

(1997) 07 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Appeal No. 472 of 1994

S.P. Singh

APPELLANT

Vs

National Building Construction Corporation, New Delhi

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Citation : (1997) 42 DRJ 507

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

Bench : Division Bench

Advocate : H.A. Ahmadi and Ravinder Kumar, for the Appellant;

Judgement

Devinder Gupta, J.

(1) The petitioners have sought direction against the respondents to make payment due to them from 1.1.1986 till their repatriation to India on the basis of Ccs (Revised Pay) Rules, 1986 announced by the Government of India and in accordance with the terms originally agreed upon at the time of deputation and directing the respondent Corporation to pay duty allowance and Da from the due dates announced by Government of India for admissibility of Da from 1982 onwards.

(2) The petitioners were Engineers/officers recruited and appointed in the Central Public Works Department and were sent on deputation in the year 1992 and 1993, placing their services with respondent Corporation, which is a public sector undertaking, wholly under the control of Central Government. Number of other engineers similar to the petitioners were also placed at the disposal of the respondent Corporation to pursue their projects in India, Iraq and Libya, initially for a period of 2 years but the period was thereafter extended from time to time. The petitioners and others joined back their parent department after execution of projects taken in hand by respondent out of India. Grievance made by the petitioners is that they are entitled to be treated at par with those deputationists, who were posted with the respondent Corporation in India. The respondent

Corporation while granting the benefits of the C.C.S. (Revised Pay) Rules, 1986 in terms of deputation allowance and increase in DA/ADA etc. announced by the Government to the officers posted in India has wrongfully denied the same benefits to the petitioners, who were similarly placed deputationists posted abroad. The act of the respondents in not granting the petitioners resultant benefits as a consequence of acceptance of the 4th Pay Commission's Report are wholly arbitrary and discriminatory. Certain allowances, which the petitioners were entitled to and were intrinsically linked with the basic pay of the petitioners, such as, foreign allowance, etc. would automatically have to be revised on the revision of basic pay. But through the office order dated 15.10.1990 the respondents have frozen most of the allowances, which were granted to the petitioners on the basis of the old basic pay. In accordance with the 1986 Rules and the implementation of the report of the High Powered Pay Committee, while increase in H.R.A., C.C.A. etc. of the deputationists, who were posted in India were affected by the respondents, similar increase in the allowances such as foreign allowance, area allowance, medical allowance, non- practicing allowance, food subsidy and terminal benefits was not been made effective in the case of the petitioners. In this back ground, aforementioned directions were sought contending that similar claims were also pending in this Court in some writ petitions, one of which was Civil Writ No.1464/92, S.Raghunathan and others v. National Building Construction Corporation Ltd.

(3) The respondents contested the petition on the ground that there is no question of any discrimination. All the petitioners had signed the contract/ employment agreement with the respondent Corporation, which provides the terms and conditions of service on which the petitioners agreed to work with the respondent Corporation. The agreement also provides for the payment of contractual salary in Iraq, which was to be paid actually to them in local currency. In so far as allowances and other benefits are concerned, the same were to be regulated at the rates admissible to the employees of the respondent Corporation. As such it cannot be maintained that the petitioners' pay scales and allowances in their parent department are relevant. The terms and conditions of service including pay and allowances were fully known to the petitioners when each of the petitioners agreed to serve the respondent and voluntarily accepted the same. During their tenure, the petitioners accepted the allowances as admissible to the employees of the respondent Corporation. It is also stated in reply that the petition is belated and after filing the petition, the petitioners have accepted arrears without any objection in respect of their foreign assignment to Iraq, which were paid to the petitioners in terms of office order dated 15.10.1990, Therefore, the petition is not maintainable.

(4) We have heard learned counsel for the parties and been taken through the entire record.

(5) In fact except the question of delay raised by the respondents and the question that after filing of the writ petition the petitioners accepted the amount

of arrears as per office order dated 15.10.1990 other questions have been dealt with by us in our decision rendered in Civil Writ No.1464/92, S.Raghunathan and others v. National Building Construction Corporation Ltd.. It was on the basis of the report of the High Powered Committee, which had been set up by the Government of India that Government of India on 12.6.1990 issued an office memorandum and it is the respondents' case that pursuant thereto office order dated 15.10.1990 (annexure-P.6) was issued. The said office order was fully dealt with by us in the decision in S.Raghunathan's case (supra). in which we held that foreign allowance, which is akin to the deputation (duty) allowance has to be regulated as per the rates specified for the purpose, namely, on percentage basis and in case there has been revision of basic pay, it would automatically stand revised. Deputation (Duty) Allowance is also an allowance payable on percentage basis and on revision of pay, it is payable on percentage basis on the basic pay. In so far as other allowances, namely, desert allowance, food subsidy allowance, medical allowance and other local allowances, the same would be governed on the same principle, applicable to House Rent Allowance and City Compensatory Allowance and not on the principle applicable to foreign allowance and Deputation (Duty) Allowance. In so far as H.R.A. and C.C.A. were concerned, it was held that no grievance can be made by the petitioners in that regard and no interference is called for in the impugned order dated 15.10.1990 with respect to these allowances. However, the impugned order (annexure-P.6) dated 15.10.1990 was held to be bad in so far as it pertains to foreign allowance and deputation (duty) allowance. We need not reproduce in this order the reasonings since the same have been dealt with by us in S.Raghunathan and others's case (supra) and there is no ground made out to take a different view in this case.

(6) In so far as the plea of the respondents as regards delay and latches, we do not find any substance therein. Petitioners have been agitating ever since the impugned order was issued in the year 1990 by submitting representations and thereafter the same was agitated by some of the employees by filing Civil Writ No.1464/92 along with other representationists. The petitioners also joined in by filing the petition during pendency of the said petition.

(7) On the question of waiver/estoppel, we do not find that any case has been made out by the respondents. Annexure-R.1 (Colly) are the four receipts placed on record by the respondents by which the three petitioners and the widow of late Shri Ramji Lal, namely, Kusum Asthana received the arrears towards foreign allowance pursuant to the impugned order dated 15.10.1990. These receipts were issued during the pendency of the writ petition. The writ petition was preferred on 17.1.1994. The payments were received subsequent thereto. Receipts does not reflect that the petitioners expressly gave up their claims made in the petition. As the petitioners had already approached this Court making grievances and it is not stated in any of the receipts that the petitioners gave up their rights or claims made in the pending writ petition, there is no question of any waiver. For a waiver, there must be clear and unequivocal intention expressed, giving up of a known right, unequivocally or abandonment of a known

right. The writ petition having already presented in this Court, there was no intentional abandonment of the claim made therein and thus there cannot be any question of either waiver or estoppel.

(8) Following the decision rendered by us in the case of S.Raghunathan and others (supra), the writ petition is partly allowed and we direct the respondents to pay to the petitioner foreign allowance and deputation (duty) allowance at the same percentage of the revised pay w.e.f. 1.1.1986 and not on the pre-revised basic pay. The respondents are directed to work out the amounts, which are 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.