(1996) 09 DEL CK 0078

In the Delhi High Court

Case No : Civil Writ Appeal No. 1464 of 1992

S. Raghunathan and Others — APPELLANT

Vs

ational Building Construction Corporation Ltd. — RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Citation : (1996) 64 DLT 509

Hon'ble Judges : Devinder Gupta, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : H.A. Ahmadi, S. Subramaniam and Ravindra Kumar, for the Appellant;

Judgement

Devinder Gupta, J.

(1) The grievance of the petitioners is that they are not being allowed the benefit of revision of pay scales and other allowances that were given on the basis of recommendations of the Fourth Pay Commission, while they were serving on deputation in Iraq and consequently have sought various directions against the respondent to make payment from 1st January, 1986 till their repatriation to India on the basis of the Ccs (Revised Pay) Rules, 1986 and in accordance with the terms, as originally agreed upon at the time of deputation and payment of interest on the amount due from 1st January, 1986 till payment etc.

(2) Facts in brief are that the petitioners, while posted as Engineers/Officers in the Central Public Works Department (for short "the C.P.W.D.") were sent on deputation to the respondent-corporation and were posted on overseas projects being executed by rerespondent-Corporation in Iraq. According to the petitioners, the order for placing their services at the disposal of the respondent on deputation spelled out the terms and conditions of deputation under which the petitioners had an option either to draw their grade pay of the C.P.W.D. from time to time plus a deputation (duty) allowance or pay in the scale of new post. Dearness Allowance was to be regulated at the rates admissible to Central

Government employees. House Rent Allowance and City Compensatory Allowance were to be regulated at the rates as admissible to the employees of the foreign employer, namely, the rerespondent corporation. While on deputation in various projects of the rerespondent in Iraq, the petitioners were discharging their functions diligently. They were undergoing various hardships and had to live in extremely difficult conditions. Petitioners remained on deputation from 1982-83 to 1987-88. The terms and conditions of all the deputationists were the same.

(3) It is alleged that to give effect to the Fourth Pay Commission Recommendations, C.C.S. (Revised Pay) Rules, 1986 were brought into effect by Government of India w.e.f. 1st January, 1986. The petitioners ''pay scale in the parent department of C.P.W.D. were revised and properly fixed in the new pay scales w.e.f. 1.1.1986. It is also alleged that pay and allowances of other deputationists with respondent, who were posted in India were also revised by the respondent Corporation and the arrears were also paid to them w.e.f. 1.1.1986. In the case of persons like petitioners, who were posted abroad, no such revision was effected and no payments were made for a long period of more than five years despite petitioners making representations. Respondent, however, informed the petitioners that in case of deputationists, who were posted on overseas projects and were drawing the pay of their parent department, their case was still under consideration and they would be informed of the decision, as and when the same is arrived at.

(4) It is alleged that the rerespondent-corporation while informing the petitioners through letters, one of which is Annexure-P-5 stated that their pay would be regulated later on, if required, on the same pattern, as would be applied to the other regular employees of the rerespondent-corporation, who also had worked on overseas projects. This was a totally different stand taken by the respondents. As far as the petitioners are concerned, they were to be governed by the terms of deputation, which were clear. The wages payable to the respondent''s employees had no relevance to the petitioners'' case.

(5) It is also alleged that several writ petitions were filed by the employees of various public sector undertakings in Supreme ''Court and pursuant to the directions of the Supreme Court dated 14th March, 1986, Government of India had appointed a High Powered Committee on 7th April, 1986 under the Chairmanship of Mr. Justice R.B. Mishra. As a result of the implementation of the report of the Committee, respondent-corporation issued an order dated 15th October, 1990 (Annexure-P-6) for revision of wages of all the employees posted on overseas projects, also making it applicable to the deputationists. The petitioners allege that the same is not only contrary to the terms of deputation but is also not in conformity with the recommendations of the High Powered Committee as no revision in House Rent Allowance, City Compensatory Allowance and other special allowances and terminal payments, which were recommended by the Committee are mentioned in office order Annexure P.6. The Engineers/

officers of C.P.W.D., who were posted within India and were on deputation with the respondent-corporation were in receipt of deputation (duty) allowance from respondent while the petitioners, who were posted abroad were not given deputation (duty) allowance. Similarly, the increase in Dearness Allowance, Additional Dearness Allowance and Interim Relief announced by the Government from time to time were paid to the officers, who were posted in India from the due dates but no such increase was made in the case of the petitioners by the respondent-corporation . Petitioners feeling aggrieved, through letter dated 24th August, 1990 approached the Grievance Cell of the Government of India for appropriate relief. Petitioners were informed by the Grievance Cell that their case was under consideration by the Government. The petitioners when did not get any relief, despite representation, filed Civil Writ No. 1091/91 before Supreme Court of India, which was dismissed as withdrawn with the observation that the petitioners may seek red reseal of their grievances before the High Court and that is how the petitioners approached this Court by filing the present writ petition.

(6) After the respondent was served, its version, as stated by its Counsel was taken on record on 30th October, 1992 that the respondent does not dispute that the petitioners are to be paid as per their claim, however, the payment cannot be made because of embargo put by United Nations and that the Government of India had approached U.N, Authorities for lifting of the embargo and decision was expected shortly. Another statement was made by learned Counsel for the respondent on 15th February, 1993 that the respondent had applied for loan to make payment to the employees, who had worked in Iraq and who are entitled to be paid on the basis of the Iv the Pay Commission Report and time was prayed for making payment. On the basis of these two statements, writ petition was disposed of on 21st July, 1993 directing the respondents to make payment to the petitioners, as per their claim within a period of eight weeks. Respondent thereafter sought review of the order by filing C.M. No. 6832/93 on the ground that the statements, as recorded did not materially reflect the stand that was taken by its Counsel. Review petition, however, was dismissed by the Court on 12th October, 1993. Feeling aggrieved, the respondent-corporation preferred Special Leave Petitions before the Supreme Court against the two orders. Leave was granted and the two Civil Appeals No. 7113/95 and 7114/95 were decided on 4th August, 1995. While setting aside the order dated 21st July, 1993 and 12th October, 1993, a direction was issued for restoration of the writ petition and for its disposal on merits within a period of one year from the date of the order, namely, 4th August, 1995. This petition was posted for directions on 30th October, 1995, on which date notice was directed to be issued to the parties for 4th January, 1996. It was directed to be posted for 5th February, 1996 for arguments and parties were directed to file their synopsis also. Adjournment was sought on behalf of the respondents on 15th February, 1996. Learned Counsel for the parties were thereafter heard on 7th March, 1996.

(7) Respondent''s case in reply, filed on the affidavit of Shri R.C.Verma, Chief

Project Manager (Personal & Administration) National Building Construction Cororation Limited is that the petitioners were on deputation with the respondent -corporation from C.P.W.D. and were posted to the overseas projects, being executed by the respondent in Iraq. Petitioners executed contractual agreements/ employment agreements with the respondent for the said purpose, which inter alias provided for the payment of contractual salary per month, which was to be paid to them in Iraq in local currency of that country. As such the pay scales, as recommended in the report of the High Powered Committee headed by Mr. Justice R.N. Mishra do not automatically apply to their case, as the benefits arising out of the recommendations of the High Powered Committee are not contractually admissible to the petitioners during their posting abroad.

(8) Respondents have not denied that the petitioners and similar other officers, were taken under deputation by the respondent-corporation and they were allowed to opt either to draw their grade of pay, as in the C.P.W.D., from time to time or to draw the pay in the scale of pay in the new post in the respondent organisation. It is, however, stated that other standard terms and conditions for deputationists were also made applicable to the petitioners during their posting in the respondent-corporation . It is respondent''s case that employees posted to overseas projects of the respondent-corporation are governed by a set of rules and regulations and the pay admissible to them is always specifically stated in the contract agreement, signed by them, before proceeding abroad on overseas projects. The revision of Dearness Allowance in respect of regular employees working in India does not automatically apply to the employees including deputationists working on overseas projects. However, as a gesture of goodwill, the respondent corporation allowed revision of Dearness Allowance from 1st April of the prospective year and this practice has been followed since 1981. The petitioners executed work agreement with the respondent-corporation regarding their posting on overseas projects in Iraq, as such they are governed by the terms and conditions of the agreement. Since petitioners are governed by separate set of rules, while posting on overseas projects, the pay admissible to their equivalent ranks in India have no direct relevance to the pay admissible to the petitioners, in terms of the agreement executed by them.

(9) Respondents have not denied that in so far as the other deputationists from C.P.W.D. on the respondent-corporation in India are concerned, the benefits, as admissible to the employees of the respondent-corporation have already been allowed to them, but has qualified its stand stating that the officer on deputation from C.P.W.D. posted in India and abroad are governed by separate sets of rules and that the two are not comparable. Deputationists posted on overseas project are governed by the terms of contract executed by them before proceeding on those projects. As regards the order passed on 15th October, 1990, the respondent''s case is that the petitioners cannot claim the pay and allowances on the basis of the said order dated 15th October, 1990, when they are contending that the same is contrary to their terms of deputation. Petitioners are entitled to claim pay and allowances in terms of the said order provided they accept the

said order as it is, without any reservation.

(10) Petitioners in their rejoinder have stated that as per the terms and conditions they are entitled to the benefit of the recommendations of the Fourth Pay Commission. Benefits of the said revision of tile Fourth Pay Commission have been made admissible to the deputationists, who are posted in India and denial to the petitioners of the same is arbitrary. Petitioners allege that the alleged contract entered into between the petitioners and respondent-corporation was merely a formality, which was insisted upon by the Government of Iraq for the purpose of enabling the employees of the respondent-corporation to work in Iraq. In fact the said contract, entered into, in no manner affected or abrogated the terms of deputation entered into between the petitioners and the respondent-corporation . The terms of contract do not supersede the terms of deputation. Had it been so, there was no occasion for the respondent-corporation to have passed the order dated 15th October, 1990. Petitioners allege that the terms of contract, if any, have to be harmoniously read along with the terms of deputation and perusal of the terms would suggest that there is no inconsistency between the terms of the deputation and the terms of the contract. Respondent-Corporation in the past throughout, in accordance with the terms of deputation, had been allowing the benefit to the petitioners, in accordance with the revision, which would take place in their parent department, namely, C.P.W.D. Petitioners have amplified their claim in the rejoinder stating that basic pay, dearness allowance, deputation allowance, foreign allowance etc. as per the 4th Pay Commission''s Recommendation, which have already been made applicable by respondent-corporation, insofar as the deputationists posted in India are concerned is also payable to them by the respondent-corporation. Petitioners have denied that there are separate rules and regulations for the employees posted overseas. Petitioners'' case in nutshell is that they are governed by the terms contained in deputation order and as and when revision has taken place, they are entitled to the benefits thereunder.

(11) In the light of the aforementioned pleadings, learned Counsel for the parties were heard at length. The contention of learned Counsel for the petitioner has been that while on deputation several emoluments, such as. House Rent Allowance, City Compensatory Allowance, Foreign Allowance etc. were intrinsically linked with the basic pay of the petitioners. Foreign allowance was admissible at the rate of 125% on the basic pay. House Rent Allowance at the rate of 25% of the basic pay and City Compensatory Allowance at the rate of 6% of the basic pay. As and when there has been any revision carried out in the basic pay, consequently the allowances were automatically paid to the petitioners on the increased basic pay, on percentage basis e.g. Foreign Allowance was paid at the rate of 125% on the creased basic pay and not on unincreased basic pay. It is contended that with effect from 1.1.1986 C.C.S. (Revised Pay) Rules, 1986 came into force, pursuant to the recommendation of the 4th Pay Commission, which were fully applicable to the petitioners, inasmuch as the petitioners had opted for their parent grade at the time of their deputation to the respondent-

corporation, Since the petitioners had opted for their parent grade, they were to be governed by the Rules, as applicable to the Central Government employees and not by the Rules of the respondent-corporation or the Rules applicable to the employees of respondent-corporation. It is contended that despite the fact that such recommendations were fully implemented forthwith, insofar as similarly placed deputationists in India are concerned, the petitioners were deprived of the said benefits. It was submitted that the petitioners are entitled to receive emoluments as per C.C.S. (Revised Pay) Rules, 1986 and not as per the pay as admissible to the employees of respondent-corporation. The emoluments, which were intrinsically linked with the basic pay on percentage basis were arbitrarily frozen by the respondent-corporation in the case of the petitioners through the impugned order dated 15th October, 1990. On such revision the same were not so frozen but were granted to the similarly placed deputationists in India. As such there is no reason why the same be not allowed to the petitioners. Respondents had, in the past, a consistent practice and policy of refixation the Foreign Allowance, House Rent Allowance and City Compensatory Allowance linking it with revised basic pay, as and when the basic pay was revised, so as to bring the same at par with the revised basic pay, on percentage basis. The past practice and policy followed by the respondent-corporation also gave rise a legitimate expectation to the petitioners of being paid all the allowances on) percentage basis on the revised pay scale and the act of the respondent in not giving the same benefit, while issuing the impugned letter dated 15th October, 1990, being contrary to their legitimate expectation, is wholly arbitrary and illegal, having been passed without hearing them. In addition, the petitioners have also prayed that interest be allowed at the rate of 18% p.a.

(12) Learned Counsel for the respondent contended that petitioners'' case cannot be governed on the doctrine of legitimate expectation. There must be a foundation for the claim, which is lacking in this case. Unequivocal past practice cannot be made the basis unless there was an assurance held out that as and when there will be any increase in basic pay, allowances will be increased correspondingly on percentage basis. Petitioners cannot lay claim for higher allowances. Petitioners are entitled only to deputation (duty) allowance and not the foreign allowance. The terms and conditions, as incorporated in Annexure-I were the only terms and conditions. Foreign allowance was not included as one of the allowances in the terms and conditions and, Therefore, while issuing the order dated 15th October, 1990, respondents rightly took a decision of freezing those allowances on the perceived basic pay. Percentage was reflected only for the purpose of computation of the amount and not for any other purpose. The petitioners would not be entitled to claim increase on percentage basis on each occasion when there is increase in basic pay. It is contended that there is no right of the petitioners, which can be said to be enforceable on the basis of the doctrine of legitimate expectation.

(13) Respondents have not placed on record the copy of the contract, alleged to have been entered into between the petitioners at the time of the petitioners

joining the respondent-corporation. The petitioners joined on deputation, on the basis of an office order (Annexure-1) dated 21st November, 1993, which says :

"The Director General of Works, C.P.W.D. has been pleased to place the services of the following Executive Engineers (Civil) of this Departmental the disposal of National Building Construction Corporation, New Delhi, for appointment as Resident Engineer (Civil) for posting on their Projects in Iraq for a period of two years in the first instance with immediate effect in public interest as per terms and conditions of foreign service shown in the Annexure: S/Shri 1. V.Nainani, Asian Games, New Delhi. 2. A.K. Mittal, EE(C) 0/0 C.E.(CDO), New Delhi. 3. Pawan Kumar EE(C) Bikaner Central Division, Bikaner. 4. K.V.L.N. Rao, EE(C), Fly-over Project, New Delhi. 5. G.C. Khattar, EE(C), Ssw (Constn. Zone) C.P.W.D., New Delhi. 6. S.K. Mittal.EO to Ce (NDZ), Cp Wd, New Delhi. 7. S. Ramamurthy, EE(C) Fly-over Project (D.A.), New Delhi. 8. K. John Surgeon, Ee (C), Hyderabad Central Divison, C.P.W.D., Hyderabad. 2. It is certified that but for their deputation to National Building Construction Corporation, New Delhi, these officers would have continued to officiate as Executive Engineer (Civil) in C.P.W.D. 3.These Executive Engineers (Civil) may please be relieved immediately by making dual arrangements. Their substitutes are being posted separately. 4. This issues with the approval of Ministry of Works & Housing vide their U.O. No. 1445-SF/FW/82, dated 22.11.82. sd/- Mrs.Neena Garg Dy. Director of Admn."

(14) The terms and conditions of foreign service annexed to the office order makes reference to allowances payable to the petitioners including Deputation (Duty) Allowance, Dearness Allowance, House Rent Allowance and City Compensatory Allowance etc. Relevant clauses of the terms of deputation as annexed to the order of deputation read :

"1. The Officer will have the option either to draw his grade pay in the Central Public Witness .D. from time to time plus a deputation (duty) allowance or the pay in the scale of pay of the new post as may be fixed under normal rules as per Ministry of Finance (Department of Expenditure) No. 10/24/EII (6)/60, dated 4.5.61, as amended from time to time. 2. Dearness allowance will be regulated at the rates admissible to Central Government Servants. 3. House rent and City Compensatory Allowance will be regulated at the rate admissible to the employees of the foreign employer. 4. Liability for leave salary in respect of disability leave granted on account of disability incurred in or through foreign service even though such disability manifests itself after the termination of foreign service, will be borne by the foreign service employer. 5. He would be entitled to traveling and daily allowance for journeys in connection with his duties on foreign service as admissible to him under the Rules framed by the Foreign Employer. 6. The contribution towards leave salary and pension for the period the officer remains on foreign service will be paid by foreign employer according to the rates in force from time to time in accordance with the orders issued by the President under F.R. 116. 7. He will remain subject to leave rules applicable to the service of which he is a member. 8. He will be eligible to the Medical

Attendance and the treatment not inferior to that admissible to an officer of the corresponding state under the Central Government Rules. 9. Joining time, joining time pay and traveling allowance on transfer to the foreign service and reversion there from shall be regulated under rules framed by Foreign Employer and paid for by him. 10. He will be entitled to leave travel concessions as admissible to Central Government Employees of his status and expenditure on this amount will be borne by the foreign employer. 11. The whole expenditure in respect of any compensatory allowance for the period of leave in or at the end of foreign service shall be borne by the foreign employer. 12. He will not be allowed to join pension scheme which may be in force in the Foreign Service. 13. The Foreign Service will commence from the date he relinquishes the post under the Central Public Witness .D. and end on the day he resumes duty in the Central Public Witness .D. 14. The provisions of Government accommodation, if any, occupied by him at the time of proceeding on deputation would be subject to the conditions laid down in the Ministry of W.H. & S.O.M. No. 12016(l)/ 68-PI.II, dated 13.12.68, as may be amended from time to time. 15. He will be subject to C.G.F.I.S. Recovery contributions to wards C.G.F.I.S. may be effected from the deputationist and the amount remitted to the Pay & Accounts Officer concerned."

(15) The aforementioned terms of deputation clearly stipulate that the officers were given an option either to draw their grade pay in the C.P.W.D., from time to time, plus a deputation (duty) allowance or the pay in the scale of pay of the new post. Admittedly, petitioners exercised their option to draw their grade pay in the C.P.W.D. from time to time. There is also no dispute on the point that the petitioners were entitled and were allowed to draw their grade pay as revised in the year 1986 w.e.f. 1.1.1986. The dispute is only with regard to the allowances.

(16) Impugned order Annexure-.6 dated 15th October, 1990 appears to have been issued to give effect to the recommendations of the High Power Committee to the employees of the Corporation including the deputationists posted to overseas projects and it says :

"Sub: Implementation of recommendation of High Power Pay Committee to the employees of the Corporation including deputationists posted to overseas projects." Dear Sir, The Department of Public Enterprises vide its O.M. dated 12.6.90 (copy enclosed for ready reference) has issued guidelines for allowing revised pay scales to the employees of the Public Sector Enterprises who were on Central Da pattern. 2. Consequent upon implementation of revised pay scales to the employees of the Corporation, it has been decided by the Board on 5.9.90 to extend the benefits as per Annexure I & Ii w.e.f. 1.1.1986 to the employees as well as deputationists who had worked on Overseas Projects and have either been repatriated on or after 1.1.86 or still continue to be posted in projects abroad. 3. The revised rates of D.A. is admissible to the employees from the crucial date i.e. 1st April of the respective year as per existing procedure. A copy of the ready reckoned for the purpose of calculation and payment of D.A. and C.C.A. as admissible on revised pay from time to time is enclosed. 4. As regards payment of arrears to the deputationists as well as to the employees of the Corporation who have since been repatriated, it has been decided that the same be worked out by the respective Central Offices, Overseas Projects in U.S.dollars and the due and drawn statement be sent to head Office (IFW) for arranging payment in India. The arrears to the employees still working in Overseas Project will be paid as per existing practice. 5. The above instructions may please be examined carefully before implementation and in case of any doubt, clarification the same may please be obtained from Head Office so as to avoid any over-payment to an individual. This issues with the approval of the Competent Authority. Thanking you."

(17) A copy of ready reckoned is annexed to letter Annexure-P.6, for the purpose of calculation and payment of Dearness Allowance and City Compensatory Allowance, as admissible on revision of pay scales from time to time. As regards the basic pay, there is no dispute that the same has been worked out by the respondent-corporation w.e.f. 1.1.1986, The dispute is with regard to the allowances only. Petitioners'' case is that as and when in the past there has been revision in the pay scale, there has been corresponding increase in the foreign and other allowances on percentage basis. Foreign allowance was payable at the rate of 125% of basic pay for Libya and Iraq and 280% for Sanaa .House Rent Allowance and City Compensatory Allowance were at the rate of 25% and 6% respectively on basic pay plus D.P. and similarly Dearness Allowance as admissible in the grade pay. But while allowing revised pay w.e.f. 1.1.1986, there has been no corresponding increase. Copy of ready reckoned Annexure-1 attached to the impugned order Annexure P-6 says:

SI. Break-up of Present pay Proposed pay No. pay details fixation fixation formula formula on allowing revised pay scales 1 Basic Pay Pre-revised Revised pay as Grade pay of intimated by parent Deptt. parent Deptt./ from time to worked out by time the Corporation w.e.f. 1.1.1986 2. Foreign 125% of basic Allowance pay for Libya Sanna amount 3. Food Subsidy 4. Medical Rs.700.00 p.m. allowance 5. H.R.A. 25/ p.m. No change for pay+DP employees already repatriated to India 6. C.C.A. 6% of basic For existing employees pay + Dp subject Hra would be 25% to maximum of of the revised basic pay Rs.75.00 p.m. subject to a maximum of Rs.1000.00 p.m. and Cca would be @ 6% of the basic pay subject to a maximum of Rs. 100.00 p.m. It would be made applicable from the date on which Board the date on which Board approves the Agenda. 7. DA/ ADA As admissible As admissible with Grade pay. with revised pay (any increase in Da or Ir will etc. be admissible from April, of the next year as per existing procedure). 8. I.R.-I (Effective date 1.4.1984 1.3.83) I.R.-II (Effective date 1.4.1985 1.3.85) 9. Desert It will continue to be regulated allowance on pre-revised basic pay. (wherever applicable)

(18) Petitioners are basing their claim on the ground that since in the past there has been corresponding increase in the allowance on percentage basis and this has been the past practice and policy of the respondents, the same gave rise to a

legitimate expectation to the petitioners of being paid in future also the allowances on percentage basis on the revised basic pay. The act of freezing those allowances on the pre-revised basic pay is illegal and arbitrary.

(19) Respondents have not disputed that in the past, as and when there has been revision in the pay scale such allowances were also correspondingly increased on percentage basis. The existence of legitimate expectation in these circumstances may have a number of different consequences and one of such consequences would be that the respondents, ought not to have acted in a manner so as to defeat the legitimate expectations, without some overriding reason of public policy, to justify in its doing so.

(20) In Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, , it was held that in a case of legitimate expectation, if authority proposes to defeat a person''s legitimate expectation, it should afford him an opportunity to make representation in the matter. When persons enjoying certain benefit/ advantage, not by policy of Government derived legitimate expectation, even though they may not have any legal right in private law, the aggrieved persons are entitled to an opportunity to make representation before the Government and in case opportunity is not given, the decision would be amenable to judicial review and will be liable to be quashed and set aside The Court observed :

"In the aforesaid facts, the Group Housing Societies were entitled to Legitimate expectation'' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of legitimate expectation'' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the Legitimate expectation'' without some overriding reason of public policy to justify its doing so. In a case of legitimate expectation'' if the authority proposes to defeat a person''s legitimate expectation'' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on legitimate expectation'' at page 151 of Volume 1(1) of Halsbury''s Laws of England, 4th Edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service, it has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons."

(21) Nature and scope and applicability of the doctrine of legitimate expectation was further explained in a subsequent decision of the Supreme Court in Union of India and others Vs. Hindustan Development Corpn. and others, . It was held that expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the Government activities. The doctrine of

legitimate expectation is to be confined mostly to the right of a fair hearing before a decision, which results in negativing a promise or withdrawing of an undertaking. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person''s legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. Even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A legitimate expectation would arise when a body by representation or by past practice aroused expectation, which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. A person who basis his claim on the doctrine of legitimate expectation, must satisfy that there is a foundation and thus has locus standi to make such a claim.

(22) There is no denial on the part of the respondents, as regards the past practice and policy, which has been followed by revising the foreign allowance, house rent allowance and city compensatory allowance etc. correspondingly commensurate with the basic pay. Petitioner''s case is that certain emoluments, which are intrinsically linked with basic pay had to be paid on percentage basis on the revision basic pay and the action of the respondents in not making payment of those allowances or freezing those at the pre-revised level is arbitrary and contrary to the legitimate expectation. No opportunity was ever allowed to the petitioners before taking a decision and the same has also not been justified by the respondent on the well known principles. According to the petitioners, the decision contained in Annexure-6 thus has to be quashed and set aside and direction deserves to be issued to the respondent to pay the allowances on percentage basis on the revised basic pay.

(23) In so far as the house rent allowance and city compensatory allowance are concerned, the same are specifically mentioned in the terms and conditions that the same will be regulated at the rates admissible to the employees of foreign employer. In other words, these two types of allowances are to be allowed and are to be regulated by the respondents and payable at the same rate as is admissible to the employees of the foreign employer. The same are not connected with the basic pay. Even in the past the respondent did not allow increase therein on every revision of basic pay of the petitioners. For these type of allowances, the doctrine of legitimate expectation cannot be made applicable, in view of the specific terms and conditions in the order of deputation that these type of allowances will be payable be at such rate as is admissible to the employees of the foreign employer. The impugned order states that house rent allowance and city compensatory allowance were payable at 25% of basic pay plus D.P. and 6% of basic pay and D.P. subject to maximum of Rs. 75.00 per

month respectively. There will be no change in the House Rent Allowances on revision of pay w.e.f. 1.1 .1986 as the employees had already repatriated to India. But for the existing employees, the house rent allowance would be 25% of the revised basic pay subject to maximum of Rs. 1,000.00 per month and city compensatory allowance would be 6% on the basic pay subject to maximum of Rs. 100.00 per month. Petitioners stood repatriated to India when this order was passed and thus in the petitioners'' case, the order says that there will be no change in the allowance. In case the House Rent Allowance and city compensatory allowance, as per decision of the respondent-corporation has to be paid to its employees on the basic pay plus D.P., no grievance can be made by the petitioners in that regard and no interference is called for in the impugned order with respect to these two allowances.

(24) In so far as the foreign allowance is concerned, the same was payable @ 125% of the basic pay. The petitioners were posted in Iraq and the impugned order says that there will be no change/addition in the amount. In other words, this amount was ordered to be frozen and payable @ 125% of the pre-revised basic pay and not of the revised basic pay. No doubt, foreign allowance is not one of the allowances mentioned in terms of deputation, but the same is akin to the deputation (duty) allowance referred to in Clause (I) of the terms of deputation. When the same was made intrinsically linked with the basic pay and in the past there has been correspondingly increase on every revision of pay on the same percentage basis, there is no reason forthcoming that why the same now stands frozen on pre-revised basic pay and why it is not allowed at the same percentage on the revised basic pay. In the absence of any justifiable reasons this act of the respondents will have to be held to be illegal and arbitrary. Petitioners legitimately expected that on revision of the basic pay, the foreign allowance would also correspondingly stand enhanced on percentage basis. Foreign allowance, which is akin to and deputation (duty) allowance has to be regulated as per the rates specified for the purpose, namely, on percentage basis of the basic pay and in case there has been a revision of basic pay, it would automatically stand revised. The deputation (duty) allowance is also an allowance payable on percentage basis and on revision of pay, it is payable on percentage basis on the revised basic pay.

(25) In so far as other allowances, namely, desert allowance, food subsidy, medical allowance or other local allowances, the same would be governed on the same principle, applicable to the house rent allowance and city compensatory allowance and not on the principle applicable to the foreign allowance.

(26) Respondents has not denied that in so far as the benefits on revision of pay scale w.e.f. 1.1.1986, the same were allowed to such of the officers, who were on deputation and were posted in India. In their case on benefit of revision allowances were paid on percentage basis of the revised pay. Presumably, while passing the impugned order Annexure P.6, the respondent treated the petitioners at par with its employees, in so far as foreign allowance is concerned. The

petitioners could not have been treated equally or at par with the employees of the respondent corporation. Their terms and conditions were separate. Petitioners were to be governed by the terms and conditions contained in order of deputation, copy of which was also sent to the respondent. The respondent accepted the petitioners'' services on deputation on the terms and conditions, as attached to the said order. Since the respond ent has not produced on record the alleged contract or its copy and nothing was alleged during the course of arguments on the alleged contract, we have no hesitation in holding that the office order similar to Annexure P-I, issued in the case of each petitioner containing terms and conditions of deputation would govern their case and insofar as the foreign allowance is concerned, the same would be payable to the petitioners on the same percentage on the revised basic pay at which it was payable prior to revision on the pre-revised basic pay and the action of the respondent as regards this allowances is concerned, is bad inasmuch as the petitioners legitimately expected that this allowance would stand revised and became payable to them, as in the past, on percentage basis of the revised basic pay. In case the respondents wanted to effect any change in the same, it was reasonably expected that the respondents ought to have informed the petitioners and in case the fresh proposed terms would not have been acceptable to the petitioners, the petitioners might have taken a decision to get themselves repatriated or got terminated their deputation.

(27) In view of the above, the writ petition is partly allowed holding that Annexure P.6, in so far as it pertains to foreign allowance, the same is bad in law when it says that no change/advantage in the foreign allowance will be made and consequently we direct the respondents to pay to the petitioners foreign allowance at the same percentage of the revised pay w.e.f. 1.1.1986 and not of the pre-revised basic pay. The respondent is directed to work out the amount, which will become due and payable to the petitioners and the same will be paid to the petitioners within a period of three months from today along with interest at the rate of 10% p.a. from the date when the amount became due till the date of payment.

