentioned while other employees who were sent on deputation had been given larger amounts and that is discriminatory and hit by Article 14 of the Constitution of India. The decision taken on the 10th of January, 1983 reads as under:-

Reg: Payment of salary/per diem to the personnel deputed at Algeria.

It has been decided to pay to the officers/staff deputed to Algeria, the total salary as per the details given below, w.e.f. 1.1.1983, in place of Indian Salary and Per Diem:

Caste Rank Total Payable in Retention gory Emoluments US \$ Algerian Money proposed Dinars Equivalent (equivalent in in US \$ US \$)

AA Level I 2400 1370 3340 240 A Level I 2300 1310 3210 230 C J.A. Grade 1800 960 2990 215 ("68 Batch & senior) D J.A. Grade 1600 790 2740 160 (upto "68 Batch & Sr. Scale) E Rs.700-1200 1450 660 2740 145 F Rs.550-750/ 1100 600 650 110 Rs.700-900 G Rs.425-700 860 550 910 85

24. The only question common to all the three writ petitions on the aspect of emoluments is: "Whether the claim of the petitioners for higher emoluments in US dollars could be sustained? With reference to continuity of service, that would survive only in the case of Rameshwar Dayal, the petitioner in CW.2298/95, as

petitioner in CW.2296/95, Dr.Ranjit Sinha, had died and the petitioner in CW.2297/95, Rakesh Ratti Kapoor, had resigned.

25. Now, I shall take up the question of emoluments payable to the petitioners while they were in Algeria. As noticed above, on the 10th of January, 1983, the respondent/Corporation had decided about the emoluments payable to officers/staff sent to Algeria on assignment in terms of US dollars. There, the scale of pay and rank are mentioned.

26. The learned counsel for the petitioners, Mr. O.P. Khadaria, submitted that the respondent/Corporation had acted without any justification fixing the emoluments of the petitioners far less than the others who were in the scale of pay or were drawing less than the petitioners were drawing while they were in India. The learned counsel submitted that the respondent/Corporation had misled the petitioners in mentioning some amounts in the agreements without any reference to the decision taken by the Corporation itself on the 10th of January, 1983. The learned counsel submitted that the respondent/Corporation had assumed that the petitioners were only temporary employees and, Therefore, the lesser amounts were fixed for the petitioners. The learned counsel further submitted that the petitioners had to sign the agreements without any choice or option and they did not have the equality of bargaining power with the respondent/Corporation. The learned counsel submitted that the respondents acted in an arbitrary fashion.

27. The learned counsel for the petitioners, Mr. O.P. Khadaria, referred to the following judgments of the Supreme Court:-

1. Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,
2. Assistant Excise Commissioner and Others Vs. Issac Peter and Others,
3. Union of India and others Vs. Hindustan Development Corpn. and others,
4. Vishwas Anna Sawant and others Vs. Municipal Corporation of Greater Bombay and others,
5. State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.,
6. Union of India (UOI) and Others Vs. Bhola Dutt Pandey,
7. LIC of India and Another Vs. Consumer Education and Research center and Others,

28. The learned counsel for the petitioners. Mr. O.P. Khadaria, referred to the decision which had also referred to in the 25th Meeting of the Board of Directors on the 3rd of March, 1982, which is same as what was decided on the 10th of January, 1983. The learned counsel submitted that once the remunerations payable to the employees in Algeria was to be fixed on the basis of the scale of pay on which the employees were working, the respondent/Corporation cannot deviate there from and seek to reduce the amount at its own whims and fancies.

29. The submissions made by the learned counsel for the petitioners, Mr.O.P.Khadaria, had overlooked one crucial aspect that the scale of pay was not determinative of the issue. Different categories of employees in the department may be on the same scale of pay but the duties and responsibilities might be different and it would be depend on a variety of factors. Parity cannot be claimed on the basis of the similarity in the scale of pay. The petitioners working were employed as French Translators. That was a different category altogether. At the time when the decision was taken in March, 1982 and January, 1983, the petitioners were not on any substantive cadre in the respondent/Corporation. The petitioners are bound by the terms of the agreement. The respondent has explained the position in the counter and it is reasonably deducible from the documents placed on record. The principles laid down by the Supreme Court in the rulings cited by the learned counsel for the petitioners, Mr.O.P.Khadaria, are not relevant for the purpose of deciding the issue in this case. Therefore, I am unable to accept the submissions of Mr.O.P.Khadaria, the learned counsel for the petitioners, that the respondent/Corporation had committed any illegality or irrationality in fixing the emoluments of the petitioners while they are sent on assignment to Algeria as French Translators.

30. Now, I Come to the question of the respondent's authority to dispense with the services of the petitioner in CW. 2298/95. There is considerable force in the submission of Mr. O.P. Khadaria that the petitioner, Rameshwar Dayal, who belongs to a Scheduled Caste category, whose post has been redesignated, cannot be sent out by the respondent. It is not the case of the petitioner in CW. 2298/95, Rameshwar Dayal, is not capable of working on ministerial assignment having regard to his long experience in the organisation. The respondent/Corporation being a public authority, is bound to act in accordance with fairplay and justice, and cannot dispense with the services of the petitioner in CW. 2298/95 by simply issuing a show cause notice asking him to fend for himself. It may also be noticed that it is not the case of the respondent/Corporation that the performance of the petitioner, Rameshwar Dayal, has not been satisfactory.

31. In the light of these facts, the respondent/Corporation is bound to regularise the services of the petitioner in CW.2298/95, Rameshwar Dayal. Accordingly, the CWP. 2296/95 & 2297/95 are dismissed and CWP.2298/95, in so far as they relate to payment of higher emoluments for assignment in Algeria stand dismissed. However, the petitioners shall be at liberty to file a civil suit for the recovery of the same, if so advised, and the respondent shall have the right to urge all points available to it in law. In CWP. 2298/95, the respondent/Corporation is directed to regularise the services of the petitioner, Rameshwar Dayal, with all consequential benefits, including promotion of the petitioner to a higher post, in the post in which he has been functioning, and such order shall be passed by the respondent/Corporation on or before the 30th of June, 2000.

32. There shall be no order as to costs.