
(2006) 02 DEL CK 0089

In the Delhi High Court

Case No : LPA No"s. 189, 289-290 and 294 of 2000

Rameshwar Dayal

APPELLANT

Vs

Indian Railway Construction Co. Ltd.

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

IRCON Conduct Discipline and Appeal Rules, 1981 — Rule 30(A)

Citation : (2006) 02 DEL CK 0089

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : O.P.Khadaria and Deepak Khadaria, for the Appellant; Saurabh Misra, B.L. Anand and A.P. Narath, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—These two writ appeals have been against the impugned judgment of the learned Single Judge dated 3.3.2000. Heard learned counsel for the parties and perused the record.

2. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

3. LPA No. 294/2000 has been filed by the respondent in the writ petition, Indian Railway Construction Company Ltd. (IRCON) against the direction in the impugned judgment to regularize the writ petitioner. On the other hand, LPA 189/2000 has been filed by the writ petitioner against the direction in the impugned judgment dismissing the writ petition so far as the prayer for payment of higher emoluments for assignment in Algeria was concerned, giving liberty to the employee to file a civil suit.

4. Since the facts are common in both LPAs, hence we are disposing them of by a common judgment.

5. IRCON is the company incorporated under the Indian Companies Act whose

shares are owned by the Union of India. The petitioner was selected to the post of French Translator/Interpreter. True copy of the appointment letter dated 12.4.1985 is Annexure P-1 to the writ petition states :-

No. : IRCON/PF/727

Dated : 4.6.85

Shri Rameshwar Dayal,

No. 1037, Street Maders,

Jamas Masjid,

Delhi-110006.

Dear Sir,

Sub : Appointment to the temporary post French Translator in scale of Rest.550-750 in Indian Railways Construction Co.Limited.

I am directed to state that you have been selected for appointment to the temporary post of French Translator in scale Rest.550-750 on an initial pay of Rest.550/- per month in this Company plus usual allowances as admissible under the rules and subject to such other conditions governing the grant of such allowance in force from time to time, from the date you takeover charge of the post as per the following terms and conditions:-

I) The post is temporary but likely to continue.

II) You will be on probation for a period of one year from the date of appointment which may be extended or curtailed at the discretion of the competent authority of the Company.

III) During the period of probation, extended or otherwise the appointment may be terminated at any time without notice and without any reasons being assigned.

IV) After successful completion of the probation period the appointment may be terminated at anytime by one month's notice given either side, without assigning any reasons therefore. The company, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowance for the period of notice or the unexpired portion thereof.

V) The appointment will be subject to the production of the following documents at your own expense at the time of reporting for duty:

(a) A medical certificate of health and physical fitness on prescribed proforma for service from a qualified registered medical Practitioner.

(b) Original certificate in support of your educational and other professional

qualification, documentary proof, in respect of date of birth, etc. together with two copies thereof.

(c) Character certificates from a Class I Gazetted Govt. Officer/Member of Parliament or MLA/Municipal Commissioner/Justice of Peace/First Class Judicial Magistrate etc.

(d) Certificates of release from your last employer in case you were employed in Govt. Undertaking/Department/Autonomous bodies.

(e) Attestation form in triplicate (enclosed) after filing up.

(f) In case you belong to, Scheduled Caste/Scheduled Tribe, one of the following certificates in original should be produced.

Or

A certificate in the enclosed form issued by one of the authorities enlisted therein.

VI) You will have to take an oath of allegiance to the Constitution of India in the form of enclosed)

VII) You will be liable for transfer to any of the offices/regional offices under the control of the Company in India.

VIII) You should sign the following declaration in the forms enclosed with this letter :

(a) Declaration of Marriage.

(b) Relationship/Connections with the Directors.

IX) You will not, save with the prior permission of the competent authority, apply for any appointment outside the Company. You will have to withdraw your application for appointment elsewhere made prior to the date of issue of these orders and will not appear for interview or accept any employment, if offered. No application for appointment elsewhere shall be forwarded during the probation period.

X) You will not, save with the express permission from the Company, engage in any trade or business or undertake any other work or any employment, full time or part time, while in the service of the company.

XI) In regard to any matters, not specifically covered in the foregoing paragraphs, you will be governed by the rules and orders applicable to the employees of the Company.

XII) If any declaration given or information furnished by you proves to be false, it is found that you have willfully suppressed any material information, you will be liable to removal from service without any or notice and without assigning any reason Therefore notwithstanding any action taken against yours the Company may deem necessary.

XIII) No traveling allowance (TA/DA) will be admissible for joining the duty.

If the above terms and conditions are acceptable, you may please communicate your acceptance or otherwise to this offer of appointment within a fortnight of the receipt of this letter by returning the duplicate copy of this letter, duly signed, to the undersigned and report for duty to this office for further posting, Along with the documents mentioned in this offer will stand automatically cancelled in ease of failure to report for duty on or before 20.6.1985.

Yours faithfully

For and on behalf of

(N.SWAMINATHAN)

COMPANY SECRETARY

6. As stated in para 6 of the writ petition, the petitioner was sent to Algeria on 14.11.85 as French translator and served there till 17.2.92. It is alleged in para 7 of the writ petition that petitioner was granted the pay-scale of Rs. 700-1200 w.e.f. 25.7.85, and as such, he was entitled to a salary of US\$ 1450 per month, whereas he was given only US\$ 880 per month. It is alleged that he was thus deprived of a part of his salary to the tune of US\$ 570 per month for the entire period commencing from 14.11.85 till 17.2.92. He made a representation against this but to no avail. True copy of the representation dated 10.9.87 is Annexure-9, 19 and 20 to the writ petition.

7. It is alleged in para 16 of the writ petition that IRCON instead of implementing their assurance given to the petitioner and his two other colleagues, amended the IRCON Conduct, Discipline and Appeal Rule, 1981 in its 80th Board Meeting held on 25.3.94 in which they introduced Rule 30(A).

8. It is alleged in para 19 of the writ petition that the petitioner who belonged to S.C. Category, has been served with the memorandum dated 7.6.95 that his services are no more required by the respondent and hence he should resign voluntarily and look for a new assignment with immediate effect. True copy of this memorandum is Annexure P-24 to the writ petition. The said memorandum dated 7.6.95 reads as follows:-

No. IRCON/Estt./P.F./727/747 Dated : 7.6.95

MEMORANDUM

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 utilize your services in the company in the area of

your specialization for which you were recruited. Therefore, you are advised to be on the look out for the jobs outside IRCON where you can utilize 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 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 Organisations like forwarding of your applications etc.

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

Sd/-

(K.Seshasaya)

Sr.Manager (Pers.)

To:

Sh.Rameshwar Dayal

Asstt.Manager/Language

IRCON,

Corporate Office.

9. It is alleged that the memorandum is mala fide and hence, the writ petition.

10. Counter affidavit was filed in the writ petition and we have perused the same.

11. It is alleged in para 2 A of the same that the posts of French Translators, to which the petitioner was appointed along with other Translators, are temporary posts created by the Company for doing translation work in connection with the construction projects in French speaking countries. The persons so appointed constitute a separate class in the company and are now identified as a part of Foreign Language Cell. Their seniority in service in the company is amongst each other. As not much work of French translation was available in the company, after the completion of projects in such countries, the office Memorandum dated 7.6.95 was issued to all such persons in the foreign language cell in Algeria.

12. It is stated that the petitioner's service can be terminated in pursuance to the appointment letter dated 4.6.85. This letter states that the post is temporary and the petitioner's services can be terminated even after the probation period is over at any time after giving one month's notice. It is stated that the petitioner's appointment was purely temporary and adhoc and hence the writ petition was not maintainable. It is further stated that the petitioner was employed in Algeria under an agreement signed by him and hence he cannot resile the same. His challenge is barred by acquiescence, delay and laches. It is stated in the counter affidavit that since no further construction projects are under process in Algeria, hence, the work of French Translator was no longer required.

13. It is alleged in para 5 of the counter affidavit that the petitioner was considered and approved for deputing the petitioner in place of Shri Ashit Saha who was returning to India. The petitioner who was already holding the regular grade of Rs. 700-1200 agreed to proceed to Algeria on terms and conditions and emoluments stated in the agreement applicable to staff. At no stage during his assignment in Algeria did he ask for repatriation to India because of lower emoluments. Although he was originally slated for repatriation to India from Algeria in February 1989, due to attrition of work on completion of the project he agreed to continue beyond February, 1989 along with skeletal staff for looking after residual work. The foreign posting of the petitioner was approved by the Company on terms and conditions duly accepted by him on 14.10.85. While giving his acceptance, he specifically recorded that, "I have read the terms and conditions of assignment and hereby accept." Copy of the agreement is Annexure R-2 to the counter affidavit.

14. It is alleged in para 4 of the counter affidavit that there is no discrimination in fixing of emoluments. It is submitted that foreign emoluments are fixed by the company with a due criteria. These were fixed with reference to merit of each individual. The petitioner is not entitled to raise any grievance after more than 10 years of joining the project in Algeria and more than five years after having come back. The foreign emoluments were received by the petitioner in accordance with the terms and conditions agreed to and accepted by him.

15. In para 7 of the counter affidavit, it is stated that petitioner is not entitled to compare his case with those others mentioned in the writ petition. Sh.Satish Kumar Chaudhary was sent to Algeria as a Chartered Accountant and Sh.Chitranjan Singh and Sh.Pradeep Kulsherstra were sent to Algeria as an Engineer(Technical Officers).

16. Moreover, emoluments of the aforesaid persons were approved by revising criteria of fixing emoluments in the year 1985. By then the company had decided that as regards officers and staff of the Railways on deputation with IRCON in whose cases proposals for their absorption in IRCON have either been recommended to the Railway Board/Railways or who have been absorbed, their foreign pay may be fixed based on their pay corresponding to the grade and pay in which they have been proposed to be absorbed in IRCON and that those directly recruited as regular officers and staff of IRCON, to the grade they were then holding in the company at the time of being sent outside.

17. The company then also decided to revise the emoluments of those sent earlier, who had been sent to foreign projects by fixing their foreign pay corresponding to their pay in the next below grade while in India, w.e.f. 1.8.85, with reference to their grade and pay in which they were actually working in India, provided they had continuously worked in that grade for a minimum period of three years at the time of their departure. The petitioner was not entitled to revision of his emoluments under the above decision as he had not continuously worked in the grade of Rs. 700-1200 continuously for a minimum period of three

years at the time of his departure. Smt. Jayashree Krishan Swami, French Translator and Interpreter, was given emoluments of US\$ 1300 as she was more qualified and experienced than the petitioner and her emoluments were fixed with reference to the above said decision of 1985, under which the case of the petitioner was not covered.

18. On the facts of the case we are of the opinion that appeal of IRCON has to be allowed and writ petition has to be dismissed.

19. As regards question of regularization we have already held in Delhi Tapedic Unmulan Samiti v. Babita Rani and Ors. LPA No. 2554/2005, decided on 16th January 2006, that the Court cannot issue directions for regularization as it is an executive function, and it depends on the relevant rules and can only be directed by the Authorities concerned and not the Court. The entire case law on the point has been considered in Delhi Delhi Tapedic Unmulan Samiti v. Babita Rani and Ors. (supra) and hence we not repeating the same again.

20. So far as the plea for higher emoluments is concerned, the petitioner had accepted his assignment in Algeria and he cannot go back on his agreement now. It is entirely for the authority concerned to decide what pay scale should be given to a particular employee and court cannot interfere with the pay scale vide Delhi Delhi Tapedic Unmulan Samiti v. Babita Rani and Ors. (supra). At any event, as held by the learned Single Judge, the appellant can file a suit for this purpose.

21. For the reasons given above, the appeal is allowed so far as the direction in the impugned judgment for regularization of the writ petitioner is concerned and this direction is set aside. The writ petitioner's appeal praying for higher emoluments is dismissed. The Writ Petition is dismissed in entirety.